

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 23rd JANUARY 1987

Present : Hon'ble Shri Ch. Ramakrishna Rao

- Member (J)

Hon'ble Shri P. Srinivasan

- Member (A)

APPLICATION No. 725/1986(T)

C.H. Basappanavar
Deputy Conservator of Forests
Shimoga

- Applicant

(Sri H.B. Datar, Advocate)

1. Union of India represented by
The Secretary, Department of Personnel
Cabinet Secretariat
North Block, New Delhi

2. The Special Selection Board for
Indian Forest Service by its
Chairman, C/o Union Public Service
Commission, P.B. No. 186, New Delhi

3. The State of Karnataka by its
Secretary to the ~~Govt~~ Deptt of
Agriculture & Forest Dept.,
Vidhana Soudha, Bangalore

- Respondents

(Sri M.S. Padmarajaiah, Senior C.G.S.C.)

This application came up for hearing before
this Tribunal and Hon'ble Member (J) Shri Ch. Ramakrishna
Rao to-day made the following

ORDER

This application was initially filed as a writ
petition in the High Court of Karnataka ('High Court')
and subsequently transferred to this Tribunal. The
facts giving rise to the application are briefly as
follows:

2. The Indian Forest Service was constituted with
effect from 1-10-1966 under section 2(A) of the All
India Service Act, 1951. Under sub-rule (1) of Rule 4

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C.H. Basappanavar
Deputy Conservator of Forests
Shimoga - Applicant
v (Sri H.B. Datar, Advocate)

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of the said Rules, regulations were framed for the initial recruitment with effect from 1-10-1966. By a notification dated 15th July 1977 published in Karnataka Gazette dated 1-8-1967 a list of 33 officers was published.

The petitioner's name was excluded. Therefore the applicant filed W.P. No. 1327 of 1968 before the High Court which quashed the selections and appointments made under the notification referred to above.

Thereafter on or about November, 1970 a Special Selection Board was constituted under Regulation No.3(1) of the Regulations. The Board met at Bangalore on 16th and 17th November, 1970 and about 51 persons were appointed to the IFS, with effect from 1-10-1966. Once again the applicant was excluded from the selection.

The applicant filed a writ petition No. 127 of 1971 before the Supreme Court against the said selection list. Along with the applicant, S/Shri B.S. Parishad, M.Basappa, H.Mohamed Ataulla and M.S. Rama Rao also filed petitions before the Supreme Court. In one of those petitions (W.P. No. 75 of 1971) the Supreme Court made the following order :

"The learned Attorney General has, in our view, quite fairly stated that he will recommend to the Government of India, having regard to the various matters which he has considered and which this Court would have considered, to place the case of the petitioner before the selection Board and the Union Public Service Commission for reconsideration for initial recruitment. In view of this statement, Mr. A.K. Sen for the petitioner has not pressed this writ petition and the petitions accordingly permitted to be withdrawn."

CKD

An order on the same terms was passed by the Supreme Court on 15.4.1975 in the writ petition filed by the applicant permitting him to withdraw the petition. Thereafter, the names of the persons, who moved the Supreme Court (including the applicant's) were considered by the Special Selection Board ('Board') and a list published in which the name of the applicant did not find a place. Aggrieved by the exclusion of his name, the applicant has filed this application.

3. Shri H.B. Datar, learned counsel for the applicant, strenuously contends that the adverse remarks in the annual Confidential Reports ('CRs') of his client for the years 1963, 64, 65 and 66 and 1973-74, which were subsequently expunged, weighed with the Board in excluding his name from the list. Shri M.S. Padmarajaiah, learned counsel for the respondents, submits that the adverse entries expunged by the State Government were got pasted over by them and the case of the applicant was placed before the Board on the 14th October, 1976; that the Board considered the record of the applicant only upto the year 1966; that the entries in his C.R. for 1973-74 were not relevant and as such, were not placed before the Board.

4. We have considered the rival contentions. We have also perused the CRs. We are satisfied that the adverse remarks having been obliterated by the pasting effected over them there is no scope to infer that the Board took into account the expunged remarks.

End

5. The second string to the bow of Sri Datar is the decision of the Supreme Court in Union of India v H.P. Chothia AIR 1978 SC 1214 wherein it was held the provisions of regulation 5(2(b) of the IFS Regulations 1966 are mandatory in character. Sri Datar has relied on the following observations in the decision cited supra :

".... a plain interpretation of Regulation 5 would show that the requirements mentioned in cls (a), (b) and (c) must be complied with before the recommendation is sent to the Commission. Clause (b) clearly states that where eligible officers of the State Forest Service are not found suitable, reasons must be given by the Board for their non-inclusion in the select list. This provision, in our opinion, is in public interest and has been made with a view to avoid arbitrary or capricious exercise of discretion by the Board and also to prevent any hostile discrimination."

Shri Datar also placed reliance on the observations of the Supreme Court in Union of India v M.L. Kapoor AIR 1974 SC 87 rendered subsequent to the decision cited supra which fortify his contention.

6. Shri M.S.Padmarajaiah invited our attention to a decision of a single Judge of the Calcutta High Court in Matter No. 249 of 1979 which was decided in May 1980 ^{and} in which the applicants similarly placed as the applicant in the present case and since jurisdiction of the High Court was invoked in 1979 long after the notification under the IFS Regulations 1966 was published by the Government of India on October 19, 1971 and by the Government of West Bengal on May 17, 1972. Shri Padmarajaiah also submits that the High Court of Calcutta declined to entertain the Matter on the ground that it was barred by delay and laches. According to Shri Padmarajaiah the case of the applicant was considered by the Board in 1976 while the

application was filed five years thereafter in 1981. On the merits Shri Padmarajaiah maintains that the Board had considered the case of the applicant carefully before excluding his name from the list.

7. We have considered the matter carefully. In our view this application is not barred by delay or laches in as much as the applicant moved the High Court initially in 1968 itself and later invoked the jurisdiction of the Supreme Court in 1971. As already noticed, on the basis of the undertaking given by the learned Attorney General extracted in paragraph 2 above, the case of the applicant was considered in 1976 by the Board. He also made a representation to the Government of India subsequently and in view of these facts the case of the applicant is distinguishable from the case of the applicants before the High Court of Calcutta. We, therefore, reject the plea based on delay and laches.

8. Turning to the submission of Shri Datar based on the ratio of the Supreme Court decisions cited by him, we have no doubt in our mind that the Board has not kept in view the law as laid down by the Supreme Court in the decisions referred to above. The Board in Paragraph 9 of minutes of the proceedings dated 14.10.1976 merely observed


"Having considered the Service records of these officers and having taken into consideration all relevant facts and the expunction of adverse remarks by the State Government, the Board came to the conclusion that there was no justification for the inclusion of the names of S/Shri C.H. Bassapanavar and M. Basappa in the list of officers adjudged suitable for appointment to the Indian Forest Service at its initial constitution."

The Supreme Court in the decision in Union of India v

H.P. Chothia cited supra has observed :

"The word 'adjudge' is a very strong term and indicates that the Board must be satisfied that a person is not suitable and the requirement for giving reasons has been enjoined for the purpose of proving that the Board was not only satisfied but has given grounds of its satisfaction so as to exclude possibility of any oblique or extraneous consideration. In these circumstances, therefore, we are unable to agree with the counsel for the appellant that the requirement of giving reasons as contained in Regulation 5(2)(b) is merely an idle formality and it is a substantial compliance with the said clause if the Board peruses the confidential rolls of officers and forwards the record to the Commission."

~~Another expression of the same opinion is given in the judgment of the Commission in the case of Mr. K. Venkateswaran~~

9. In view of the foregoing, we direct the respondents to consider the case of the applicant for appointment to the Initial Recruitment Cadre of Indian Forest Service with effect from 1-10-1966 in accordance with the provisions of the IFS Recruitment Rules and in conformity with the provisions of IFS Regulations and in accordance with law. This direction shall be complied with within a period of two months from the date of receipt of this order.

10. In the result the application is allowed. No order as to costs.

Ch. Venkateswaran

23/1/87

Member (J)

P. S. - 23/1/87

Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

REGISTERED

CONTEMPT APPLICATION No. 4/87
IN APPLICATION NO. 725/86(T)
(WP. NO. 7123/81)

COMMERCIAL COMPLEX, (BDA)
INDIRANAGAR,
BANGALORE-560 038.

DATED: 27 MAY 1987

APPLICANT

Vs

RESPONDENTS

Shri C.H. Basappanavar

The Secy, Dept of Personnel & 2 Ors

TO

1. Shri C.H. Basappanavar
Conservator of Forests
Dryland Development Board
Mysore
2. Shri B.B. Mandappa
Advocate
115/3, Balappa Building
Seshadripuram
Bangalore - 560 020
3. The Secretary
Department of Personnel
and Cabinet Secretariat
Ministry of Home Affairs
North Block
New Delhi-110 001

4. The Chairman
Special Selection Board for
Indian Forest Service
C/o Union Public Service Commission
P.B. No. 186
New Delhi
5. The Secretary to Govt. of Karnataka
Animal Husbandry, Fisheries and
Forest Department
Multistoried Building
Dr. Ambedkar Veedhi
Bangalore - 560 001
6. Shri M.S. Padmarajaiah
Senior Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

SUBJECT: SENDING COPIES OF ORDER PASSED BY THE
BENCH IN APPLICATION NO. 4/87

CONTEMPT

Please find enclosed herewith the copy of the Order
passed by this Tribunal in the above said Application on

25-5-87.

R. Venkatesh
DEPUTY REGISTRAR
(JUDICIAL)

ENCL: As above.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE

DATED THIS THE 25TH DAY OF MAY, 1987

Present: Hon'ble Shri Justice K.S. Puttaswamy, Vice-Chairman
Hon'ble Shri P. Srinivasan, Member (A)

C.C. APPLICATION NO. 4/87.

C.H. Basappanavar,
S/o Holiappa, 49 years,
Conservator of Forests,
Dryland Developmeht Board,
Mysore. Applicant.

(Shri B.B. Mandappa, Advocate)

v.

1. The Secretary
to Government of India,
Department of Personnel
and Cabinet Secretariat,
M/o Home Affairs,
North Block,
New Delhi.

2. The Chairman,
Special Section,
Board for Indian Forest Service,
C/o Union Public Service Commission,
P.B. No.186,
New Delhi.

3. The Secretary to Government,
Animal Husbandry, Fisheries
and Forest Department,
Multistoreyed Building,
Dr. Ambedkar Veedhi,
Bangalore-1. Respondents

(Shri M.S. Padmarajaiah, SCGSC)

This application having come up for hearing today,
Vice-Chairman made the following.

O R D E R

In this application made under Section 17 of
the Administrative Tribunals Act, 1985, and the



Contempt of Courts' Act, 1971, the applicant has moved this Tribunal to punish the accused for the alleged disobedience of the directions of this Tribunal issued in his favour in A.No.725/86(T).

2. Shri M.S. Padmarajaiah, learned Central Government Standing Counsel, appearing for the accused, has placed before us two letters received by him, one from the UPSC and the other from the Government of India which establish that the case of the applicant for selection to the IFS was considered on 23.3.1987 in pursuance of the directions of this Tribunal and he was not found suitable for selection. In this view, it is clear that the accused have complied with the directions issued by this Tribunal on 23.1.1987, and therefore these contempt proceedings are liable to be dropped. We, therefore, drop these contempt of court proceedings. But this does not prevent the applicant from challenging his non-selection to IFS in a separate application. No costs.



Sd/-

✓ Vice-Chairman 27/3/

Sd/-

Member (A)

-True Copy-

dms/Mrv.

R. M. Venkateshwaran
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

27/3/