

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex(BDA),
Indiranagar,
Bangalore- 560 038.

Dated: 14th March '88

APPLICATION NO 280 /88 (F)

W.P.No. -

APPLICANT

B. R. Annaji Rao

To

Vs

RESPONDENTS

Secy, Food & Forest Dept.,
State of Karnataka, Bangalore-1.
and Anr

1. Shri B. R. Annaji Rao,
Dy. Conservator of Forests,
Social Forestry Division,
Gulbarga.
2. Shri M. Narayana Swamy,
Advocate,
No. 844, V Block,
Rajaji Nagar, Bangalore-10.
3. Secretary,
Food and Forestry Dept.,
M.S. Building,
Dr. Ambedkar Veedhi,
Bangalore-1.
4. Secretary,
Dept. of Forest and Wild life,
Ministry of Forest & Environment,
Krishi Bhawan, New Delhi

5. Shri S.M. Babu, Advocate,
c/o Advocate General's
Office, Karnataka -
Administrative Tribunal,
Bangalore-38.

6. Shri M. S. Padmarajiah,
Sr. Central Govt.
Standing Counsel,
High Court Building,
Bangalore-1.

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~/copy/~~

~~INTERIM ORDER~~ passed by this Tribunal in the above said application

on 11 March 88.

Certified copy issued
to the Applicant vide
Order Sheet No. 9 on 11-3-88
k.n. *[Signature]*
Encl: as above.

[Signature]
SECTION OFFICER
(JUDICIAL)

[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE
BANGALORE BENCH

Dated the 11th day of March 1988

Present

THE HON'BLE SHRI L.H.A. REGO .. MEMBER(A)

THE HON'BLE SHRI CH. RAMAKRISHNA RAO, MEMBER(J)

APPLICATION NO.280 OF 1987(F)

B.R. Annaji Rao
S/o B. Ramachar,
47 years,
Deputy Conservator of Forests,
Social Forestry Division,
Gulbarga.

Applicant.

(By Shri M. Narayana Swamy, Adv. for applicant)

-vs.-

1. The State of Karnataka
by its Secretary,
Food and Forest Deptt.,
M.S. Building,
Dr. Ambedkar Veedhi, Bangalore-1.

2. The Union of India
by its Secretary to
Deptt. of Forest and Wild Life,
Ministry of Forest and Environment,
Krishi Bhavan, New Delhi.

Respondents.

(By Sri S.M. Babu, Govt. Advocate for R-1

" M.S. Padmarajaiah, Sr. Central Govt.
Standing Counsel for R-2)

Application coming on for hearing before
this Tribunal, Hon'ble Member - Shri L.H.A. Rego,
made the following:

Order

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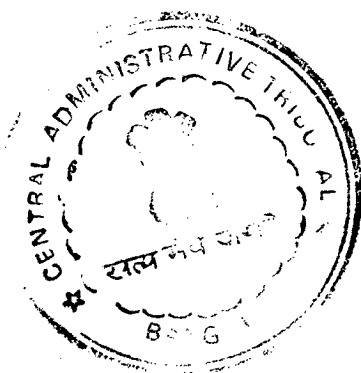
ORDER

The main prayer in this application, is for a declaration by an appropriate order or direction to the respondents(R), to the effect, that the "sealed cover procedure" adopted, for denying to the applicant, promotion to the super time-scale of pay in the Indian Forest Service(IFS), is illegal and arbitrary and for a further direction to R-1, to grant the super time-scale of pay in the IFS to the applicant, with effect from 20-10-1984, i.e., the date from which his immediate junior, namely, Shri K.G.Maharudrappa (KGM for short) was granted that scale of pay⁷, with all consequential benefit.

2. The following service curriculum vitae of the applicant and other relevant particulars, brings the case into focus, to help determine the questions raised in this application. The applicant was appointed directly to the cadre of Assistant Conservator of Forests with effect from 17-4-1964, in the State Forest Service and confirmed therein, on 1-4-1966. He filed Writ Petition No.21466 of 1981 in the High Court of Judicature, Karnataka, impleading R-1 and R-2, for a direction to them, to consider his case for initial recruitment to the IFS, with effect from 1-10-1966, under the provisions of the IFS(Recruitment) Rules, 1966 and to place him above his junior,

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namely



namely, K.G.M. This Writ Petition was decided by a Single Judge on 6-6-1985 (Annexure-A). Paras 2 and 7 of the Order of the learned Single Judge, which are of import in this case, read as under:

"2. Though petitioner was in the first instance kept under suspension pending departmental enquiry against him, subsequently suspension order has been revoked and reinstated. Even after a lapse of 13 years nothing has come out from the disciplinary proceedings. Right to claim for inclusion in IFS cadre cannot be denied indefinitely on the ground that disciplinary proceedings is pending against him. Hence, there is no substance in the first contention.

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xx	xx	xx	xx

7. In the result, Writ Petition is allowed. A writ in the nature of mandamus shall be issued directing respondents to consider the claim of petitioner for inclusion in IFS cadre w.e.f. 1-10-1966 in accordance with law and to grant all consequential benefits flowing from such consideration. To comply within six months from the date of receipt of this order. Rule made absolute."



3. The applicant alleges, that the departmental enquiry instituted against him, as long back as 1972, has not progressed further, even though more than a

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decade

decade and a half has elapsed, leading to the inevitable inference, that it has been abandoned by the State Government.

4. He further submits, that Writ Appeal No.1999 of 1985 filed by the Government of India (GOI) before the Division Bench of the High Court of Judicature, Karnataka, was rejected on 13-9-1985 and that this Writ Appeal was not against the decision of the Single Judge of that High Court, in Writ Petition No.21466 of 1981 and as such, the decision of the Single Judge, had become final and conclusive, in so far as R1 was concerned. He states, that despite the directions of the High Court in Writ Petition No.21466 of 1981, the case of the applicant for appointment as initial recruit (IR), in the junior time-scale of pay in the IFS was not considered. He had therefore to file C.C.C.No.10 of 1966 in the High Court of Judicature, Karnataka. The State Government filed an affidavit thereon, pleading administrative difficulty and requested for a period of 4 months, to comply with the directions of the High Court. Accepting the plea of the State Government, the High Court dropped the contempt proceedings on 20-3-1986, granting it 4 months' time, for compliance with its directions.

5. Thereafter, after due compliance with the procedure prescribed, the applicant was appointed by the GOI to the IFS as IR, in the junior time-scale

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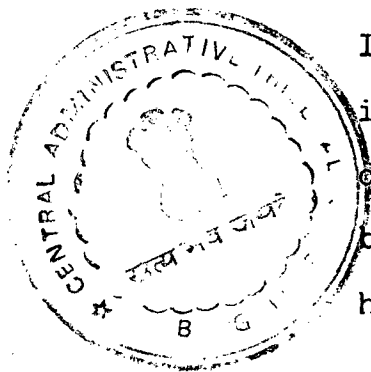
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of pay on probation, by its notification dated 18-7-1986 (Annexure-B), with effect from 1-10-1966, under Rule 4,3(A)(1) of the IFS (Recruitment) Rules, 1966. His year of allotment to the IFS, was fixed by the GOI as 1965, under their Letter dated 12-2-1987, placing him between Shri B.S.Adappa and Shri K.G. Maharudrappa.

6. The applicant alleges, that while the respondents complied with the directions of the High Court, to appoint him to the junior time-scale of pay of the IFS as IR, the State Government did not grant him consequential benefits, as directed by the High Court. He therefore submitted a representation to the State Government on 28-10-1986, requesting for grant of these benefits, in the light of the undertaking furnished by it to the High Court of Judicature, Karnataka, in Civil Contempt Case (CCC) No.10 of 1986. In reply to this representation, the State Government is seen to have informed the applicant by its letter dated 13-11-1986, that his promotion in the IFS, would be governed by the rules and would be dependent on his confirmation in the IFS.

7. Aggrieved, the applicant is seen to have filed CCC No.6 of 1987 before the High Court of Judicature, Karnataka. Thereon, the State Government of Karnataka by its Notification dated 21-2-1987 (Annexure-C), promoted the applicant to officiate in the Senior time-scale of pay in the IFS retrospectively, from



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7-12-1970 to 7-8-1986, subject to further orders thereafter, in the various posts indicated in the said notification. This according to R-1, was a formal order of promotion, issued by the State Government, by way of regulation of the services of the applicant with retrospective effect, consequent on his appointment to the IFS as IR and this was in compliance with Rule 6A(3)(a) of the IFS (Recruitment) Rules, 1966. The entire Rule 6A is extracted below, to bring out the full context:

"6A. Appointment of officers in the junior time scale of pay to posts in the senior time scale of pay.--

(1) Appointments of officers recruited to the Service under clause(a) or clause (aa) of sub-rule (2) of rule 4 to posts in the senior time-scale of pay shall be made by the State Government concerned.

(2) An Officer, referred to in sub-rule (1), shall be appointed to a post in the Senior time-scale of pay if, having regard to his length of service and experience, the State Government is satisfied that he is suitable for appointment to a post in the senior time-scale of pay.



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(3) Notwithstanding anything contained in sub-rule (2), the State Government may--

(a) withhold the appointment of an officer, referred to in sub-rule(1), to a post in the senior time-scale of pay,--

(i) till he is confirmed in the Service, or

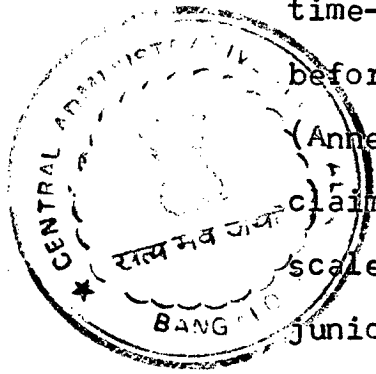
(ii) till he passes the prescribed departmental examination or examination, and appoint, to such a post, an officer junior to him,

(b) appoint an officer, referred to in sub-rule(1), at any time to a post in the senior time-scale of Pay as a purely temporary or local arrangement."

8. The State Government of Karnataka, however, had made no mention in the undertaking furnished by it to the High Court of Judicature, Karnataka, in C.C.C.No. 10 of 1986, about promotion of the applicant, to the super time-scale of pay in the IFS. R-1 filed an affidavit, before the High Court in C.C.C.No.6 of 1987 on 17-3-1987 (Annexure-D), stating inter alia, that as regards the claim of the applicant for promotion to the super time-scale of pay in the IFS, from the date of promotion of his junior KGM, to that time-scale of pay, the Departmental Promotion Committee(DPC). had met on 24-2-1987 and adopted the "sealed cover procedure", in accordance with the circular instructions of the G.O.I, as an enquiry was pending against the applicant in the Karnataka Lokayukta (erstwhile Vigilance Commission), in regard



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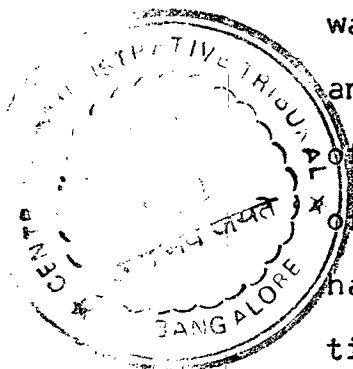


to the irregularities alleged to have been committed by the applicant, during his tenure as Deputy Conservator of Forests, Kolar, from 7-12-1970 to 3-8-1972.

9. The Contempt proceedings in C.C.C.No.6 of 1987 came to be dropped on 20-3-1987, in view of the above affidavit filed by R-1.

10. The applicant is now questioning the legality and correctness of the "sealed cover procedure", adopted by the respondents, in regard to grant of promotion to him, in the super-time scale of pay in the IFS and has approached this Tribunal, through his present application for redress.

11. Shri M.Narayanaswamy, learned Counsel for the applicant contended, that the "sealed cover procedure" adopted by the respondents, in regard to grant of promotion to his client, to the super-time scale of pay of the IFS is invidious, arbitrary and discriminatory, as this procedure was not taken recourse to, when he was earlier promoted to the senior time-scale of pay and selection grade in the IFS, even though shouldering of higher responsibility was involved at these stages of promotions; that the High Court of Judicature, Karnataka, had given a categorical verdict on 6-6-1985, in Writ Petition No.21466 of 1981, that pendency of an enquiry instituted against the applicant as far back as in 1972, could not be a ground for exclusion of the applicant from appointment to the IFS as IR, with effect from 1-10-1966 and



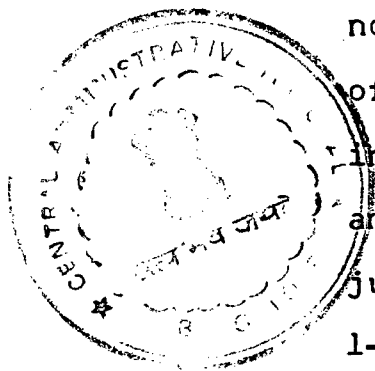
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that he was entitled to consequential benefit on such appointment; that the G.O.I. having appointed the applicant to the junior time-scale of pay in the IFS with retrospective effect, from 1-10-1966 by that notification dated 18-7-1986 (Annexure-B), cannot deny him the consequential benefit in the IFS, as directed by the High Court, particularly to the super time-scale of pay, when he was granted promotion in the preceding stages of senior time-scale of pay and selection grade in the IFS; that when the departmental enquiry instituted against his client more than a decade and a half ago, could not come in the way of his retrospective appointment, to the junior time-scale of pay in the IFS as IR, there is no reason as to why it should continue to remain a hurdle, in the case of his promotion to the super time-scale of pay; that the "sealed cover procedure", could not be applied in the case of the applicant, in view of the clear verdict of the High Court of Judicature in Writ Petition No. 21466 of 1981, referred to above and retrospective appointment of the applicant to the junior time-scale of pay in the IFS with effect from 1-10-1966 as IR; that the Special Leave Petition No. 383 of 1986 filed by the G.O.I. before the Supreme Court, on W.A.No. 1999 of 1985 (filed in the High Court of Judicature, Karnataka) has been dismissed on 24-3-1987, as infructuous and therefore the directions given by the High Court of Judicature, Karnataka, have become final; that therefore there is no other ground, to deny his

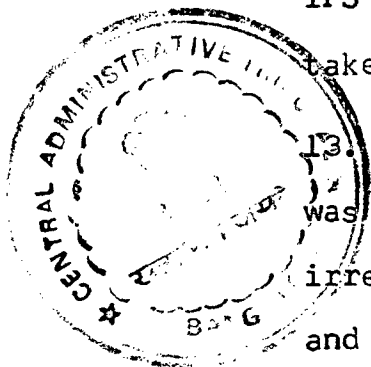
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client, promotion to the super time-scale of pay in the IFS, as on the date his junior viz., K.G.M. was promoted to that time-scale of pay i.e., on 20-10-1984, according to the Government of Karnataka Notification at Annexure-E.

12. Shri S.M.Babu, learned Counsel for R-1 (The State Government of Karnataka), ^{ll} ~~appearing for his~~ ^{ll} ~~Senior, Shri S.M. Narasimhan~~, submitted, that on appointment of the applicant to the junior time-scale of pay in the IFS as IR, with retrospective effect, from 1-10-1966, by its Notification dated 18-7-1986 (Annexure-B), the State Government had sent a proposal on 10-11-1986, to the G.O.I, along with the relevant documents, for his confirmation in that time-scale of pay, with effect from 1-10-1967, but the matter was still pending with the GOI, which by their letter dated 4-8-1987, had intimated the State Government, that ^{ll} ~~the~~ the fitness of the applicant for confirmation, had to be examined taking into account inter alia, the fact that a penalty had been imposed on him, for some grave irregularity, committed by him, during the period of his probation in the IFS and that a final decision in the matter would be taken in due course.



13. According to Shri Babu, a departmental enquiry was instituted against the applicant, in respect of certain irregularities committed by him during the years 1967 and 1968, which had a bearing on his probationary period as IR, in the junior time-scale of pay in the IFS, as the State Government by its Order dated 13-11-1975, had

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imposed a penalty on him, withholding two of his annual increments with cumulative effect, and this was an impediment to his confirmation ⁱⁿ ~~as~~ IR on completion of his probation and unless he was so confirmed, it was not possible, according to the rules, to consider him, for promotion to the super time-scale of pay in the IFS. The matter however, was under the consideration of the G.O.I, he said.

14. A further impediment, to the promotion of the applicant, he said, was an enquiry pending against the applicant in the Karnataka Lokayukta (erstwhile Vigilance Commission), in connection with the irregularities alleged to have been committed by the applicant, during his tenure as Deputy Conservator of Forests, Kolar, from 7-12-1970 to 3-8-1972. Though a charge-sheet was served in this case, on the applicant, in 1972, he said, owing to certain administrative difficulties, it was not possible to complete the departmental enquiry so far. He pointed out, that the DPC had met on 24-2-1987, to consider the case of the applicant for promotion to the super time-scale of pay in the IFS and had adopted the "sealed cover procedure", in accordance with the circular instructions of the G.O.I, in view of the departmental enquiry pending against the applicant and that a final decision in the matter, would be taken, no sooner than this enquiry was concluded.

15. Shri M.S. Padmarajaiah, learned Senior Standing Government Counsel, appearing for R-2 (the GOI), more or less reiterated the stand taken by Shri Babu, as in para-13

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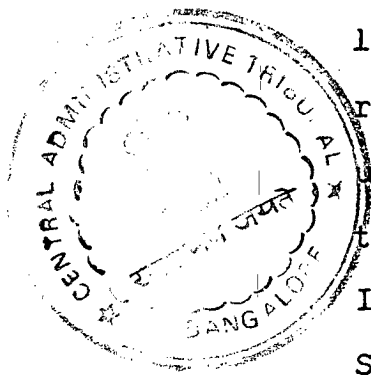
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supra, and added, that the applicant was appointed to the junior time-scale of pay in the IFS, with effect from 1-10-1966 as IR, on probation, for a period of one year, in accordance with the provisions of Rule 3(1) of the IFS (Probation) Rules, 1966, and that his continuation beyond 30-9-1967 in the IFS, was subject to his completing his probationary period, to the satisfaction of R-2 and meriting confirmation thereafter. The matter he said, was under the consideration of R-2 and a decision thereon, would be taken shortly but the applicant had rushed prematurely to this Tribunal, for redress.

16. Shri Padmarajaiah stated, that the State Government of Karnataka, had unilaterally promoted the applicant, to the senior time-scale of pay and selection grade in the IFS, without concurrence of the GOI and without fulfilment of the pre-requisites of satisfactory completion of the probationary period and confirmation thereafter, as explained in para 15 supra, and therefore the GOI disavowed responsibility for the action so taken by the State Government.

17. With reference to the above statement of Shri Padmarajaiah, that the State Government of Karnataka had acted unilaterally, in regard to promotion of the applicant to the senior time-scale of pay and selection grade in the IFS, without obtaining the concurrence of the GOI, Shri Babu clarified, that in terms of Rule 6A of the IFS (Recruitment) Rules, 1966 (extracted in para-7 above),

and



and the guidelines dated 5-6-1978, drawn up by the Department of Personnel and Administrative Reforms (Services and Cabinet), Government of India, on the subject, the matter was well within the competence of the State Government and that it was not obligatory, that it should refer the matter to the Government of India, for its concurrence or approval, in this respect and therefore, the action taken by the State Government, was strictly in accordance with Rule 6A ibid and the guidelines aforementioned.

18. He further clarified, that according to Rule 6A(3)(a) ibid, the State Government could withhold the appointment of an officer referred to in Rule 6A(1) ibid, to a post in the senior time-scale of pay in the IFS (i.e., the post of Deputy Conservator of Forests, in this case) till he was confirmed in the IFS or till he passed the departmental examination. Laying accent on the word "or", appearing in between the two pre-requisites stipulated in ^{g k} above rule, for appointment to a post in the senior time-scale of pay in the IFS, Shri Babu argued, that the State Government was not fettered in the exercise of its option, in regard to any of the two pre-requisites, in considering the case of the applicant for appointment to the above senior time-scale of pay. As the applicant had passed the departmental examination prescribed, and had thus fulfilled one of the pre-requisites, the State Government deemed the applicant

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eligible for promotion, to the senior time-scale of pay in the IFS and promoted him accordingly with effect from 3-2-1972, by its Order dated without considering it necessary, that he should be confirmed in the IFS, for this purpose.

19. Elaborating, as to why the "sealed cover - procedure" was adopted in the case of the applicant, only in regard to considering his promotion to the super time-scale of pay in the IFS and not to the senior time-scale of pay and selection grade, Shri Babu contended, that the question of adopting this procedure, while promoting the applicant, with effect from 3-2-1972, to the said time-scale of pay, did not arise, as no charge-sheet was framed on the applicant, in regard to any irregularity or misdemeanour as on that date and this he said, was in keeping with the principle enunciated by a Full Bench of the Hyderabad Bench of the Central Administrative Tribunal, in the decision rendered by it on 2-3-1987, in 1987(1)ATR 547 (VENKAT REDDY & ORS. -vs.- UOI & ORS.). Besides, he contended, that the guidelines dated 5-6-1978, formulated by the GOI referred to in para-17 supra, enjoined application of the "sealed cover procedure", only in the case of promotion to the super time-scale of pay in the IFS and not to the senior time-scale of pay or selection grade in the IFS.

20. As for not applying the "sealed cover procedure", while promoting the applicant with effect from 1-4-1982 to the selection grade in the IFS, Shri Babu sought to

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advance his contention on the additional ground, that this promotion did not actually entail shouldering of higher responsibility.

21. We have heard this case for two days, namely, on 7-3-1988 and 9-3-1988 and given it our most anxious consideration. We have also examined carefully, the material placed before us. The following twin issues constitute the hub of the matter, on which the fate of the application hinges:

(i) Whether non-confirmation of the applicant in the junior time-scale of pay in the IFS at this distance of time i.e., after a lapse of nearly three decades, could be a hurdle to promote him to the super time-scale of pay in the IFS, particularly, when for the two stages of promotion immediately preceding, namely the selection time-scale of pay and the selection grade, this did not constitute a bar;

(ii) Whether application of the "sealed cover procedure", could be adopted selectively under the rules, ^{by} while considering his promotion to the super time-scale of pay, specially when it was dispensed with, while granting him promotion to the aforementioned two stages immediately preceding.



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22. We shall proceed to examine these two main issues in depth. We have in para 12 supra, narrated the contention of Shri Babu with reasons, as to why non-confirmation of the applicant in the junior time-scale of pay in the IFS, did not act as an impediment, while he was considered for promotion to the senior time-scale of pay and the selection grade in the IFS on 3-2-1972 and 1-4-1972 respectively. Shri Babu laid stress on the unfettered discretion of the State Government, in choosing one of the pre-requisites stipulated in Rule 6A(3)(a) of the IFS(Recruitment) Rules, 1966, while promoting the applicant to the senior time-scale of pay. In exercising this discretion, the State Government, he said, felt satisfied, that the applicant was eligible for promotion to the said time-scale of pay, merely by virtue of the fact, that he had passed the prescribed departmental examination, even though he was not confirmed in the IFS. As for promotion of the applicant to the selection grade of the IFS, without his being confirmed in the IFS, Shri Babu's contention was, that this grade did not entail higher responsibility and as such, non-confirmation in the IFS, was not considered a bar.
23. Shri Padmarajaiah, on the other hand contended, that the applicant could not have advanced in his career in the IFS, until he had completed his period of probation

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to the satisfaction of R-2, in the junior time-scale of pay in the IFS and was confirmed thereafter. Since he had not done so, Shri Padmarajaiah asserted, that the applicant could not have been promoted to the senior time-scale of pay and selection grade in the IFS and the action taken by the State Government in so promoting the applicant, without consulting R-2, was not in order.

24. The applicant was appointed on 18-7-1986 (Annexure-B) by the G.O.I. in the junior time-scale of pay in the IFS as IR, under Rule 4(3A)(1) of the IFS(Recruitment)Rules, 1966 on probation, with effect from 1-10-1966 ^{to} respectively. According to Shri Padmarajaiah, his probation and confirmation in the IFS ~~is~~ ^{are} governed by Rules 3 and 4 of the IFS (Probation) Rules, 1968 respectively. These Rules are extracted below for ease of reference:

"3. Period of Probation.--(1) Every person recruited to the Service in accordance with sub-rule(1) of Rule 4 of the Indian Forest Service(Recruitment)Rules,1966, shall be appointed to the service on probation for a period of one year:

Provided that the Central Government may, on the recommendation of the State Government, dispense with the period of probation of a person, who prior to his recruitment to the Service, was holding substantively the post of or above the

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rank of Conservator of Forest or its equivalent.

(2) Every person recruited to the service in accordance with the Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967 or the Indian Forest Service (Released - Emergency Commissioned and Short Service Commissioned Officers) (Appointment by Competitive Examination) Regulations, 1968 shall be appointed to the Service on probation for a period of three years:

Provided that any period of training for Diploma Course in Forestry at the Institute or in any other Institution recognised by the Central Government as equivalent thereto when followed by appointment to a gazetted post in State Forest Service may be counted towards the period of probation on the recommendation of the State Government.

(3) Every person recruited to the Service in accordance with the Indian Forest Service (Appointment by Promotion) Regulations, 1966, shall be appointed to the Service on Probation for a period of one year:

Provided that in the case of any person so recruited any period for which he has been appointed to a cadre post may, having regard to his performance in such post, be counted towards the period of probation:

Provided further that the Central Government may, in exceptional circumstances of any case, after consulting the Commission, reduce the period of probation.



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(4) The Central Government may, if it so thinks fit in any case or class of cases extend the period of probation subject to the conditions, that --

- (a) the total period upto which a person recruited to the service referred to in sub-rule(i) or sub-rule(3) may be kept on probation, shall not ordinarily exceed two years; and
- (b) the total period upto which a person recruited to the service referred to in sub-rule(2) of sub-rule(3) may be kept on probation, shall not ordinarily exceed six years.

(4-A) Notwithstanding anything contained in sub-rule (4) if during the period of probation, a probationer is placed under suspension, or disciplinary proceedings are contemplated, or started against him, or an investigation, inquiry or trial relating to a criminal charge is pending against him, the period of his probation may be extended for such period as the Central Government may think fit in the circumstances of the case.

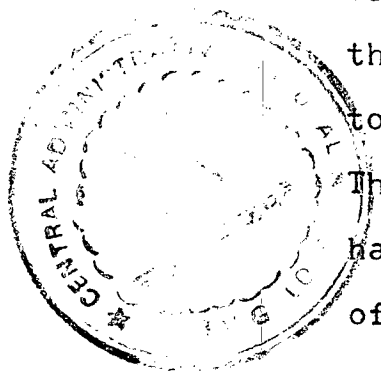
(5) In this rule, 'cadre post' has the same meaning as in clause (b) of Rule 2 of the Indian Forest Service (Cadre) Rules, 1966.



4. Confirmation.-- Where a probationer has completed his period of probation to the satisfaction of the Central Government, he shall subject to the other provisions of these rules, be confirmed in the Service at the end of his period of probation."

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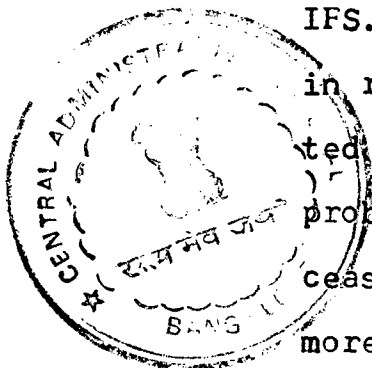
25. According to Rule 3(3) ibid, the normal period of probation is one year. Rule 3(4) ibid, provides for extension of probation, subject to the conditions stipulated therein and ordinarily, this would not exceed 2 years in the case of the applicant. Rule 3(4-A) ibid, however further stipulates inter alia, that notwithstanding anything contained in Rule 3(4) ibid, the period of probation may be extended for such period, as the Central Government may deem fit in the circumstances of the case, if during the period of probation, the probationer is placed under suspension or disciplinary proceedings are contemplated or started against him. The period of probation in the ordinary course, should have come to an end, after one year i.e., by 30-9.1967. Shri Padmarajaiah submits, that the question of satisfactory completion of the probationary period, by the applicant, in the junior time-scale of pay in the IFS and of his confirmation thereafter, is still under consideration of R-2, as he had committed certain irregularities during the years 1967 and 1968, overlapping with and proximate to the period of probation, for which he was penalised.. The reply filed by R-1 shows, that the State Government had by its Order dated 13-11-1975, imposed the penalty of withholding two increments of the applicant, with cumulative effect. The effective period of this punishment, is seen to have expired on 12-11-1977. G.O.I. does not seem to have extended the period of probation



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so far, in terms of Rule 3(4-A) ibid, in the context of the punishment.

26. The departmental enquiry instituted against the applicant in 1972, does not seem to have progressed any further, even though more than a decade and a half has elapsed, giving rise to an irresistible impression, that the administration is virtually mired in immobility, complacent in the feeling, "do not decide, let things slide". Even if the period of one year of probation is to be reckoned, with effect from 18-7-1986(Annexure-B) i.e., the date from which the applicant was appointed to the junior time-scale of pay in the IFS as IR, ^{in the} ₁ respectively from 1-10-1966, on probation, the probationary period already expired on 17-7-1987. As long as 8 months have since elapsed and the G.O.I. seem to be still cogitating, as whether to decide that the applicant has satisfactorily completed the period of probation and that he deserves to be confirmed in the IFS. The punishment imposed on the applicant, in 1975, in regard to the irregularity said to have been committed by him, during and proximate to the period of his probation (i.e., 1966-1968) is seen to have effectively ceased from 12-11-1977. By efflux of considerable time -- more than a decade and a half -- the other departmental enquiry instituted against the applicant in 1972, has almost become a nullity, for want of action and in view of the levity with which it has been treated.



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27. Besides, the applicant was promoted by R-1 to the senior time-scale of pay and the selection grade in the IFS, with effect from 3-2-1972 and 1-4-1982 respectively, dispensing with the need of confirmation in regard to the former, in accordance with Rule 6A(3) of the IFS (Recruitment) Rules 1966, (extracted in para-7 ⁱⁿ supra) ^{the} exercising its discretion. The contention of Shri Padmarajaiah, that R-1 should have obtained prior concurrence of R-2 in the matter, does not seem to be supported by the above Rules.

28. For the following main reasons, we hold, that the applicant should have been confirmed in the IFS with effect from 1-10-1967:

(i) His probationary period in the ordinary course, came to an end on 30-9-1967, according to Rule 3(3) of the IFS(Probation) Rules, 1968, considering that he was appointed to the junior time-scale of pay of the IFS as IR retrospectively, with effect from 1-10-1966;

(ii) This probationary period was not extended by R-2 in accordance with Rule 3(4-A) ibid;

(iii) He was punished as late as in 1975, for his lapses and irregularities, alleged to have been connected with 1967 and 1968.

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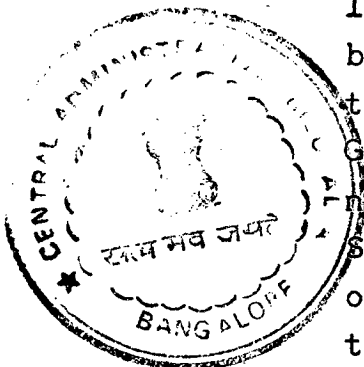
29. The next issue to be resolved is, whether the "sealed cover procedure" could be applied by R-1 selectively, only while considering the promotion of the applicant to the super time-scale of pay in the IFS, after having dispensed with the procedure, while promoting him to the earlier stages of senior time-scale of pay and selection grade in the IFS. In this respect, Shri Babu relied on the guidelines dated 5-6-1978, formulated by the Department of Personnel and Administrative Reforms (Services and Cabinet), GOI, the relevant portion of which, is extracted below:

"Sub: Indian Forest Service - Appointment to Senior Scale, Selection Grade and Super time scale - Guidelines regarding - Issues.

xx	xx	xx	xx
xx	xx	xx	xx

ORDER NO.DPAR 17 SFP 77, Bangalore, dated the 5th June, 1978.

In Government Orders dated 18-3-1976 and 18-10-1976 cited above, specific guidelines have been laid down for regulating the promotion/selection of the members of the I.A.S./I.P.S. to various Grades of the Services. But such guidelines have not been prescribed in respect of Indian Forest Service posts. With a view to securing uniformity of procedure in these matters in respect of all the All India Services, the question of establishing a suitable machinery and formulating guidelines for assessing suitability of members of the Indian Forest Service for promotion to the Senior Scale, Selection Grade and Super-time Scale posts was



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under consideration of Government. It has now, therefore, been decided that, apart from setting up Screening Committees, specific guidelines should be laid down for regulating the promotion of the members of the Indian Forest Service, to various Grades of the Service.

2. Accordingly, the following Orders are issued:

I. Appointment of Officers in the Junior scale to Senior Scale posts.

The Secretary to Government in charge of the Forest Department shall evaluate the performance of the members of the Indian Forest Service in the Junior Scale for deciding their suitability for promotion to the Senior Scale posts.

II. Promotion to the Selection Grade:

A Committee consisting of the Chief Secretary to Government, the Commissioner and Secretary in charge of Forest Department and the Chief Conservator of Forests (General), Bangalore, shall screen members of the Indian Forest Service in the Senior Scale for promotion to the Selection Grade on the basis of merit with due regard to seniority.

III. Promotion to Super-time Scale posts of and above the rank of Conservator of Forests:

1. Composition of the Screening Committee will be as follows:

For promotion to the posts of Conservator of Forests and other Equivalent posts:-- as also for promotion to posts above the rank of Conservator of Forests:--

(i)

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- i) Chief Secretary to Government.
- ii) Secretary to Government in-charge of Forest Department.
- iii) Chief Conservator of Forests (General).

2. Zone of consideration:

The zone of consideration for promotion to the post of (i) Conservator of Forests and other equivalent posts shall consist of all the members of the Service who have completed 16 years of service, the period of 16 years being counted from the year of allotment assigned to the concerned member of the Service (in computing the years of service period not exceeding two years during which an Officer has undergone --

- (a) Training in Forestry in the F.R.&C, Dehradun; or
- (b) such other Training Course in other Institutions as may be approved by the Government of India shall be included);

and (ii) for the posts above the rank of Conservator of Forests -- five years of service as Conservator of Forests or in equivalent post(s).

IV. Method of selection:

(i) Selection should be based on merit with due regard to seniority as provided in sub-rule(3) of Rule 3 of the Indian Forest Service(Pay)Rules, 1968.

(ii) Suitability of Officers to hold super-time scale posts shall be judged by evaluating their character roll record as a whole, and general assessment of their work.

(iii) An officer against whom a Vigilance or Departmental enquiry has been started, after

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the changes have been prima facie established in a preliminary enquiry, should also be assessed and the assessment placed in a sealed cover and the question of his inclusion in the Panel should be considered when the result of the enquiry is known.

(iv) The reasons for supersession shall be indicated in the case of Officers who are not included in the panel.

(v) An officer who has not been included in the Panel in the first instance, shall be eligible for reconsideration after earning two more reports.

(vi) Special review shall be done in cases where adverse remarks in the Officers' annual confidential reports are expunged subsequently as a result of their representations."

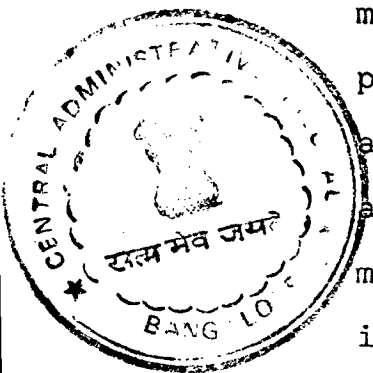
30. Shri Babu contended, that according to these guidelines, the "sealed cover procedure" was applicable, only in regard to promotion to the super time-scale of pay and selection grade in the IFS. This does not seem to accord with the context, object and collocation of the above guidelines and the general congruity with the concept or object, these guidelines intend to articulate. The reasoning of Shri Babu, that the "sealed cover procedure" could not be adopted, at the time the applicant was promoted with effect from 3-2-1972, to the senior time-scale of pay in the IFS, because the above guidelines dated 5-6-1978 of the GOI, were not in existence at that time, is disingenuous, as this promotion

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was given retrospective effect, by the State Government by their Order dated 21-2-1987, when the above guidelines were operative. The contention of Shri Babu, that the "sealed cover procedure" was not adopted, when the applicant was promoted to the selection grade retrospectively on 1-4-1982, because the post did not entail added responsibility is specious, as the very decision of the Central Administrative Tribunal in a Full Bench (Hyderabad) on 2-3-1987 in K.C.VENKAT REDDY & ORS v. UOI & ORS, relied upon by Shri Babu, lays down, that the "sealed cover procedure" also applies to promotion to the selection grade. It is therefore clear, that the "sealed cover procedure", is applicable to all the above three stages of promotion viz., the senior time-scale of pay, selection grade and the super time-scale of pay in the IFS.

31. Shri Babu stated, that the case of the applicant has been examined by the Departmental Promotion Committee (DPC) on 24-2-1987, in accordance with the aforementioned guidelines dated 5-6-1978 from the GOI, for promotion to the super time-scale of pay in the IFS and that the decision has been kept in a "sealed cover", according to the procedure prescribed and that the matter would be finalised, when the departmental inquiry instituted against the applicant in 1972 is concluded. It is disquieting to note, that this departmental enquiry is pending almost ad infinitum, for over a decade and a half, As a result, the gravity of the charges in this enquiry, tends to be whittled down by inordinate efflux



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of time, in view of the maxim, that law dislikes delay - lex reprobat moram. The respondents have not advanced any satisfactory reason for this abnormal delay, which needs to be deprecated. We are satisfied, that this long pending and almost "fossilised" departmental enquiry, does not merit continuance and should therefore be given a quietus. We direct accordingly.

32. In the result, we make the following order:

ORDER

- i) The applicant be confirmed in the IFS with effect from 1-10-1967.^{SR}
- ii) The applicant be promoted to the super time-scale of pay in the IFS, with effect from 20-10-1984 i.e., the date from which his junior, namely Shri K.G.Maharudrappa was so promoted.
- iii) Since the applicant has not actually shouldered higher responsibility, in the super time-scale of pay in the IFS, he shall not be entitled to arrears of pay, but his pay in this time-scale of pay, would be regulated by granting him the increments due, from 20-10-1984, till the date he is actually entrusted with the responsibility of the post in the said time-scale of pay.

iv)



iv) This order be complied with, within a period of two months from the date of its receipt.

v) No order as to costs.

33. In the result, the application is allowed in the above terms.

Sd/-

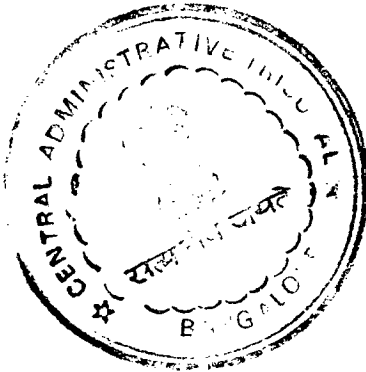
(L.H.A. REGO) 11.2.1988
MEMBER(A)

Sd/-


(CH. RAMAKRISHNA RAO)
MEMBER(J)

11.2.88

True Copy =



TRUE COPY


SECTION OFFICER 14/3
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
DANGALORE

Kms.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

....

Commercial Complex(BDA),
II Floor, Indiranagar,
Bangalore- 560 038.

To

Dated: 15 Mar 88


1. Shri.Sanjeev Malhotra,
All India Services Law Journal,
Hakikat Nagar, Mal Road,
New Delhi- 110 009.
2. ~~Shri.R.Venkatesh Prabhu, Member,
Editorial Committee,
Administrative Tribunal Reporter,
57-Lower Palace Grounds, Bangalore- 560 003.~~
Post Box No -1518,
Delhi -110006.
3. The Editor,
Administrative Tribunal Cases,
C/o. Eastern Book Co.,
34, Lal Bagh,
Lucknow- 226 001.
4. The Editor,
Administrative Tribunal Law Times,
5335, Jawahar Nagar,
(Kolhapur Road),
Delhi- 110 007.
5. M/s.All India Reporter,
Congressnagar,
Nagpur.
6. Services Law Reporter,
108, Sector 27-A,
Chandigarh- 160 019.

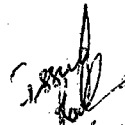
Sir,

I am directed to forward herewith a copy of the under
mentioned order passed by a Bench of this Tribunal comprising of
Hon'ble Mr. Ch. Ramakrishna Rao ~~Vice-Chairman/~~
Member(J) and Hon'ble Mr. L.H.D. Rego Member(A)
with a request for publication of the order in the Journals.

Order dated 11.3.88 passed in A.Nos. 280/87(F)

Yours faithfully,


(B.S. VENKATA REDDY)
DEPUTY REGISTRAR(J).

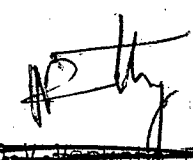

16-3-88

Copy with enclosure forwarded for information to:

1. The Registrar, Central Administrative Tribunal, Principal Bench, Faridkot House, Copernicus Marg, New Delhi- 110 001.
2. The Registrar, Central Administrative Tribunal, Tamil Nadu Text Book Society Building, D.P.I.Compounds, Nungambakkam, Madras- 600 006.
3. The Registrar, Central Administrative Tribunal, C.G.O.Complex, 234/4, AJC Bose Road, Nizam Palace, Calcutta- 700 020.
4. The Registrar, Central Administrative Tribunal, CGO Complex(CBD), 1st Floor, Near Kankon Bhawan, New Bombay- 400 614.
5. The Registrar, Central Administrative Tribunal, 23-A ^{Post Bag No. 613,} Thorn Hill Road, Allahabad.- 211 001.
6. The Registrar, Central Administrative Tribunal, S.C.O.102/103, Sector 34-A, Chandigarh.
7. The Registrar, Central Administrative Tribunal, Rajgarh Road, Off Shilong Road, Guwahati- 781 005.
8. The Registrar, Central Administrative Tribunal, Kandamkulathil Towers, 5th & 6th Floor, Opp.Maharaja College, M.G.Rd., Ernakulam, Cochin-682001.
9. The Registrar, Central Administrative Tribunal, CARAVS Complex, 15 Civil Lines, Jabalpur(MP).
10. The Registrar, Central Administrative Tribunal, 88-A B.M.Enterprises, Shri Krishna Nagar, Patna- 1.
11. The Registrar, Central Administrative Tribunal, C/o.Rajasthan High Court, Jodhpur (Rajasthan).
12. The Registrar, Central Administrative Tribunal, New Insurance Building Complex, 6th Floor, Tilak Road, Hyderabad.
13. The Registrar, Central Administrative Tribunal, Navrangpura, Near Sardar Patel Colony, Usmanpura, Ahmedabad.
14. The Registrar, Central Administrative Tribunal, Dolamundai, Cuttak- 753001.

Copy with enclosure also to:

1. Court Officer (Court I)
2. Court Officer (Court II)


(A.V. Venkatesh Reddy)
for Deputy Registrar(J).

qc

Received

put up in application
& number 3-6-88

BE
CENTRAL

116

BEFORE THE ~~KARNATAKA~~ ADMINISTRATIVE TRIBUNAL, BANGALORE

APPLICATION NO.

280

OF 1987

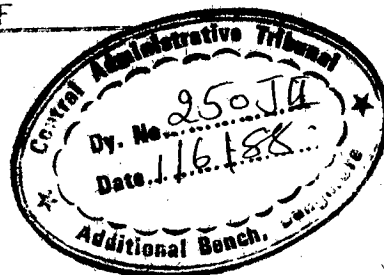
IN

WRIT PETITION NO.

OF

Between:

B.R. Aramaji Rao



..... APPELLANT/S

And:

State and another

..... RESPONDENT/S

M E M O

Extension of Time

~~Reply Statement / I.A. for Vacating of Stay /~~

~~Memo for Disposal / Memo for posting in the above~~
Application is filed herewith in Triplicate along
with the acknowledgment for having served them on the
opposite counsel.

Place: Bangalore

Dated: 31-5-88

Govt
Government Advocate
And
Advocate for Respondent/s

gyt/*
16388.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AT BANGALORE.

APPLICATION NO:280/87

BETWEEN

B.R. ANNAJI RAO

: APPLICANT

AND

STATE AND ANOTHER


: RESPONDENTS

SECTION 151 OF THE CODE OF CIVIL
PROCEDURE

The respondent ~~has~~ submit~~s~~ that this Hon'ble Tribunal by its order dated 11.3.1988, has allow~~ed~~ the application and has granted two months time to imple~~ment~~ the order of the tribunal.

The respondent respectfully submits that the time limit of two months granted by the tribunal to imple~~ment~~ the decision is not sufficient, as the State Government has to correspondence with the U.P.S.C. and Government of India in the matter. In order to do so, the respondents require~~d~~ some more time. Under these circumstances, the respondent respectfully submits that a total period of four months may be granted from the date of receipt of the order of this tribunal to comply with the decision of this Hon'ble tribubal.

3. WHEREFORE, the respondent respectfully submits that this Hon'ble tribunal may please ~~to~~ extend time by


.....2/-

another two months to comply with the orders passed by this Hon'ble tribunal in the interest of justice.

BANGALORE.

DATED: 13-5-1988

[Signature]
RESPONDENTS

VERIFICATION

I, . . . *Sh. G. Ramdas Under Secy. to Govt -*
aged about. . . *53 years* . . . working in the office of the
.*Kamataka Govt. Secretariat* . . .

do hereby solemnly verify that what is stated above is true to the best of my knowledge-based on records.

[Signature]
RESPONDENTS

SHA*.

A C K N O W L E D G M E N T

Sri M. Narayanaswamy
Advocate,
Bangalore

Received a copy of the ~~Reply Statement~~/Application *for Extension*
~~Counter Affidavit/Memo~~ in Application No. 280 1987
on the file of the ~~Karnataka~~ *Central* Administrative Tribunal
from the Advocate-General for Karnataka, Bangalore.
Place: Bangalore.

Dated:

1
Advocate for Applicant.

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 10 JUN 1988

IA I IN APPLICATION NO. 280 / 87(F)

W.P. NO. _____

Applicant(s)

Shri B.R. Annaji Rao

To

Respondent(s)

V/s

The Secretary, Food & Forest Dept,
Govt. of Karnataka & another

1. Shri B.R. Annaji Rao
Deputy Conservator of Forests
Social Forestry Division
Gulbarga
2. Shri M.Narayana Swamy
Advocate
844 (Upstairs)
Vth Block, Rajajinagar
Bangalore - 560 010
3. The Secretary
Govt. of Karnataka
Food & Forest Department
M.S. Building
Dr Ambedkar Veedhi
Bangalore - 560 001
4. The Secretary
Ministry of Environment & Forests
Govt. of India
Paryavaran Bhavan
Lodi Road
New Delhi - 110 003

5. Shri S.M. Babu
State Govt. Advocate
C/o Advocate General (KAT Unit)
Commercial Complex(BDA)
Indiranagar
Bangalore - 560 038
6. Shri M.S. Padmarajaiah
Central Govt. Sing Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY~~/INTERIM ORDER
passed by this Tribunal in the above said application(s) on 3-6-88

Encl : As above

[Signature]
DEPUTY REGISTRAR
(JUDICIAL)

**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**

B.R. Annaji Rao

I.A. No.1 in A.No. 280/87.

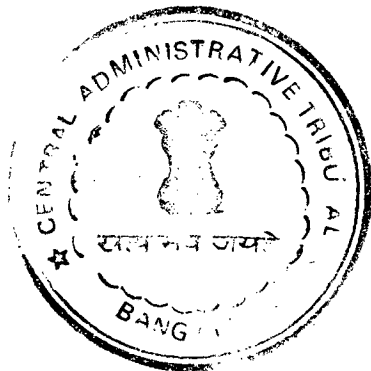
The Secy, Govt. of Karnataka,
Food & Forest Dept. & another

M. Narayana Swamy

Order Sheet (contd)

S.M. Babu & M.S. Padmarajaiah

Date	Office Notes	Orders of Tribunal
		<p><u>KSPVC/PSM(A)</u> 3.6.1988.</p> <p><u>Orders on I.A.No.1 (Application for extension of time):</u></p> <p>In I.A.No.1, respondent No.1 has sought for extending the time granted by this Tribunal on 11.3.1988 by another 2 months, on the ground that the matter had to be processed in consultation with the UPSC.</p> <p>I.A. No.1 is opposed by the applicant.</p> <p>Shri S.M. Babu, learned Government advocate, appearing for respondent No.1, contends that the facts and circumstances stated in I.A. No.1 justify the extension of time by another two months.</p> <p>Shri M. Narayanaswamy, learned counsel for the applicant, contends that sufficient time had been granted by this Tribunal and there is no justification to grant any further extension of time.</p> <p>We are of the view that the facts and circumstances stated by respondent No.1 justify the grant of a reasonable time. We are of the view that on the facts and circumstances of the case, it is reasonable to grant one more month's time to comply with the order made by this Tribunal on 11.3.1988. We, therefore, allow I.A. No.1 and grant one more month's time from this day for complying with the directions made in favour of the applicant on 11.3.1988.</p> <p>I.A. No.1 is disposed of in the above terms.</p>



TRUE COPY

Sd/-
VICE-CHAIRMAN

Sd/-
MEMBER(A)

dms.

[Signature]
DEPUTY REGISTRAR (JDL)
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE