

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

 BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

O.A. No. 80/93
T.A. No.

198

DATE OF DECISION 30 Apr. 93.

Navin Singh

Petitioner

Applicant in person

Advocate for the Petitioner(s)

Versus

Union of India and One anr. Respondent

Mr. R. Darda for R.No.1

Advocate for the Respondent(s)

Mr. G.K. Nilkanth for R.No.2

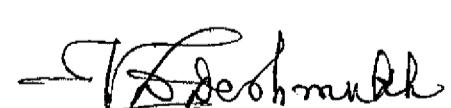
CORAM

The Hon'ble  Ms. Usha Savara, Member (A)

The Hon'ble Mr. V.D. Deshmukh, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

M


 (V.D. DESHMUKH)
 M(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

CIRCUIT SITTING AT NAGPUR
O.A.80/93

Navin Singh,
10, S.B.I. Officer's Colony,
Amravati Road,
Nagpur.

.. Applicant

VERSUS

1. Union of India
through

The Govt. of India,
Ministry of Environment,
Forests & Wild Life,
New Delhi.

2. State of Maharashtra,

through
The Chief Secretary,
Govt. of Maharashtra,
Mantralaya,
Bombay.

.. Respondents

Coram: Hon'ble Ms. Usha Savara, Member (A)

Hon'ble Mr. V. D. Deshmukh, Member (J)

Appearances:

1. Applicant
in person.
2. Mr. R. Darda
Counsel
for Respondent No. 1
3. Mr. G. K. Nilkanth
Counsel for
Respondent No. 2

JUDGMENT:
[Per V. D. Deshmukh, Member (J)]

Date: 30 Apr. 93

The applicant is a member of Indian Forest Service of 1983 batch and belongs to Maharashtra cadre. The applicant while in service was put under suspension by the Govt. of Maharashtra, respondent No. 2, by order dt. 12-5-1992. The applicant challenged the suspension order by O.A.779/92 and this Tribunal stayed the suspension order as an interim relief by order dt. 3.8.92.

It is the case of the applicant that inspite of the order being stayed the respondent No.2 continued the applicant under suspension till 17-10-1992. The order dt. 3-8-92 was confirmed till the disposal of O.A.779/92. The respondent No.2 however reinstated the applicant on 17-10-1992. The applicant after being reinstated was posted under the same order dt.17-10-92 as Divisional Forest Officer(Planning)Kolhapur. According to the applicant (the said post of DFO(Planning)Kolhapur was a non cadre post and he challenged the transfer order by O.A. 1118/92. This Tribunal after hearing both the parties quashed and set aside the order of transfer dt. 17-10-92. A copy of the order dt. 13-11-1992 is attached as Annexure 'C' to the application. This Tribunal was called upon to decide whether in the normal course the applicant could be posted to a post specified in Schedule-III of Indian Forest Service(Pay)Rules,1968 and whether as the post of Divisional Forest Officer(Planning) Kolhapur did not fall under the said schedule the applicant could not be posted to that post. The Tribunal referred to the provisions of Rule 9(1) of the aforesaid rules enabling either the Central Government or State Government to make a declaration that the given post was equivalent in status and responsibilities ^{to} to a post specified in the Schedule. Apart from the other contention ^S the applicant had contended in O.A.1118/92 that no declaration as contemplated by aforesaid Rule 9(1) was issued before the passing of the impugned order dt. 17-10-92. This Tribunal observed

at para (4) that it appeared that the respondents accepted that the applicant could not be posted as Divisional Forest Officer(Planning) Kolhapur in the absence of any declaration as envisaged in Rule 9 of the said Pay Rules. The respondents placed before the Tribunal the notification dt.12-11-92 under which the declaration as contemplated by Rule 9(1) was issued. The Tribunal however found that the impugned order could not be sustained on the basis of a subsequent notification dt. 12-11-92 and the impugned notification could not have any retrospective operation. It was found that the portion by ~~which~~ the applicant was ~~reinstated was separable from~~ the portion of order by which the applicant was posted as DFO(Planning)Kolhapur and for the reasons given in the order the later portion was quashed. The applicant also contended in the said O.A. that he could not be posted as DFO (Planning)Kolhapur inspite of the declaration dt.12-11-92. However, the Tribunal held that it was not called upon to go into that question at that stage. Respondent No.2 again posted the applicant vide order dt. 30-11-92 to the post of DFO(Planning)Kolhapur and it is this order which is under challenge in the present application.

2. The applicant after filing the present application moved for interim relief on 20-1-1993. Notice was issued to the respondents on the same date. Applicant expressed an apprehension that he may not be allowed to

go to Bombay to contest the case and the respondents were directed to grant the required leave of the kind and to the extent due, if applied for by the applicant for the purpose of contesting the present application. The application was again before the Tribunal on 5-2-1993 and the respondents were directed to file a detailed affidavit ^{showing} ~~say~~ that the status and responsibilities of the DFO and a Deputy Conservator of Forest are the same and also to produce the relevant record. By way of interim relief it was ordered that the applicant shall not be posted as DFO at Kolhapur in pursuance of the impugned order. Liberty was given to the respondents to take from the applicant the work of Deputy Conservator of Forest. The respondents thereafter filed affidavit which was followed by the rejoinder and sur-rejoinder. The application was admitted on 18-3-1993 and posted for final hearing on 12-4-93 at Nagpur. The interim order came to be continued from time to time.

3. We heard the applicant who argued his case in person and the learned counsel for respondent No.2. Shri R. Darda appeared for respondent No.1 but the respondent No.1 did not file any reply and no ^{g. w.e.} submission/made on their behalf as no ^{the} relief was claimed against respondent No.1.

4. By the impugned order dtd. 30-11-92 the applicant was again posted as DFO(Planning)at Kolhapur. The order itself states that the respondent No.2 was passing revised order in view of the judgment

and order passed by this Tribunal in O.A. 1118/92 on 13-11-92, with reference to order dt. 17-10-1992, order dt. 3-11-92 and order dt. 12-11-1992. This order also states that the applicant was posted as per the order as he had been reinstated. Although the respondent No.2 had issued the notification under Rule 9(1) of the I.F.S.(Pay) Rules, 1968 on 12-11-1992, the declaration under the said rules was incorporated again in the impugned order to the effect that the post of DFO(Planning)Kolhapur was equivalent to the post of Deputy Conservator of Forest Evaluation in the cadre of IFS in status and responsibilities. Thus the validity of the impugned order posting the applicant as DFO Kolhapur ^{will} ~~was~~ ultimately depend upon the validity of the declaration incorporated in the order made under Rule 9(1) of the IFS(Pay)Rules, 1968. It cannot be disputed that the post of DFO(Planning)Kolhapur is not a cadre post included in the IIIrd Schedule. It is, the contention of the respondents that ^{Considering the} ~~the post of~~ pay scales of the Deputy Conservator of Forest(DY.CF) can ^{be} ~~never~~ be equated with the post of DFO which is a post of the State Government. The post of DFO which is the cadre post of Maharashtra Forest service carries the pay scale of Rs.3000 - 4500. The respondents in the affidavit dt. 5-3-93 state~~s~~ that all the posts of DY.CF are in the Senior Time Scale of the Indian Forest Service and carries~~s~~ the pay scale of Rs.3000 - 4500. According to the applicant the cadre of DY.CF has also a

selection grade of Rs.4100 - 5300. The applicant is drawing at present the pay scale of Rs.3700 - 5000. It is stated by the respondents that this pay scale belongs to the Junior Administrative Grade of IFS Officers and the IFS Officer gets this scale only by virtue of his nine years length of service. It is mainly the contention of the respondents that as the scale of DFO in the Maharashtra cadre and the DY.CF in the Indian Forest Service are the same it can be declared under Rule 9(1) of the Pay Rules of 1968 that the two posts were equivalent. Rule 9(1) of the Pay Rules initially provides that no member of the service shall be appointed to a post other than a post specified in Schedule III. This can be done only if the State Government concerned in respect of the post under its control or the Central Govt. in respect of the post under its control makes a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule. A plain reading of Rule 9(1) would thus show that the primary intention was that a member of the All India Service should not be posted to any post other than a post specified in Schedule III. No doubt the Rule confers the power on the State Govt. or the Central Govt. to make a declaration that the given post was equivalent to a post specified in the Schedule. It is obvious that although the power is available either to the State Govt. or to the Central Govt., that power has to be exercised reasonably and keeping in mind that the status and responsibilities of the given post and the

specified post in the IIIrd Schedule are comparable if not exactly equal or equivalent.

5. The main question in the present application is, therefore, whether the declaration incorporated in the impugned order dt. 30-11-1992 is valid and in reasonable exercise of powers under Rule 9(1) of the aforesaid rules. There cannot be any doubt that while exercising the powers under Rule 9(1) care has to be taken that not only the pay of the officer concerned but his status must also be protected. The respondent No.2 in their affidavit dt. 5-2-93 mainly relied upon the declaration incorporated in the impugned order. It was necessary for them to show that the status and responsibilities pertaining to the post of DY.C.F. and ~~to~~ the post of DFO were equivalent and they were called upon to file the affidavit to that effect. The respondent No.2 in their written statement dt. 5-3-93 contained that the pay scales of two posts are equal and the DY.CF so also the DFO are the regional heads of their offices. It is difficult to accept that merely because the said officers are the regional heads of their respective offices the posts held by them be taken as equivalent posts. Respondent No.2 also filed an affidavit of Shri A.D. Vaitla of February, 1993. In this, affidavit they have mentioned about the duties of DFOs. However, they have not shown that the duties and responsibilities of the DFOs are comparable or equal to those of DY.CF.

6. The applicant relies upon Rule 8 in Indian Forest Service (Recruitment) Rules, 1966. The relevant portion of the rule reads as below:

"8. Recruitment by promotion -
(1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of the State Forest Service."

~~provision~~
The directions of above rule 8(1) would thus clearly show that when an officer from the State Forest Service is to be recruited in a respective post in the Indian Forest Service, he is taken by way of promotion. The respondent No.2 have themselves stated in para 5 of their written statement that the eligibility criteria for appointment of State Forest Officer to the IFS is minimum of eight years continuous service in the State cadre inclusive of two years period of training spent at Forest College and substantive appointment in the state cadre. It is therefore obvious that the post of Deputy Conservator of Forest Central Evaluation Unit Nagpur which is

held by the applicant is a promotional post so far as the officers belonging to the State Forest Services are concerned. The respondent No.2 in their affidavit of February, 1993 had given the table showing the gradation. They have shown the post of Deputy Conservator of Forest on the same level with the post of Divisional Forest Officers. In view of the provision of aforesaid Rule 8(1) it is difficult to see as to how these two posts could be shown at the same level when obviously the post of Deputy Conservator of Forest was a promotional post for the officers of the State Forest Service. It was not disputed that the Divisional Forest Officers belong to the feeder cadre from which the incumbents to the post of Deputy Conservator of Forests could be promoted. In view of this position and especially the provision of Rule 8(1) of the aforesaid rules it is impossible to sustain the declaration in the impugned order that the post of DFO(Planning)Kolhapur is equivalent to the post of Deputy Conservator of Forest Evaluation in the cadre of IFS in status and responsibilities.

7. It is also the contention of the applicant that the post of DFO which was not a cadre post in Schedule III could not be equated with the post of DY.CF. In this connection he relies upon the decision of the Govt. of India cited at page 966 in All India Services Manual of Shri R.N.Mishra, 3rd Edition. The decision is cited at para 1.3

on the said page. It mentions that the letter of Ministry of Home Affairs No. 1/27/59-AIS(II), dated 23-3-1960 had created confusion and the State Governments had been declaring non-cadre posts as equivalent to cadre posts under Rule 9 of the IAS/IPS (Pay)Rules, 1954 even when such non-cadre posts were held by Select List Officers. The decision further records that this procedure was unauthorised and irregular and the declaration under Rule 9 of IAS/IPS (Pay)Rule 1954 was to be made only when an ex-
~~cadre~~ post was held by a member of the Service and not by a Select List Officer. No doubt this decision was concerned the IAS and IPS (Pay) Rules. Rule 9 in the said rules is pari materia with Rule 9(1) of Indian Forest Service (Pay)Rules, 1968. In fact both the provisions are similar word to word. The principle which is ~~criteria~~ contained in the Govt. of India decision can certainly be invoked in cases of the officers governed by the Indian Forest Service (Pay)Rules, 1968.

8. The post of DFO(Planning) Kolhapur was created in 1983 along with ten other similar posts. It can be presumed in the absence of any evidence to the contrary that the responsibilities duties and status of the officers holding these 10 posts are equal and similar. It is difficult to appreciate as to how only the post of DFO(Planning) Kolhapur could be declared as equal to the post of Deputy Conservator of Forest. There is absolutely nothing in any of the affidavits filed

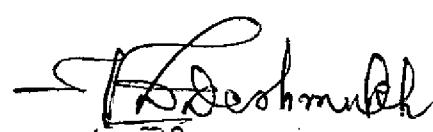
on behalf of the respondents No.2 or their written statement that there were any special reasons for circumstances which warranted the declaration that the said post in Kolhapur circle was necessary to be declared as equal to the post of Deputy Conservator of Forest, Evaluation Unit at Nagpur.

9. Thus considering the impugned order and the declaration incorporated in it from the various aspects we find that the declaration and the consequent ^{orders} ~~are~~ both arbitrary and ~~unsustainable~~. We also cannot ignore the circumstances ^{and} the background ~~on~~ ⁱⁿ of which the impugned order and the declaration came to be issued. In view of the above discussion we find that the impugned order and the declaration contained therein are liable to be quashed. We, therefore, pass the following order:

10. The impugned order dt. 30-11-92 of the respondent No.2 and ~~the~~ the declaration therein under Rule 9(1) of Indian Forest service (Pay) Rules 1968 are quashed.

11. No other reliefs are called for at this stage.

12. No order as to costs.


(V.D. DESHMUKH)
Member (J)

M


(USHA SAVARA) 30.4.93
Member (A)

X. PTD

Operation stayed by the