

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 114 of 1997.

Dated this Tuesday, the 11th day of January, 2000.

Anil Mohan, Applicant.

Shri M. S. Ramamurthy, Advocate for the applicant.

VERSUS

Union of India & Others, Respondents.

Shri V. S. Masurkar, Advocate for the Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ? Yes
- (ii) Whether it needs to be circulated to other Benches ND of the Tribunal ?
- (iii) Library. yes

Response

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

OS*

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Anil Mohan, I.F.S.,
Joint Director,
Social Forestry Circle,
Cassia Park, Station Road,
At. P.O. Tq. & Dist. Akola -444 001.

... *Applicant.*

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. The Government of Maharashtra
through the Secretary,
Forests Revenue & Forests
Department, Mantralaya,
Mumbai.

2. Principal Chief Conservator
of Forests,
Maharashtra State,
Jaika Building, Civil Lines,
Nagpur.

3. Deputy Secretary,
Forest Revenue & Forests Deptt.,
Government of Maharashtra,
Mantralaya, Mumbai.

4. The Government of India
through the Secretary,
Environment & Forests,
Paryavaran Bhavan,
C.G.O. Complex,
Lodi Estate, Lodi Road,
New Delhi.

... *Respondents.*

(By Advocate Shri V.S. Masurkar).

...2

for

OPEN COURT ORDER

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed by the applicant under Section 19 of the Administrative Tribunals Act. Respondent Nos. 1 to 3 have filed reply. None have represented respondent no. 4, the Government of India. We have heard Shri M.S. Ramamurthy, the Learned Sr. Counsel for the applicant and Mr. V.S. Masurkar, the Learned Counsel for Respondent Nos. 1 to 3.

2. The short point for consideration in this O.A. is, whether the applicant is entitled to salary and allowances for the period from 01.03.1995 to 15.12.1995 by treating it as compulsory waiting period ?

3. Most of the facts are admitted in this case. We will mention only the facts that are necessary to answer the above question.

4. The applicant was working as a Deputy Conservator of Forests in the Forest Department in Maharashtra. He was promoted as a Conservator by order dated 13.02.1995 (page 15 of the Paper Book) in the grade of Rs. 4500-150-5700 and on promotion, he is deputed to the Central Government for being appointed in the Department of Biotechnology. In pursuance of this order of promotion, the applicant handed over charge on 28.02.1995. He is

entitled to joining and deputation time as per rules. He reported before the Central Government on 21.03.1995 seeking an order for posting. It appears, the Central Government wanted to post him as a Deputy Secretary which was lower in rank than the rank of Conservator of Forests. That is how the applicant could not be appointed as Deputy Secretary. Then the applicant came back to Maharashtra and reported to the State Government that he has not been given posting by the Central Government, since the post of Deputy Secretary is lower in rank to that of Conservator of Forests and sought immediate posting in the State of Maharashtra. Then the Maharashtra Government issued a letter that it is seeking clarification from the Central Government. The applicant went on making representation after representation seeking an order of posting, but ultimately he was given a posting in November by order dated 21.11.1995. In pursuance of this order, the applicant joined the present post as Conservator of Forests at Akola on 16.12.1995. Therefore, the applicant's case is that he is deprived of his promotion and monetary benefits from 01.03.1995 to 15.12.1995 for no fault of his and hence, he is entitled to salary and allowances for that period in the promotional post of Conservator of Forests.

5. The substance of the defence is that the applicant when he was directed to report to Central Government and he went to Delhi, he should have joined duty as Deputy Secretary and if he



has not joined that post, it is his fault and he cannot claim salary and allowances for the period in question. It is specifically stated in the reply that due to the fault of the applicant, he has not taken charge at New Delhi and, therefore, he cannot claim any salary and allowances for the period in question.

6. After hearing both counsel and perusing the material on record, we find that applicant was admittedly transferred on promotion by order dated 13.02.1995. It is also a common ground that applicant was relieved on 28.02.1995 and he went to Delhi to join the new post. So far there is no dispute. As to what happened in Delhi, we have one important letter on record, which is at page 19 of the Paper Book. It is an Office Memorandum dated 21.03.1995 issued by the Department of Biotechnology in the Ministry of Science and Technology. The O.M. says that applicant had come to join duty but it was noticed that the rank of Deputy Secretary is lower than the rank of Conservator of Forests and in the circumstances, he cannot be appointed as Deputy Secretary in that department pending clarification from the Department of Personnel & Training.. We are told at the time of argument that no further clarification came from D.O.P.T. and, therefore, the applicant returned to Bombay and reported to the State Government and sought an order of posting, as could be seen from his letter dated 24.03.1995. Therefore, the applicant has come back to Maharashtra and sought instructions from the State Government

about his posting. Now let us see as to what is the stand of the State Government and this can be seen from the letter dated 15.04.1995 (page 22 of the Paper Book) where the State Government has written to the applicant that they are seeking clarification from the Government of India and after receiving clarification they would consider his request for posting. If it was a case of applicant's negligence or applicant's fault in not joining duty at New Delhi, the response of the State Government would have been to direct the applicant to join the post at New Delhi or face disciplinary action. No such direction was given to the applicant. But on the other hand, he was told to wait, since the State Government is seeking clarification from the Central Government. The applicant went on making representation to all concerned, including the Hon'ble Minister for Forest, but nothing transpired. It is only six months later in September, 1995, the State Government started moving the matter seeking information from the Forest Department about posting, etc. and then ultimately, issued the order dated 21.11.1995 under which the applicant was given posting as Conservator of Forests at Akola.

After going through the materials on record, we are satisfied that there was no fault on the part of the applicant and on the other hand, he has been very diligent in making repeated representations to the State of Maharashtra to give him a posting at the earliest. We must know that due to this, the

applicant was not getting salary for six months and inspite of this, he was pressing the Government to give him a posting and it is not a case of applicant remaining absent unauthorisedly due to his own fault. Even granting for a moment that in the initial three four weeks some responsibility can be attributed to the applicant, he has promptly come and reported to the State Government within two three weeks and the State Government has taken about eight months for issuing the posting order. Hence, taking the entire material on record, we have no hesitation to hold that there ~~was~~ ^{was} no negligence or fault on the part of the applicant and he has been waiting for the order of posting from day one till he got the order by the end of November. Therefore, the period from 01.03.1995 to 15.12.1995 should be treated as an Officer on compulsory waiting and entitled to pay and allowances for the period in the pay scale of Rs. 4500-150-5700 plus all usual allowances. As far as applicant's seniority is concerned, the State Government itself has conceded it by granting him deemed promotion and deemed seniority from 16.02.1995 in the post of Conservator of Forests, as could be seen from the State Government's order dated 02.08.1997 (exhibit R-6 to the written statement).

7. In the result, the application is allowed. The respondents are directed to treat the period from 01.03.1995 to



15.12.1995 as compulsory waiting for posting orders and pay the salary and allowances for the said period to the applicant within a period of three months from the date of receipt of a copy of this order. In the circumstances of the case, there will be no order as to costs.


(D. S. BAWEJA)

MEMBER (A).


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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