

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CIRCUIT BENCH: GOA

OA No.168/98

Date of decision: 9.10.1998

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.N.SAHU, MEMBER(A)

Shri Mulidhar Anant Desai Applicant

(By Advocate Shri S.N.Naik)

Vs.

Secretary to Ministry of Environment
and Forests & others Respondents

(None for respondents 1 to 3,
Shri N.S.Vadkarni with Sh.R.K.
Shetty, counsel for respondent
No.4)

- ✓ 1. Whether to be referred to the Reporter or not? *yes*
2. Whether a copy of the judgement to be circulated
to all the Benches of the Central Administrative
Tribunal ? *X*

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(K.M.AGARWAL)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CIRCUIT: GOA

O.A. No.168/98

THIS THE 9th DAY OF OCTOBER, 1998.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR. N.SAHU, MEMBER(A)

Shri Muralidhar Anant Desai
S/o Shri Anant Pundalik Desai
Deputy Conservator of Forest Soil
Conservation Division
Forest Department of Ponda,
Goa.

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Applicant

(By Advocate Shri S.N.Naik)

vs.

1. Secretary,
Ministry of Environment and Forests,
Paryawaran Bhavan, C.G.O. Complex,
Lodi Road, New Delhi.

2. Secretary,
Union Public Service Commission,
Dholpur House,
New Delhi.

3. Chief Secretary,
Govt. of Goa,
Secretariat Panjim,
Goa.

4. Shri O.V.R.Reddy,
Deputy Conservator Forests,
Goa Govt. St. Cruz Ponda,
Goa.

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Respondents

(None for Respondents 1 to 3 and
Shri N.S.Vadkarni with Shri R.K.
Shetty, counsel for respondent No.4)

ORDER

JUSTICE K.M.AGARWAL:

By this application under Section 19 of the Administrative
Tribunals Act, 1985, the applicant has made a prayer for quashing
the appointment of 4th respondent of the State Forest Service of
Goa to the Indian Forest Service, (in short, "IFS"), vide
notification dated 31.12.1997, (Annexure A), with a further prayer
to direct the official respondents to promote him to the aforesaid
IFS on the ground of his seniority in the State Forest Service

For Group 'A'.

2. Briefly stated, the applicant was a promotee, whereas the 4th respondent was a direct recruit to the post of Assistant Conservator of Forests, (in short, "ACF"), in the State Forest Service of Goa. The applicant was promoted to the post of ACF on 16.7.1982. The 4th respondent joined his services as such on 22.11.1983 on completion of two years training in Forest Research Institute & College Burnihat (Assam). As per seniority list of ACF issued on 4.7.1991, the name of the 4th respondent was shown at Sl.No.3 above the name of the applicant, who had been placed at Sl.No.4. By notification dated 28.12.1990, published in Official Gazette dated 24.1.1991, "the Government of Goa, Office of the Conservator of Forests, Group 'A' Gazetted Post Recruitment Rules, 1991", (in short, "Group 'A' G.P. Recruitment Rules"), were brought into force. Under these rules, the post of Deputy Conservator of Forests, (in short, "Dy.CF") was created. As specified in the schedule to the rules, the post was a selection post and required to be filled in entirely by promotion from amongst ACF with 8 years regular service in the grade. It appears that pursuant to these rules, the 4th respondent was promoted to the post of Dy. CF by order dated 26.8.1991, whereas the applicant was promoted to the said post by subsequent order dated 4.11.1991. The applicant challenged the promotion order of the 4th respondent by filing a petition in the Goa Bench of Mumbai High Court, which was allowed and the promotion order of the 4th respondent

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was quashed by order dated 9.9.1991, inter alia, on the ground that on the date of his promotion to the post of Dy.CF, the 4th respondent did not have 8 years regular service in the grade of ACF to his credit. The 4th respondent was, thereafter, again promoted by order dated 8.7.1993 after observing due process of selection and as by then he had to his credit 8 years regular service in the grade of ACR. The applicant, therefore, claims that he was senior to the 4th respondent in the grade of Dy.CF in State Forest Service Group 'A'. By their letter dated 17.10.1994, (Annexure G), addressed to the Deputy Secretary to Government of India, Ministry of Environment and Forests, the Government of Goa, Department of Personnel submitted a list of 4 officers in the State Forest Service for being considered for promotion to the IFS. The first paragraph of the letter reads as follows:-

"I am directed to invite reference to the Ministry's letter No.170/3-22/94-IFS dated March 1994 and to state that as per sub-Rule 4 of the Indian Forest Service (Appointment by promotion) Regulation, 1966 following officials of the State Forest Service Cadre are eligible for consideration of their names, for inclusion in the select list of Indian Forest Service (AGMU) Cadre and accordingly their names have been arranged in the order of seniority list in the State Forest Service,

For

in accordance with Rule(4) of I.F.S. (Appointment by promotion) Regulations, 1966.

- 1) Shri O.V.R.Reddy, Dy.Conservator of Forests.
- 2) Shri M.A.Desai, Dy.Conservator of Forests.
- 3) Shri V.T.Thomas, Dy.Conservator of Forests.(on ad-hoc basis)
- 4) Shri L.V.Kulkarni, Asstt. Conservator of Forests."

(Emphasis supplied)

On the basis of this letter, the names of the said officers in the State Forest Service were considered for promotion to IFS and thereafter, the Government of India, Ministry of Environment and Forests published the following notification dated 15.10.1997, (Annexure H):-

"In exercise of the provisions contained in Sub-Regulation (3) of Regulation 7 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966, the Union Public Service Commission have approved the Select List on 13th October, 1997, containing the names of the following three members of the State Forest Service of the State of Goa, prepared by the Selection Committee in its meeting (Oct.) held on 13th, /1997 at Goa towards filling up of one vacancy in the Indian Forest Service of AGMUT Cadre during 1997-98:-

<u>S.No.</u>	<u>Name of the Officer</u>	<u>Date of birth</u>
	S/Shri	
1.	O.V.Reddy	24.04.1958
2.	M.A.Dessai	31.12.1942
3.	V.J.Thomas	10.10.1943."

On the basis of this notification, further notification dated 31.12.1997 was issued by the Government of India, Ministry of Environment and Forests appointing the 4th

respondent of the State Forest Service of Goa to the IFS, which is impugned in this O.A. The applicant claims that in their letter dated 17.10.1994, the Government of Goa wrongly mentioned his name at Sl.No.2, whereas it ought to have been at Sl.No.1 on the basis of his seniority. If his name were also mentioned at Sl.No.1 on the basis of seniority, in Grp.A he was bound to be selected for the post of IFS in preference to the 4th respondent, whose name was below his name in the seniority list of Group 'A' State Forest Service. Accordingly he has filed the said O.A. for the said reliefs. The application is resisted by the contesting respondents on various grounds.

3. After hearing the learned counsel for the contesting parties and perusing the record, we may concede at the outset that the applicant was shown senior to the 4th respondent in the cadre of Group 'A' Gazetted Post of Dy.Conservator of Forests. It is, therefore, not necessary for us to examine or discuss the various authorities cited by the learned counsel for the applicant in support of his contention that the applicant was senior to the 4th respondent in Group 'A' Gazetted Post of Dy. Conservator of Forests. Similarly it cannot be disputed and has not been *Jm* disputed by the applicant that the 4th respondent was

shown senior to him in the seniority list of ACF in the State Forest Service of Goa. In para 3 of his rejoinder dated 14.6.1998 to the affidavit in reply, the applicant has stated that:

" The applicant respectfully submits that he has not raised any point as regards the seniority list of Assistant Conservator of Forests which the respondents have replied under para 4. The respondent 4 was given seniority in the grade of Assistant Conservator of Forests, only because of Quota-Rota Rule."

In paragraph 4 of the affidavit filed on behalf of the 3rd respondent, the following statement has been made:-

" Although, as stated in the petition, it is correct that the applicant was promoted to the post of Assistant Conservator of Forests on 16.7.1982, and respondent No.4 was appointed to the post of Assistant Conservator of Forests on 22.11.1983 on completion of two years of training in State Forest Service College Burnihat, Assam, respondent No.4 is senior to the Applicant in the cadre of Assistant Conservator of Forests. The inter-se-seniority of the Officers in the cadre of Assistant Conservator of Forests was finalised as early as by order No.3-1-83-PA (FOR) dated 4.7.1991 which shows that the respondent No.4 has been placed above the Applicant. It is pertinent to note that the Applicant has not at any stage challenged this inter-se-seniority, although, at one stage the Applicant had filed a Writ Petition No.262/88 in the High Court at Bombay at Panaji for counting his ad hoc service for the purpose of seniority, which Writ Petition was dismissed by the Judgement and Order dated 10.7.1992. Moreover, on the principle of rota-quota respondent No.4 being a direct recruit ranks senior to the Applicant. Further, respondent

No.4 was confirmed in the post of Assistant Conservator of Forests with effect from 11.3.1991 as against the Applicant who was confirmed on the same post much after on 30.8.1993. Also, as provided in Explanation II Sub rule (2) Rule 5 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966, in computing the period of continuous service for the purpose of the said Regulations any period which an officer has undertaken a training shall also to be included. Respondent No.4 had joined the training on 6.11.1981 i.e. much before the Applicant was promoted as Assistant Conservator of Forests."

We may, therefore, now proceed on the basis that: (i) The applicant was senior to the 4th respondent in the category of Group 'A' Gazetted Post of Dy. Conservator of Forests, but (ii) He was junior to 4th respondent in the category of ACF in the State Forest Service of Goa.

4. Rule 4.3.3 of the Goa, Daman & Diu Forest Code Vol. I & II makes the following provision:-

" All gazetted posts in the Forest Department not encadred in the I.F.S. are included in the Goa, Daman and Diu State cadre viz.-Assistant Conservator of Forests and shall be held by the officers of the State Cadre." (Emphasis supplied).

Under rule 4.3.2 of the Goa, Daman and Diu Forest Code, the post of Dy.Conservator of Forests has been encadred in the IFS. Rule 4.3.2 reads as follows:-

"The Indian Forest Service has been constituted under Section 2A of the All Indian Services Act LXI of 1951 with effect from 1st July 1966. The number

of posts in the Indian Forest Service in this territory will be determined by the orders issued by the Government of India and the Local Government from time to time. The following posts shall be included in the Indian Forests Service and accordingly they shall be held by the officers belonging to the Indian Forest Service of U.T.Cadre:

(1) Conservator of Forests.

(2) Deputy Conservator of Forests.

(3) Assistant Conservator of Forests." (Emphasis supplied)

It would, thus appear that the post of Dy.CF does not form part of State Cadre. It appears that in his own fanciful manner, the applicant has described the State Cadre to consist of two Groups, Group 'A' and Group 'B' and further states that the post of Dy.CF is in Group 'A' of the State Cadre, whereas the post of ACF is in Group 'B' of the State Cadre. We could find no basis to hold that the State Cadre consists of two groups or that the post of ACF falls in Group 'B' of State Cadre. On the contrary, a combined reading of Rules 4.3.3 and 4.3.2 of the Goa, Daman and Diu Forest Code would show that the post of Dy.CF being encadred in the IFS is not included in the State Cadre of Goa, whereas the post of ACF having been not encadred in the IFS is in the State Cadre and accordingly it is specifically provided that the post of ACF shall be held by the officers of the State Cadre. Proviso (ii) of sub-rule (2) of rule 5 of the Indian Forest Service

Ym. (Appointment by Promotion) Regulations, 1966 contained

the following provision before 20.4.1976:-

"(ii) the Committee shall not consider the case of a member of the State Forest Service unless, on the first day of the January of the year in which it meets, he is substantive in the State Forest Service and has completed not less than eight years of continuous service (whether officiating or substantive) in a post of Assistant Conservator of Forests or any other post or posts declared equivalent." (Emphasis supplied)

After 20.4.1976, rule 5(2) was substituted by another rule 5(2). The last proviso to this amended rule 5(2) reads as follows:-

"Provided also that the Committee shall not consider the case of a member of the State Forest Service unless, on the first day of January of the year in which it meets, he is substantive in the State Forest Service and has completed not less than eight years of continuous service (whether officiating or substantive) in post (s) included in the State Forest Service." (Emphasis supplied).

A careful reading of the aforesaid provisions would disclose that the feeder cadre for promotion to the IFS was earlier, the ACF or any other post declared equivalent. Subsequently the feeder category is shown to be State Forest Service. Under these circumstances, it may be said that after his promotion to the post of Dy.CF, the applicant ceased to be a member of State Forest Service and, therefore, he could be ignored or excluded from consideration to the post of IFS.

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However, as he held the post of ACF before being promoted to the post of Dy.CF, his name was also considered and included in the list submitted to the Central Government by the State Government containing names of eligible officers for promotion to IFS. In the State Forest Service i.e. in the grade of ACF, the applicant was admittedly junior to the 4th respondent. Accordingly he cannot be heard to say that his name was wrongly mentioned at Sl. No.2 on the basis of his seniority. In the circumstances of the case, the seniority of officers in the grade of Dy.CF was immaterial. The seniority of the officers in the State Forest Service of ACF was only material and, therefore, we find that no mistake was committed either by the State Government or by the Central Government in treating the 4th respondent senior to the applicant in the State Cadre and accordingly in giving promotion to the 4th respondent, in preference to the applicant, to I.F.S.

5. Explanation II inserted under rule 5(2) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 provides as follows:

5(2) Explanation II

"In computing, the period of continuous service for the purpose of of this regulation there shall be included any period during which an officer has undertaken:-

- (a) training in a diploma course in the Forest Research Institute and Colleges, Dehra Dun; or
- (b) such other training as may be approved by the Central Government in consultation with the Commission in any other institution."

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In paragraph 4(i) of his O.A., the applicant has asserted that the applicant " was promoted to the State Forest Service in Group "B" Rank of Asst. Conservator of Forests on 16.07.1982." In paragraph 4(ii) of his O.A., the applicant has made the following statement:-

" The applicant further states that the Respondent No.4 joined the Goa State Forest Service in Group "B" Rank of Asst. Conservator of Forests on 22.11.1983 on completion of two years training in Forest Research Institute & College Burnihat (Assam) and was subsequently promoted to group "A" service of Dy. Conservator of Forests from 8.7.93 purely on- ad-hoc basis without holding of a D.P.C."

Now in view of clause (b) of Explanation II under rule 5(2) of the Indian Forest Service (Appointment By Promotion) Regulations, 1966, if two years period of training is added to the date of joining of the 4th respondent as ACF in State Forest Service, it would be a date in the year 1981. On his own showing, the applicant was promoted to the post of ACF on 16.7.1982. Accordingly, apart from the other reasons the applicant appears to be junior to the 4th respondent in the grade of ACF for the foregoing reasons.

6. It is settled law that any selection for any selection post is based on inter se merits of candidates and not on the basis of their inter se seniority. However, as the case of the applicant was that all the candidates were found equal on merits and, therefore, on the basis of seniority he was entitled to promotion to IFS in preference

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to his junior i.e. the 4th respondent, we restricted ourselves from examining the merits of the applicant's claim for seniority and for the reasons aforesaid, we have come to the conclusion that the applicant was junior to the 4th respondent in the cadre of ACF. Only the persons in State Cadre could be considered for promotion to IFS. The post of Dy.CF was not in the State Cadre. There is no provision in any rules to show that a person in Group 'A' service would also be considered or would get preference over persons in the cadre of ACF. For all these reasons, we find no merit in this O.A. and accordingly it has to be dismissed.

7. In the result, this O.A. fails and it is hereby dismissed, but without any order as to costs.

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(K.M.AGARWAL)
CHAIRMAN

N. Sahu
(N.SAHU)
MEMBER (A)