

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1083/98

Dated this the 22nd day of August 2000.

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

Hon'ble Shri S.L.Jain, Member (J)

Dr.Arun Ramchandra Bapat,
Occupation: Service,
resident of Nasik.

... Applicant

Applicant in person

V/S.

1. The Union of India
through the Secretary,
Ministry of Environment
& Forests, CGO Complex,
Lodhi Road, New Delhi.
2. The State of Maharashtra
through the Secretary,
Forests, Deptt. of Revenue
& Forests, Mantralaya,
Mumbai.
3. The Principal Chief Conservator
of Forests, Maharashtra State,
Jaika Motors Building,
Nagpur.

... Respondents

By Advocate Shri C.Anand for
Respondent No. 1 and Shri V.S.
Masurkar for Respondents No.
2 & 3.

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ORDER

(Per : Shri D.S.Baweja, Member (A))

The applicant was selected by Maharashtra Public Service Commission for Superior State Forest Service Class-II in the year 1964-65. After undergoing two years of training, he was appointed as Assistant Conservator of Forests on probation and joined his duties from April, 1967. After passing the obligatory departmental examination, successfully, he completed probation on 6.5.1970 as per Government Resolution dated 6.5.1970. In due course of time, the applicant was confirmed on adhoc basis in the cadre of Superior State Forest Service cadre Class-II as per order dated 5.11.1976 w.e.f. 31.12.1975. The applicant was promoted as Deputy Conservator of Forests Class-I as per order dated 11/18.2.1976. Thereafter, the applicant was inducted to Indian Forest Service (IFS) Maharashtra State cadre vide order dated 11.12.1984. He was confirmed into IFS w.e.f. 11.12.1985 as per order dated 7.9.1988. The applicant's case is that the induction into IFS from 11.12.1984 was wrongful as it was not from the date the applicant was due as per his date of confirmation in State Forest Service (SFS). He, therefore, represented against the same on 4.1.1985 stating that he was accepting induction into IFS under protest. The date of confirmation subsequently as per order dated 11.2.1985 was revised to 4.6.1973 instead of 31.12.1975. The applicant, therefore, was entitled to be considered for induction into IFS

with date of confirmation as 4.6.1973. However, the respondents did not consider the case of applicant on the basis of confirmation date of 4.6.1973 and this is the genesis of the present OA. and OAs. filed earlier.

2. The applicant feeling aggrieved, filed an OA.NO.244/1991 before the Jodhpur Bench seeking the following reliefs :-

" (a) The respondents be directed to determine the vacancies in the year 1973 onwards to see that the candidates who were eligible occurrence/availability of the vacancies and their service record may also be seen for the year for which promotion is to be made. And if the applicant is found to be suitable, then he may be promoted in the IFS cadre from that very year and he may be awarded all consequential benefits.

(b) That after holding the meeting as aforesaid the respondents may be further directed to allot the year to the applicant and he may be given all consequential benefits flowing from allotment of year.

(c) That the respondents may further be directed to promote the petitioner from the date when a person junior to him has already been promoted and he may be given all consequential benefits pertaining to pay fixation, seniority and further promotion if any etc."

The above OA. was disposed of as per the order dated 3.8.1994 with following directions :-

" We have heard arguments on behalf of both the sides. The limited question now in this OA. is that the applicant has not been given the year of allotment and for some reasons he has filed the OA. and the same is admitted by the respondents in the para stated above. We, therefore, dispose of this OA. by giving a direction to the

respondents that they shall inform the applicant about the year of allotment within a period of four months of this order and if he becomes entitled for any consequential benefits the same shall be paid to him. We further direct that while considering the year of allotment they shall keep in consideration the order Annex. A-3 dated 11th February, 1985."

The applicant submits that in the order dated 3.8.1994, it is clear that issue ^{of} year of allotment and seniority had not been decided at the time of passing of the order and the respondents were directed to do so. However, the respondents had not stated the correct position before the Tribunal as already the respondents had passed order dated 11.1.1994 determining the year of allotment and inter-se seniority of 50 IFS Maharashtra Cadre officials. The applicant came to know of this order some where in August 1994. The applicant immediately through representation dated 30.9.1994 to the first respondent, Secretary, Ministry of Environment and Forest, Govt. of India requested to take action as per the direction of the Tribunal as per order dated 3.8.1994 in OA.NO.244/91. This representation was followed by several reminders. However, neither these representations invoked any reply nor the respondents complied with order dated 3.8.1994.

3. SLP was filed by the Maharashtra State against the order of this Bench of the Tribunal dated 30.8.1991 in OA.No.189/88 with regard to seniority of the promotees and direct recruits to IFS. This SLP was disposed of by the Hon'ble Supreme Court as per order dated 20.11.1997 setting aside of the order of the

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Tribunal. Observing that Central Government since has already determined the year of allotment and consequential inter-se seniority, if any one has grievance against such determination, it will be open to such persons to challenge the same before the appropriate authority in accordance with law. On learning about this judgement of the Apex Court in february,1998, the applicant again represented on 10.3.1998 stating that order dated 11.1.1994 be set aside and vacancies be filled in under Rule 8 (1) read with Rule 9 (1) of IFS Recruitment Rules, 1966 by recomputing vacancies for promotion quota from 1968 onwards and consider the case of applicant for induction into IFS with date of confirmation as 4.6.1973. On not getting any reply to this representation, the applicant filed OA.NO.423/98 at Nagpur Bench seeking the reliefs of direction to the respondents to decide the representation of the applicant dated 19.3.1998 and pass a speaking order.

This OA. was disposed of at the stage of admission as per order dated 16.6.1998 with following directions :-

" In the circumstances of the case, we are of the view that this OA. can be disposed of at the admission stage itself by directing respondent No.1 to decide the representation dated 19.3.1998 of the applicant within a period of three months from the date of receipt of a copy of this order. In order to expedite the matter we also direct the applicant to furnish a copy of the representation dated 19.3.1998 to the respondents. Accordingly, the OA. is finally disposed of. No costs."

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4. In pursuance of the directions in OA.NO.423/1998 in order dated 16.6.1998 as extracted above, the respondents have replied the representation dated 19.3.1998 as per the speaking order dated 23.10.1998 rejecting the claim of the applicant for review of year of allotment and consequential seniority with reference to date of confirmation of 4.6.1973. The present OA. has been filed on 17.12.1998 challenging the order dated 23.10.1998.

5. The applicant amended the reliefs prayed originally in the OA. through the amendment application. The amended reliefs sought are :-

(a) The order dated 23.10.1998 be set aside.

(b) The order assigning the year of allotment and seniority to the 50 promoted officer to IFS of Maharashtra Cadre be quashed.

(c) The wrongful notification No. 107013/12/83-IFS-II of Govt. of India, Ministry of Agriculture, dated 11th December be quashed.

(d) The respondents to determine the vacancies in the IFS cadre of Maharashtra in the year 1973 onwards and to see that the candidates who were eligible under the occurrence/availability of vacancies and their service record may also be seen for the year which promotion is to be made, and if the applicant is found to be suitable, then he may be promoted in the IFS cadre from that very year and he may be awarded all consequential benefits.

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(e) That after holding the meeting as aforesaid the respondents may be further directed to assign the year of allotment to the applicant and he may be given all consequential benefits flowing from the allotment of year.

(f) That the petitioner may further be promoted from the date when a person junior to him has already been promoted and he may be given all consequential benefits pertaining to pay fixation, seniority and further promotions if any etc.

6. The applicant has sought the above reliefs building his case on the following legal grounds :-

(a) As per the IFS (Appointment by promotion) Regulations 1966, induction to IFS is to be done from amongst the eligible substantive members of the State Forest Service. The applicant was inducted to IFS vide order dated 11.12.1984 when his confirmation date ^m on State Forest Service was 31.12.1975. This date has been preponed to 4.6.1973 subsequently as per order dated 11.2.1985 issued after the order dated 11.12.1984. Therefore, the case of applicant for promotion to IFS needs to be reviewed based on date of confirmation as 4.6.1973.

(b) The number of promotion posts were not correctly computed when the Selection Committee met in 1984. During the period of 1968-1983, some of the officers who had been appointed to IFS in 1983 as initial recruits were also occupying the posts

to be filled up by promotion as is clear from the order dated 31.1.1983. Applicant submits that at least 13 vacancies out of total 22 vacancies of promotional quota were occupied by one and the same officers under the initial recruitment and promotion recruitment simultaneously. Shift of the promoted officers done as per order date 31.1.1983 was known to the respondents (1) & (2) at the time of finalising select list in 1984 and these vacancies should have been taken into account on the yearwise basis. Since the applicant was eligible for consideration with confirmation on 4.6.1973, he deserves to be considered against these vacancies on the due date.

(c) As per Regulation 5 of Indian Forest Service (Appointment by Promotion) Regulations 1966, the Selection Committee shall ordinarily met at intervals not exceeding one year and prepare a list of eligible select members of the SFS as one held suitable for promotion to IFS. Respondents did not hold the Selection Committee meetings regularly as per Rules. The meetings were held only in 1969, 1974, 1979, 1981, 1984, 1986, thereby leaving gaps of 2-5 years. This has caused prejudice to consideration of the case of the applicant for promotion on the due date.

(d) There were numerous posts of IFS cadre of Maharashtra State, since 1968 varying in numbers every year but were not filled up on substantive basis as they were being manned by officers on urgent temporary ground on adhoc basis. The IFS promotion quota was not fully utilised and for want of determination of vacancies every year as the vacancies were not filled in a regular manner.



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7. The Respondent No.1, i.e Union of India through Secretary, Ministry of Environment and Forests has filed separate written statement. The Respondent No. 1 submits that the main issues raised by the applicant in his representation dated 19.3.1998 have been examined in detail and the reply has been given to the applicant as per the impugned order dated 23.10.1998 covering all the points in the representation. The Respondent No. 1 submits that the applicant was inducted into IFS w.e.f. 11.12.1984 and has been allotted 1980 as the year of allotment as per IFS (regulation of seniority) Rules, below the junior most direct recruit of 1980 batch who had been officiating continuously on senior posts prior to the date of such officiation by the applicant. Confirmation in the State Forest Service (SFS) has no bearing on the seniority in SFS. Since his posting on cadre posts if any prior to his appointment to IFS was unauthorised as it did not have the approval of the Central Government as per Rule 9 of the Cadre Rules, the applicant was not entitled to any benefit of the officiation for the purpose of determination of the seniority.

The Respondent No. 1 further states that direction of Jodhpur Bench as per order dated 3.8.1994 in OA.No.244/91 regarding fixing the seniority of the applicant in IFS with reference to his confirmation in SFS was duly taken note of while disposing of applicant's representation dated 19.3.1998. As regards the applicant's contention that some of the promotion posts prior to 1983 were occupied by the initial recruits, the

Respondent No. 1 submits that the process of initial recruitment of Maharashtra State cadre got delayed due to orders of various Courts and this process came to ^{be} finalised only in 1983. As a result, there may be a few instances where the officers promoted from SFS to IFS against promotion quota finally were included in the initial recruitment cadre. This was unavoidable because of pending litigations. The applicant was promoted to IFS in 1984 and there is no provision to antedate the promotion.

8. In the written statement filed by Maharashtra Government (Respondents No. 2 & 3), at the outset the application is opposed on the plea of non joinder of the necessary parties as the claim of the applicant if allowed from 1973, the officers working in IFS both the promotees as well as direct recruits will be adversely affected. In view of this, respondents plead that the OA. deserves to be dismissed. OA. is also opposed taking the plea that the grievance which relates back to 1973 is beyond the jurisdiction of the tribunal. It is also submitted that the claim of the applicant is stale and the entire settled position cannot be unsettled at the belated stage. The OA. suffers from delay and laches. Respondents 2 & 3 further submit that the confirmation was first allowed from 31.12.1975 and as per order dated 30.11.1976 which was subsequently antedated to 4.6.1973 as per order dated 11.2.1983. Respondent No. 2 & 3 contend that confirmation in the SFS does not confer right to him to be inducted into IFS. From the date, he only become eligible on completion of 8 years for consideration. The Respondents No. 2 &

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3 further aver that old records show that UPSC had held its meetings for preparation of the select list of IFS in 1974 and thereafter and the applicant and others were considered but it seems that the applicant was selected only ^m on the select list of 6.12.1983. Therefore, the applicant's plea that he would have been considered for promotion earlier than 1974 is not tenable.

9. The applicant has filed combined rejoinder reply in response to the written statements of Respondent No. 1 and Respondents No. 2 & 3 in the form of written arguments reiterating the grounds taken in the OA.

10. We have heard applicant in person, Shri V.S.Masurkar and Shri C.Anand for Respondents Nos. 2 & 3 and Respondent No. 1 respectively.

11. The applicant in the amended reliefs has sought the quashing of the order dated 11.1.1994 through which year of allotment and seniority to 50 promoted officers of Maharashtra cadre into IFS has been done. In the order, we note that there are officers above the applicant ^{and} also below him. The applicant has mainly sought the relief that his case for induction to IFS needs review in view of antedating the date of confirmation to 4.6.1973 in place of 31.12.1975. It is therefore not understood as to why the applicant has sought the quashing of the entire order. The applicant could be aggrieved only by those who are

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above him in the list provided they are junior to him in seniority. / It is not the case of the applicant that any junior to the applicant has been inducted to IFS earlier to him and thus superseding him. In these circumstances, quashing of the order as prayed for will mean passing adverse order against those included in the order dated 11.1.1994. The applicant has not made any of them as party respondents. In our opinion, the officers included in the list as per order are necessary parties. No adverse order can be passed against them without giving them opportunity of hearing before any adverse order is passed against them altering their seniority of induction to IFS. Therefore the present OA. as per the amended reliefs suffers for fatal infirmity of non joinder of the necessary parties. In this connection, we refer to the judgement of the Hon'ble Supreme Court in the case of Dal Chand vs. State of U.P., AIR 1985 SC 162. The OA., therefore, deserves to be dismissed on this account alone. /

12. The Respondents No. 2 & 3 have taken the ground that the applicant's plea of consideration for promotion from 1973 if granted then it will certainly adversely affect many officers who are working as IFS officers since 1973 either a direct recruit or as promotee officers and therefore the present OA. is bad in law on the ground of non joinder of necessary parties and accordingly OA. deserves to be dismissed. On considering the facts of the case and the reliefs prayed for, we find merit in the stand of Respondents No. 2 & 3. The applicant has sought the review of

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his induction into IFS on several grounds, namely, the assessment of vacancies being not done properly as per rules, vacancies occupied by officers on promotion subsequently shifted to initial recruitment not accounted for when selection Committee meeting held in 1983, Selection Committee meetings not held regularly and change in date of confirmation of the applicant in SFS. Such a review if allowed may alter the entire settled position over several years. Therefore, the officers who are likely to be adversely affected if the relief is granted to the applicant are necessary parties. Such parties deserve to be heard to present their position before any adverse order against them is passed. Therefore, as deliberated earlier in para 11 above, the OA. suffers from infirmity of non joinder of necessary parties as respondents on this account also.

13. The respondents have taken the ground that since the grievance relates back to year 1973, the Tribunal constituted w.e.f. 1.11.1985 has no jurisdiction. In view of the order of the Jodhpur bench in OA.NO.244/91 and in OA.NO.423/98 filed at Nagpur of this bench, this objection of the respondents is not sustainable.

14. Apart from the above technical objections, we find that the OA. also suffers from delay and laches. The applicant was inducted into IFS by promotion as per order dated 11.12.1984. This induction was on consideration of case based on his date of

confirmation on 11.12.1975. Leaving aside the issue of review of the induction into IFS on revision of date of confirmation, the applicant knew that even with date of confirmation in 1975, the applicant was not promoted from the date he considered himself due for promotion till 1984. The applicant claims that he was eligible to be considered and deserved promotion but was denied the ^{same} ~~saem~~ due to Selection Committee meetings being not held regularly and vacancies not being assessed properly as per the extant rules on the year to year basis. Further, the applicant had come to know of the number of promotee IFS officers who were shifted to initial recruitment cadre as per the order dated 31.1.1983. This would imply that the applicant continued to be aggrieved from 1975 onwards till 1984 when he was inducted to IFS. After his induction in IFS as per order dated 11.12.1984, the applicant would certainly have the understanding as to where he stands with regard to year of allotment and his seniority in IFS. It is noted that applicant kept quiet and did not represent at any time. He started representing only after 1984 in 1985. It is noted from the material brought on the record that his first representation is only on 4.1.1985 wherein he brought out that injustice has been caused to him due to inordinate administrative delay. A number of subsequent representations made are also of 1985 only which have been brought on the record. There is no representation brought on the record if any submitted thereafter. The applicant filed the OA.NO.244/91 before Jodhpur Bench. The OA. was disposed of by the order dated 3.8.1994

noting that limited question is the year of allotment and for the same reason the applicant has filed the OA. The respondents had submitted that the year of allotment is still to be issued and on this statement the OA. was disposed of with the direction to inform the applicant of year of allotment within 4 months. It was also provided that while considering the year of allotment, order dated 11.2.1985 will be kept in view. It may be noted that there was no direction in this order to rework the vacancies from 1973 onwards which as per the applicant were not assessed properly as brought out early and then to hold review DPC. However, before this order was passed, respondents had already issued order dated 11.1.1994 indicating the year of allotment of 50 officers which included the applicant. The applicant admits in OA. that he received the copy of the order dated 11.1.1994 in August, 1994. The applicant represented against the same as per letter dated 30.9.1994. This representation did not evoke any response. Thereafter, it appears that applicant kept quiet as there is neither any averment to this effect nor any representation has been brought on the record. The applicant again represented on 19.3.1998. This representation was in reference to Hon'ble Supreme Court's judgement dated 20.11.1997 in SLP 2078/92. Thereafter, he filed OA.NO.423/98. The applicant has brought on the record the copy of this judgement at Annexure 14. On going through this judgement, we find that the controversy before the Apex Court was in respect of inter seniority between direct recruits and promotee officers. The

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Apex Court while considering the order of the Tribunal observed that till the year of allotment is done by the Government, the Tribunal should have not interfered to give directions. Since the Government had informed that in the meantime the year of allotment has been notified. Therefore, the Hon'ble Supreme Court disposed of the SLP with the direction that if any one is aggrieved by the determination of year of allotment, it will be open to such a person to challenge the same before the appropriate authority in accordance with law. It will be noted that the case of the applicant is different from what is agitated in the SLP before the Apex Court and therefore it does not apply to the case of the applicant. Further, in the case of the applicant, the year of allotment had been notified on 11.1.1994 and the applicant was also aware of the same in August, 1994. These facts clearly bring out that judgement dated 20.11.1997 in the SLP did not give cause of action to the applicant to agitate the matter with reference to his representation dated 19.3.1998 made after this judgement. The applicant was aggrieved in 1994 itself and the delay has to be looked at with reference to this date. The applicant has not explained as to why he kept quiet till submission of the representation dated 19.3.1998.

15. The Apex Court in the case of Administration of Union Territory of Daman & Diu vs. R.D. Valand, 1995 (8) SLR 617 SC has held that in the matter of seniority dispute, the delay has vital bearing as the settled position cannot be unsettled after long

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time. The delay cannot be overlooked while making an adjudication of a petition which involves claim of retrospective promotion having direct impact on the seniority of large number of persons and which also affects the settled position of large number of persons in a cadre.

Similar view has been taken in the case of B.S.Bajwa and Anr. vs. State of Punjab, 1998 (1) ATJ 544, that the question of seniority cannot be opened after the lapse of reasonable time because this results in disturbing the settled position. Delay itself is sufficient to decline the interference.

In the case of Prakash K. & Anr. vs. State of Karnataka & Ors. 1997 SCC (L&S) 482, Hon'ble Supreme Court while dealing with delay has held as under in para 3 :-

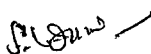
" Though Mr.Bhagwath contends that the applicants have approached this Tribunal within one year of the date of the cause of action, that may not be technically correct. The cause of action arose when the select list was prepared which they knew as unconstitutional even as early as on 17.11.1993. This apart, we are of the firm view that the limitation provided under Section 19 of the Administrative Tribunals Act, 1985, does not come in the way of exercising our discretion and reject an application, if the application suffers from laches. This is the view we have already taken in Nagaraja v. Director general and Inspector General of Police. This Tribunal cannot act mechanically and grant the relief only on the ground that an applicant has approached this Tribunal within one year of the cause of action and he has made out a good case on merits, ignoring the realities and the effect of the relief on the administration and private parties. This Tribunal cannot shut its eyes to the inconvenience and injury that would result to the private respondents who have joined the service already."

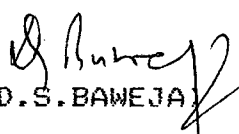
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16. In the present case, the OA. filed with reference to the disposal of representation dated 19.3.1978 as per order dated 23.10.1978 may be within the limitation period. But in the light of the law laid down by the Hon'ble Supreme Court in the case of Prakash K., we have to look at the delay with reference to the relief prayed for. We have already made above our observations on the delay and laches. Looking from the angle of delay, we have no hesitation to conclude that OA. suffers from delay and laches.

17. Since in our findings above, we have held that the present OA. deserves to be dismissed for 'Non joinder' of necessary parties and also suffers from the delay and laches, we decline to deliberate on merits of the case even if the applicant may have a good case. The judgements cited by the either side are not being listed and reviewed here.

18. In the result, the OA. is dismissed for the reasons recorded above. No order as to costs.


(S.L.JAIN)
MEMBER (J)


(D.S.BAWEJA)
MEMBER (A)

mrj.