

CENTRAL ADMINISTRATIVE TRIBUNAL, MUMBAI BENCH

OA No.346/1998

Mumbai, this 10th day of September, 2001

Hon'ble Shri S.L. Jain, Member(J)
Hon'ble Shri M.P. Singh, Member(A)

Mohan Haribhau Khedkar
"Druma Dal", 1102-B-2, Lakaki Road
Model Colony, Pune-411016

Applicant

(By Shri ~~S.R.~~ Atre, Advocate)

versus

1. Secretary to Govt. of Maharashtra(Forest)
Revenue and Forest Department, Mantralaya
Mumbai
2. Chief Secretary to Govt. of Maharashtra
General Admn. Deptt., Mantralaya
Mumbai
3. Secretary to Govt. of India
M/Environment & Forest
CGO Complex, Lodi Road, New Delhi .. Respondents

(By Shri V.S. Masurkar, Advocate)

ORDER

Shri M.P.Singh

The issue that needs determination in the present OA lies in a narrow compass. Briefly stated, the applicant an Indian Forest Service (IFS) Officer while working as Managing Director, Forest Development Corporation of Maharashtra Ltd., and being the senior most IFS officer, was asked to hold the additional charge of the post of the Principal Chief Conservator of Forest (PCCF), MS, Nagpur with immediate effect by an order dated 2.1.1996 passed by the Govt.of Maharashtra. This was done on the retirement of the incumbent of the said post Dr.A.G.Reddi on superannuation on 31.12.95. This was followed by another order dated 24.1.1997 appointing the applicant on promotion as PCCF w.e.f. 24.1.97 on regular basis. The applicant retired from service on superannuation on

31.3.1997. In the meantime, the Govt. of Maharashtra passed another order on 20.2.1997 to the effect that the applicant had been authorised the pay and allowances of the post of PCCF from the date of order i.e. 24.1.1997. Applicant made a representation on 19.2.97 praying that he was discharging the functions of the post of PCCF in addition to his own with effect from 2.1.96 as per the order dated 2.1.96 and he should have been given retrospective promotion to the post of PCCF w.e.f. 2.1.96. When there was no response from the respondents, he submitted reminders on 30.6.97, 21.7.97 and again on 22.9.97 which have not yielded any result. That is how the applicant is before us seeking ^{direction} to quash the order dated 20.2.97 and direction to the respondents to grant him promotion to the post of PCCF with effect from 2.1.96 and authorise drawal of arrears of pay and allowances accordingly.

2. Respondents have opposed the case in their reply. They admit that the applicant was the senior most IFS officer eligible for consideration for promotion to the post of PCCF, but certain complaints made against him were pending investigation. The screening committee which met in December, 1995 under the chairmanship of Chief Secretary recommended that the complaints be inquired into and decided finally and thereafter only applicant be considered for promotion. The Government having accepted the recommendations of the screening committee did not promote the applicant but asked him to hold the additional charge of the post of PCCF. Meanwhile the complaints against the applicant were decided finally without initiating any disciplinary proceedings. Thereafter the screening committee again met on 10.12.96,

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which considered the suitability of the applicant on the basis of his CR as a whole upto 1995-96 and recommended him fit for promotion as PCCF, as a result of which promotion orders were issued on 24.1.97. Therefore, his promotion retrospectively cannot be considered. Applicant's representation dated 19.2.97 is still under consideration with the Government and he would be given suitable reply as soon as a decision is taken.

3. Heard the learned counsel for the parties and perused the records. During the course of the arguments, the main defence taken by the learned counsel appearing for respondents was that the OA is barred by limitation as the cause of action arose to the applicant on 2.1.96 when he was asked to hold the additional charge of the higher post. This contention of the learned counsel for the respondents is not sustainable for the reason that the cause of action arose to the applicant only on 24.1.97 when the impugned order was issued promoting the applicant to the post of PCCF on regular basis w.e.f. 24.1.97. The applicant immediately made a representation on 19.2.97 which was followed by reminders and he has filed this OA on 11.3.98. The fact remains that the respondents have not cared to give a suitable reply to the applicant's various representations. Therefore they cannot take the plea of limitation at this stage.

4. The learned counsel for respondents next contended that the applicant is not entitled for the relief prayed for in view of the decisions of the apex court. However, we find that in the case of UOI Vs. K.V.Jankiraman AIR 1991 SC 2010 the apex court held that promotion cannot be withheld merely because some disciplinary/criminal proceedings are pending against the employee. The said

judgement also clarified sealed cover procoedure to be adopted in case of promotion where disciplinary cases are pending or contemplated. In the instant case there is nothing on record to show that disciplinary proceedings were pending or contemplated against the applicant. Therefore this contention of the learned counsel for the respondents is also not sustainable.

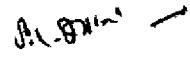
5. The learned counsel next contended that the provisions of FR 49 are not applicable to the applicant as his pay is regulated in terms of Pay Rules notified by the Government for the officers belonging to IFS. However, on perusal of the same, we find that Fundamental Rules apply, subject to the provision of Rule 3 to all Government servants whose pay is debitale to Civil Estimates and to any other class of Government servants to which the President may, by general or special order, declare them to be applicable. In the instant case the pay of the applicant is being debitale to Civil Estimates and hence the FRs are applicable to the applicant to regulate his pay. Therefore this contention of the learned counsel is also not tenable for the reason that the applicant was asked to take over over the additional charge of the post of PCCF immediately by an order dated 2.1.1996. There was no stipulation whatsoever in that order issued by the respondents to the effect that he was not entitled for any extra remuneration. Applicant shouldered higher responsibilities of the post of PCCF in addition to his own i.e. Managing Director from 2.1.96 till the date of retirement, i.e. 31.3.97 and therefore there was no

reason not to authorise him to draw the pay and allowances of the post of PCCF for the aforesaid period as provided in FR 49.

6. In view of what has been discussed above, the action of the respondents in denying the pay scale of the post of PCCF to the applicant when he actually shouldered the responsibilities of that post in addition to his own from 2.1.96 is not justified. In the circumstances, we hold that the applicant is entitled for the pay of the post of PCCF for the aforesaid period.

7. In the result, the OA is allowed and the order dated 20.2.97, in so far it states that "Shri Khedkar has been authorized pay & allowances from the date of order i.e. 24.1.1997" is quashed and set aside. Respondents are directed to calculate the arrears of pay and allowances payable to the applicant for holding the post of PCCF from 2.1.96 onwards and make payment to him within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.


(M.P. Singh)
Member(A)


(S.L. Jain)
Member(J)

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