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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A.561/90.

Date of Judgment: 14-3-91.

C.Laxma Reddy

....Applicant

Vs.

1. The Union of India represented by its Secretary to Government, Department of Environment, Forest, Science & Technology, Central Secretariat, New Delhi.
2. Union Public Service Commission, represented by its Secretary, Dolpur House, New Delhi.
3. The Selection Committee constituted Under Rule 3 of the India Forest Service (IFS) (Appointment by promotion) Regulation 1966 rep. by its Chairman, c/o Chief Secretary, Secretariat Buildings, H Y D E R A B A D.
4. The State of Andhra Pradesh rep. by its Secretary to Government, Environment, Forest, Science & Technology Department, Secretariat, Hyd.
5. The Principal Chief Conservator of Forests, Govt of Andhra Pradesh, Saifabad, Hyd.

....Respondents

Counsel for the Applicant : M/s M.P.Chandra Mouli & K. Janardhan Rao

Counsel for the Respondents : Shri ~~Naram Bhasakar Rao~~ ^{Naram Bhasakar Rao}, Addl.CGSC
Shri D.Pandu Ranga Reddy, spl.
counsel for AP State for RR 3 to 5.

CORAM:

THE HON'BLE SHRI B.N.JAYASIMHA : VICE-CHAIRMAN

THE HON'BLE SHRI D.SURYA RAO : MEMBER (JUDICIAL)

(Judgment of the Division Bench delivered by
Hon'ble Shri B.N.Jayasimha, Vice-Chairman)

The applicant is a Deputy Conservator of Forests in the office of the Principal Chief Conservator of Forests, Hyderabad. He has filed this application aggrieved by his non selection to the I.F.S.

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2. The applicant states that he was appointed as a Forest Range Officer in the Andhra Pradesh Forst Services in the year 1955. He was promoted as Assistant Conservator of Forest with effect 26-2-1971 and confirmed with effect from 30-8-1977. He was promoted as Deputy Conservator of Forests (state cadre) from 10-7-1985.

3. He became eligible to I.F.S. (according to appointment by promotion regulations, 1966) in the year 1980. However, upto the year 1984 he did not come within the zone of consideration. He came within the zone of consideration in theyear 1985 and accordingly his case was considered along with the others by the selection committee constituted as per regulation 3 of promotion regulations. His name was not included inthe select list and several officers juniors to him were included in the select list of 1985. On enquiry he came to know that his non-inclusion was due to certain adverse remarks recorded in his personnel file during the year 1982-83 and which were expunged on appeal by the government in G.O.Rt.No.1310 dated 6-11-1984.

4. The applicant states that during the year 1986 the selection committee again met on 2-12-1985 for preparing the panel for the year 1986 and just three days

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prior to the meeting of the selection committee the Principal Conservator communicated adverse remarks in his reference No.99285/86-M2 dt.29-11-1986. The applicant preferred an appeal against these adverse remarks within the prescribed time and in GO Rt.No.754 dated 8-10-1989 these remarks were expunged. The applicant contends that the selecticommitee which met on 2-12-1985 took these remarks into consideration and ^{did}/not included his name for the year 1986 also, while his juniors were included. The presence of the adverse remarks alone was cause for his non inclusion in the panel.

5. The applicant also states that the A.C.B. had registered a case against him in March, 1988 alleging that he was in possession of properties disproportionate to his known sources of income. He was placed under suspension on 19-4-1988 and on receipt of a report from A.C.B., his case was referred to the Tribunal for Disciplinary Proceedings. In the meantime the selection committee for the year 1988 considered the name of the applicant and included him at Sl.No.4 and those at Sl.No.2 and 3 are far juniors to him. The applicant contends that the adverse remarks and the pendency of the A.C.B.case are responsible for assigning him Sl.No.4.

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6. The State Government on receipt of representation of the applicant withdraw the case referred to the Tribunal for Disciplinary Proceedings in G.O.Ms.No. 119 dt.23-4-1990 and also regularised the period of suspension as on duty with all consequential benefits.

7. Similarly for the year 1989, also persons of junior rank to him were included in the panel and he was not included as the committee was prejudiced due to the case pending against him before the Tribunal for the Disciplinary Proceedings. The applicant therefore has filed this application for a direction to the Select Committee to consider his case without reference to the adverse remarks and without reference to the pending Disciplinary Proceedings.

8. Counters have been filed on behalf of the Respondents 1, 2 and Respondents 3, 4 and 5. In the counter filed by the State Government it is admitted that the adverse remarks reported by the reporting authority were filed in the personnel file of the officer and they were also communicated. The State Government however contends that it cannot be presumed that the presence of the adverse remarks is the only reason for ^{applicant's} non-inclusion. The selection committee has taken into consideration the entire record of the applicant while assigning him the grade.

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The general record of the service was comparatively inferior to those of the persons who were placed in the select list.

9. According to regulation 5(4) of the promotion regulations, 1966, the selection committee shall classify the eligible officers 'Outstanding', 'Very Good' and 'Good' or "Unfit" as the case may be on the overall relative assessment of the service record. The Members of the Selection Committee are experts in the art of Administration and they prepared a select list after considering the overall performance of the individual officers. It is the practice of the selection committee to consider the case of any officer against whom an enquiry is pending on merits and if found suitable include his name in the select list subject to the clearance of the Disciplinary Proceedings pending. The contention of the applicant that his name was not included in the list because of the pendency of the Disciplinary Proceedings is not correct.

10. We have heard the learned counsel for the applicant Shri M.P.Chandra Mouli and Shri ~~E. Madan Mohan Rao~~ ^{Narain Bhasker Rao}, *brj* learned standing counsel for the Respondents 1 and 2, Shri D.Pandu Ranga Reddy, learned counsel for the Respondents 3, 4 and 5. The main point arising for consideration is whether the presence of the adverse remarks and the pendency of the Disciplinary Proceedings were taken into consideration by the Selection Committee which met for the

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different years while assessing the grading to be given to the applicant. The learned counsel for the applicant argues that when the adverse remarks is present in the confidential report that is bound to influence the selection committee particularly when the entire grading is done only on the basis of the entries in the confidential reports. The contention of the Respondents that the adverse remarks was not a criteria in awarding the grade to the applicant cannot be accepted.

11. Before considering this contention the following dates relating to the adverse remarks initiation of disciplinary proceedings maybe noticed

- (i) 1982-83 Adverse remarks made in the confidential Report
- (ii) 6-11-84 The above adverse remarks expunged in GO Rt 1310
- (iii) 29-11-86 Adverse remarks for the year 1985-86 communicated
- (iv) 8-10-1989 The above adverse remarks expunged in GO Rt 754
- (v) 19-4-88 Applicant kept under suspension by GO Rt 221
- (vi) 17-7-1989 The suspension order revoked
- (vii) 23-4-90 Disciplinary Proceedings withdrawn from the Tribunal by GO Ms.No.119.

State

12. The Government has placed before us the relevant files relating to selections for the years 1985, 1986, 1987 and 1988.

A perusal of the records reveal as follows:-

Select list 1986:- The record shows that the selection committee for preparing the panel for the year 1985 met on 3-12-1985. As the adverse remarks had been expunged before the committee meeting, we find no reason to interfere with the select list for the year 1986. xxxxxxxxxxxxxxxxxxxxxxxxx

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Select list for 1987:- The records show that this selection committee met on 2-12-1986. The adverse remarks which were communicated on 29-11-86 have remained in the ACR. It has to be presumed that the adverse remarks have been taken into consideration by the selection committee.

Select list for 1988:- The selection committee met on 14th December, 1987. The adverse remarks of 1986 continued to remain in the ACR. It has to be presumed that these adverse remarks was taken into consideration by the selection committee.

Select list for 1989:- The selection committee met on 27th December, 1988. The adverse entries for 1986 continued to remain in the ACR. It has to be presumed that the remarks have been taken into consideration by the selection committee.

Select list for 1990:- The selection committee met on 24th December, 1989. The adverse remarks for 1986 were expunged on 8-10-1989 and the adverse remarks have therefore not before the selection committee.

13. As regard the disciplinary proceedings, the records show that the committee proceeded to consider the names only on the basis of the performance of the candidates as revealed in the Annual Confidential Reports. The pendency of the disciplinary proceedings was not a factor that was taken into consideration, while preparing the panel.

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To :

1. The Secretary to Government, Union of India,
Department of Environment, Forest
Science & Technology, Central Secretariat, New Delhi.
2. The Secretary, Union Public Service Commission,
Dholpur House, New Delhi.
3. The Chairman, C/o Secretary,
Selection Committee constituted Under Rule 3 of the
India Forest Service (IFS) (Appointment by promotion)
Regulation 1966) Secretariat Buildings, Hyderabad.
4. The Secretary to Government, State of A.P.,
Environment, Forest, Science & Technology Department,
Secretariat Hyderabad.
5. The Principal Chief Conservator of Forests,
Govt. of A.P. Saifabad, Hyderabad.
6. One copy to Mr. M.P. Chandra Mouli and K. Janardhan Rao,
Advocates, CAT, Hyd. Bench.
Narain Bhaskar Rao
7. One copy to Mr. E. Madanmohan Rao, Addl. CGSC.
8. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for State of A.P.
for RR 3 to 5.
9. One spare copy.

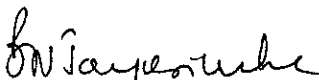
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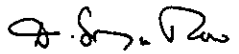
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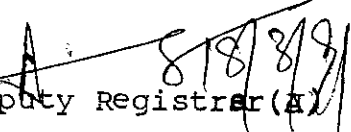
14. Taking ~~into~~ the above into consideration, we find that the case of the applicant will have to be considered afresh by the Selection Committee as of 2-12-1986, 14-12-1987, 27-12-1988. We, therefore direct the respondents to constitute a review selection committee to reconsider the case of the applicant afresh on the basis of his confidential reports where the adverse remarks have been deleted and proceed to assign a proper grading to the applicant. If the applicant is included in the panel as a result of such review in the panel year 1987, he shall be entitled to promotion from the date his junior in the panel was promoted. If he does not get included in the panel for 1987, the selection committee will proceed to consider his case for the year 1988 and 1989 in the same manner as above, and in the event of his being found fit for inclusion in the panel of 1988/89, he will be promoted from the date his junior was promoted. This will be completed within a period of three months from the date of receipt of this order.

15. The application is allowed to the extent indicated above. No order as to costs.


(B.N. JAYASIMHA)
VICE CHAIRMAN


(D. SURYA RAO)
MEMBER (JUDL)

Dt. 14th March, 1991.


Deputy Registrar (A)

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