

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA 1033/90

Date of Judgement: 4.2.1991

A. Upendra Rao

....Applicant

vs.

1. Union of India represented by the Secretary, Ministry of Environment & Forests, New Delhi.
2. Union of Public Service Commission represented by its Secretary, Oholpur House, New Delhi.
3. The State of Andhra Pradesh represented by the Chief Secretary to Government G.A.O(Sec) Department, Hyderabad.
4. Principal Chief Conservator of Forests, Government of Andhra Pradesh, Hyderabad.
5. B. Trinadha Rao, Curator, Indira Gandhi Zoological Park, Warangal. Visakhapatnam
6. K.N. Banerjee, Divisional Forest Officer, Wild Life Management, Warangal.
7. Mir Maseed Ali Khan, Assistant Conservator of Forests, Office of the Principal Chief Conservator of Forests, A.P., Hyderabad.

....Respondents

Counsel for the Applicant : Shri Y. Suryanarayana

Counsel for the Respondents : Shri Naram Bhaskar Rao,
Addl. CGSC for RR 182
K. N. D. Pandurangarao, Badi 364, Visakhapatnam
for RR 364

CORAM:

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

THE HON'BLE SHRI J.NARASIMHA MURTHY : MEMBER (J)

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

The applicant is a Divisional Forest Officer

working in the Soil Conservation Circle, Visakhapatnam.

He has filed this application aggrieved by his non-inclu-

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sion in the select list of the year 1989 prepared in February, 1990 for promotion to the Indian Forest Service in accordance with I.F.S (appointment by promotion) Regulations, 1966 (Hereinafter called Promotion Regulations). He has also challenges the orders issued in G.O.R.T.1006 dt.17.12.90 promoting Respondent No.3 to the Senior Time Scale of the IFS. We have admitted the main O.A., and issued notice to the respondents.

2. The applicant seeks an interim direction suspending the G.O.Rt.1006 dt.17.12.90. Before we consider the plea of the applicant for suspension of the G.O.Rt.1006 dt. 17.12.90, we may briefly notice the salient facts. The applicant who joined the A.P.Forest Sub-ordinate Services in the year 1961 secured promotions from time to time and he became Divisional Forest Officer in the year 1983. Although he had completed eight years of service in the category of Asst. Conservator of Forests by 16th April, 1984, he came within the zone of consideration for inclusion of his name in the select list only for the year 1989 under the promotion regulations. In the select list prepared by Selection Committee the name of the applicant is shown at S.No. 7 whereas Respondents 5, 6 and 7 who are juniors to the applicant are shown above him. The applicant contests the select list mainly on the following grounds.

- i) The selection committee failed to discharge the obligatory function of grading officers independently and by ensuring as to whether or not the Confidential Reports in

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question were written in accordance with the guidelines given by the State Govt.

ii) Respondents 5 and 6 who had worked in wild-life management through out their career and the Respondent No.7 who has worked as Asst. Conservator of Forests in the Office of the Principal Chief Conservator of Forests did not have the required experience in different branches of the Forest Administration and they could not have been given better grading than the applicant.

iii) The selection committee placed undue reliance on the reports written and counter signed by State Govt. Officers including the Principal Chief Conservator of Forests, who have exhibited Professional Favouritism.

iv) Shri Pushpa Kumar, the then Principal Chief Conservator of Forests, most of whose services was confined only to wildlife branch has shown favouritism in respect of the selected officers (he was a Member of the Selection Committee).

v) The guidelines given by the Central Govt. under All India Services (Confidential Rules), 1970 have been ignored in the preparation of the C.Rs and consequently an element of personal or professional bias/favouritism has crept in the process of preparing the select list.

For these reasons the applicant has sought a declaration that the Select list prepared by the Selection Committee under the Promotion Regulations be declared as illegal.

3. Before we consider the argument advanced by the learned counsel for the applicant seeking interim suspension of G.O. Rt.1006 dt.17.12.90, we may notice contents of the order, which reads as follows:

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" 2. Sri B.Thrinadha Rao, who is also select list Officer and presently working as Curator, Indira Gandhi Zoological Park, Visakhapatnam on his appointment to the Senior Time Scale post is transferred and posted as Divisional Forest Officer, Narsipatnam which is a cadre Division vice Sri Pushkar Srivatsay, IFS, transferred. He is also appointed to officiate in the Senior Time scale of IFS. with effect from the date of taking charge of the post of Divisional Forest Officer, Narsipatnam.

3. On transfer, the services of Sri Pushkar Srivatsay, IFS is placed at the disposal of Andhra Pradesh Schedule Caste Cooperative Financial Corporation, Hyderabad, for a period of one year on the usual ~~usual~~ terms and conditions of deputation mentioned in the Annexure to this order."

In the course of arguments, Shri Y.Suryanarayana, learned counsel for the applicant clarified that he is seeking suspension of this order in so far as it relates to Shri B.Trinadha Rao i.e. Respondent No.5 herein. He states that the ground urged are (i) this order is contrary to rule-9 of IFS (appointment by promotion) Regulations, 1966 and rule-9 of (cadre rules) (ii) a public order, publicly given in exercise of powers by a Senior Administrative Officer cannot be read in the light ^{of explanations} _{subsequently} given by the officer making the order by explaining what was in his mind or what he intended by that order. The public order must be considered publicly in respect of the language used in itself. The ^{The order}

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order dt.17.12.90 is not in accordance with the rules, and it has to be set aside. (iii) if that order is not suspended, in the event of the applicant winning the application and the Tribunal quashing the select list, the Respondent No.5 may go to the Supreme Court and get a Stay Order. The final order of the Tribunal will be only an order on paper. Sri Suryanarayana also states that he had in his long career as a Sr. Advocate represented a number of cases relating to All India Services ~~and had~~ ~~and has~~ come across a number of orders passed by the State Govt. in regard to promotion of select list officer to All India Services. In order to comply with the requirements of regulation -9 of the Promotion regulation and rule -9 of the I.F.S Cadre rules para 2 of the G.O. Rt.1006 dt.17.12.90 ought to have read as follows:

"Sri B. Trinada Rao, who is also a select list officer and presently working as Curator, Indira Gandhi Zoological Park, on his appointment to the senior time scale post has transferred and posted as Divisional Forest Officer, Narsipatnam, which is a cadre division vice Shri Pushkar Srivatsay, IFS, transferred. He is also appointed temporarily for officiating in the senior time scale of IFS with effect from the date of taking charge of the post of Divisional Forest Officer, Narsipatnam."

If the state government had issued the order appointing Shri Trinadha Rao (Respondent No.5) in temporary officiating capacity, the order would have conformed to the IFS promotion regulations and the IFS cadre rules and he ^{not} could have taken any objection to that order.



4. Shri D. Panduranga Reddy, Special Counsel for the A.P. State Govt. opposes the plea for interim orders for the following reasons:

- i) So long as the select list has not been set aside, the applicant has no claim for promotion until his turn comes in accordance with his position in the select list.
- ii) The suspension of the G.O. dt. 17.12.90 does not give any benefit to the applicant. In other words it is not the claim of the applicant that he should be posted in the place of Respondent No. 5.
- iii) In the event of the select list being set aside, all promotions made in pursuance to that select list including G.O. No. 1006 dt. 17.12.90 will have to be reviewed and a fresh select list would have to be prepared in accordance with whatever the direction the Tribunal may give. The 5th respondent cannot derive any advantage if any accruing to him because of G.O. Rt. 1006 dt. 17.12.90.
- iv) if on the other hand the select list is upheld by this Tribunal, the applicant will have no case to contest G.O., Rt. No. 1006 dt. 17.12.90;
- v) unless it can be shown that the career prospects of the applicant will be irreparably affected if the said G.O. is not suspended, this Tribunal ought not to pass the interim order suspending the said G.O.,


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If after final hearing of the case the Tribunal comes to the conclusion that the said G.O. is invalid, the same could be set aside at the time of passing the final order and the applicant will get the relief asked for.

vi) the argument that the 5th respondent may go to the Supreme Court for securing a Stay Order in the event of his succeeding in the case cannot be a ground for suspending the G.O., The Respondent No.5 may also go to the Supreme Court in regard to any order that may be passed by the Tribunal setting aside the select list itself.

5. We have given our careful consideration to these submissions. We may say at this stage point out that the select list has not been suspended and therefore the State Govt. is free to act upon the select list for the year 1989. The arguments of the learned counsel for the applicant that if the G.O. is not suspended now and if it is set aside at a later date when the O.A., is finally disposed of, the Respondent No.5 would go to Supreme Court and get a Stay Order, is in our opinion not a ground for suspending the G.O. dt.17.12.90. The fact that a party aggrieved by an order passed by us can go to Supreme Court for a Stay and therefore an interim order should be passed implies that a preemptive action is to be taken to frustrate any legal remedy available to that party. We reject this contention. Rule 24 of the A.T. Act, 1985 dealing with passing of interim order reads as follows:-

"24. Conditions as to making of interim Orders:- Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless -

- a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and
- b) opportunity is given to such party to be heard in the matter:

Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim orders as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order."

If the applicant's main relief i.e., quashing of the select list is accepted/allowed, a fresh select list would have to be prepared. The promotions made as per the impugned select list would all be reviewed. The applicant can be compensated monetarily for any loss he has suffered consequent to his non-promotion in relation to those appearing in the new select list that may be prepared. Even if the G.O. Rt.1006 dt.


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To

1. The Secretary, Union of India,
Ministry of Environment & Forests,
New Delhi.
2. The Secretary, Union Public Service Commission
Dholpur House, New Delhi.
3. The ~~xxxxxx~~ Chief Secretary to Government
G.A.D.(Sec) Department,
State of A.P., Hyderabad.
4. The Principal Chief Conservator of Forests,
Government of A.P., Hyderabad.
5. B.Trinadha Rao, Gurator, Indira Gandhi
Zoological Park, Warangal. ~~Visakhapatnam~~
6. K.N.Banerjee, Divisional Forest Officer,
Wild Life Management, Warangal.
7. Mir Maseed Ali Khan, Assistant Conservator of Forests,
O/o the Principal Chief Conservator of Forests,
A.P., Hyderabad.
8. One copy to Mr.Y. Suryanarayana, Advocate
40 MIGH Housing Board Colony, Mehidipatnam, Hyderabad.
9. One copy to Mr.N. Bhaskar Rao, Addl. CGSC. CAT.Hydr.Bench
10. One spare copy.
11. one copy to Mr. M.P.chandramouli, Advocate
H.No.1-7-139/1. S.R.K. Nagar, Golconda X'Roads
Hyderabad-6 8.

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dt.17.12.90 is suspended the applicant cannot get any more relief than what has been indicated above. We are therefore of the view that the plea of the applicant for suspending the G.O., dt.17.12.90 should be rejected and accordingly the Stay Order issued earlier is vacated.

6. We had on 11.1.1991 suspended the G.O. dt.17.12.90 until 21.1.1991. The learned counsel for the applicant has also filed an affidavit stating that Sri B. Trinadha Rao (Respondent No.5) had not taken charge prior to 11.1.1991. The learned counsel for the respondents states that he will file a separate petition on the points made by the learned counsel for the applicant. This matter will be considered along with the main application when it is posted for hearing.

7. Post the main case after 4 weeks from the date of receipt of the notice by the respondents.

B.Nayana mle
(B.N. JAYASIMHA)
Vice Chairman

MS
(J. NARASIMHA MURTHY)
Member (Judicial)

Dated: 4/2 February, 1991

MS
Deputy Registrar (Jud)

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CHECKED BY

APPROVED BY

TYPED BY

COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE MR.B.N.JAYASIMHA : V.C.

AND

THE HON'BLE MR.D.SURYA RAO : M(J)

AND

THE HON'BLE MR.J.NARASIMHA MURTY : M(J)

AND

THE HON'BLE MR.P.BALASUBRAMANIAN : M(A)

Dated: 6-2-1991.

ORDER / JUDGMENT:

M.A./R.A. /C.A. NO.

in

T.A.No.

W.P.No.

O.A.No. 1033/90

Admitted and Interim directions
issued.

Allowed

Disposed of with direction

Dismissed

Dismissed as withdrawn

Dismissed for default

M.A. Ordered/Rejected.

No order as to costs.

