

(17el)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No.220/91 & M.A.530/93

Date of decision: 26.8.1993

Between

M.K.Prasad

: APPLICANT

A N D

1. Govt. of India, rep. by the
Secretary, Cabinet Sectt.,
Deptt. of Personnel,
New Delhi.-

2. The U.P.S.C., rep. by its
Secretary, Dholpur House,
New Delhi.-

3. The State of A.P. rep. by
its Principal Secretary,
E.F.E.S. & T Dept.,
Hyderabad.

4. D.Manik Prabhu

5. C.Damodar Reddy

: RESPONDENTS

Appearance:

For the applicant : Sri Y.Suryanarayana, Advocate

For the respondents : Sri N.R.Devaraj, Sr.CGSC
1&2

For the Respondent-3 : Sri D.Panduranga Reddy, Spl.Counsel
for State of A.P.

For Respondents 4&5 : None

CORAM:

The Hon'ble Sri Justice V.Neeladri Rao, Vice-Chairman

The Hon'ble Sri P.T.Thiruvengadam, Member (Admn.)

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J U D G E M E N T

(of the Bench delivered by Hon'ble Sri Justice V. Neeladri Rao, Vice-Chairman).

The O.A. was filed praying for quashing the decision dated 3-12-1990 of Ministry of Environment and Forests, Government of India and for consequential direction to Respondents 1 to 3 to include the name of the applicant in the select-list of 1976 for appointment to I.F.S. (Indian Forest Service) by promotion under the provisions of I.F.S. (Appointment by Promotion) Regulations, 1966 and to appoint him to the I.F.S. with effect from 12-8-1977 and for all consequential benefits flowing there from such as payment of pay and arrears, and seniority. The M.A. is filed praying for permission to raise the facts and grounds referred to therein in ~~xx~~ respect of the main relief prayed in the O.A.

2. This is an unfortunate case where though the applicant moved the courts from 1977 and succeeding on technical grounds, yet he could not get the relief claimed. The facts which give rise to this O.A. to the extent to which ~~that~~ they are relevant are as under:

(i) In 1965 the applicant was selected by the Andhra Pradesh Public Service Commission for appointment to the post of Assistant Conservator of Forests in the Category-IV of Andhra Pradesh Forest Service, by direct recruitment. The

applicant was appointed to the said post by G.O. Ms.No.818, F&A, Forest-II dated 26-3-1965. With effect from 29-8-69 the applicant was declared to have successfully completed the period of probation in the said category. By GO Ms.662, Forest and Rural Development, Forest-II dated 11-9-75 the applicant, alongwith 15 others, was appointed as full member\$ in Category-IV with effect from 15-10-74. The name of the applicant was shown against Sl.No.14. The post of Deputy Conservator of Forests is above the post of Assistant Conservator of Forests. The appointment to the former is by promotion to the Indian Forest Service (Senior Scale) from the State's promotional quota and it is governed by Rule 8(1) of the I.F.S. Recruitment Rules, 1966 read with Regulation 4 of I.F.S. (Appointment by Promotion) Regulations, 1966. By 15-10-74 the applicant acquired the eligibility for being considered for inclusion of his name in the select-list for appointment to the post of Deputy Conservator of Forests by promotion. The Selection Committee met at Hyderabad on 28-12-76 for the purpose of preparing the select list of candidates who were fit for appointment to the post of Deputy Conservator of Forests by promotion. Though the names of S/Sri Mohd. Sultan Mohiuddin and N.Linganna who were juniors to the applicant were included in the said select list, the name of the applicant was not included. Then he filed Writ Petition No.1410/77 in the High Court of A.P. praying for issual of writ of certiorari to quash the order dated 7-2-77 of Govt. of India which

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approved^{my} the select list and the consequential order dated 6-4-77 of the State Government and for other consequential reliefs. The same was disposed of by judgment dated 10-2-78. A direction was given by the said judgment to the selection committee to consider afresh the claim of the applicant herein vis-a-vis Sri Mohd. Sultan Mohiuddin and Sri N. Linganna (Respondents 18 & 19 in the said Writ Petition). In the light of the said judgment, and the consequential orders of the Union Public Service Commission and the Government of India and the State Government the select-list ^{was} held to stand modified accordingly. In accordance with the said direction, the Selection Committee met at Hyderabad on 26-6-78 and it re-affirmed its earlier decision. Then being aggrieved by non-inclusion again in the select list, the applicant filed Writ Petition No. 7774/79 praying for issual of appropriate writ directing Respondents 1 to 5 therein to include his name in the list of officers for appointment by promotion to I.F.S. (senior time scale) and to place his name above the names of S/Sri Sultan Mohd. Mohiuddin and N. Linganna.

(ii) The selection committee again met in the usual course at Hyderabad on 4-12-78, and met on 5-12-79 for review and prepared a list of names for consideration for appointment by promotion to the post of Deputy Conservator of Forests. Then the applicant filed Writ Petition No. 615/81 praying

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for quashing the list of selected candidates prepared by the Selection Committee which met at Hyderabad on 4-12-78 and which was reviewed on 5-12-79 at a meeting held at Hyderabad. The Selection Committee again met in the usual course at Hyderabad on 20-5-81 and prepared another select list. The applicant filed W.P.No.4031/81 praying for quashing that list also.

(iii) The Writ Petitions 7774/79 and 615 and 4031 of 1981 were disposed by a common judgement dated 23-8-82. A direction was given in Writ Petition No.7774/79 to the Selection Committee to consider the case of the applicant vis-a-vis S/Sri ~~Mohd~~ Sultan Mohd. Mohiuddin and N.Linganna and in view of the above direction it was held that there was no need to pass any order in W.Ps.615/81 and 4031/81 and accordingly they were dismissed as unnecessary. In accordance with the above direction, the selection committee met on 4-4-83 and again the name of the applicant was not included in the select list. Then the applicant filed Writ Petition No.10487/84 praying for a direction to Respondents 1 to 5 therein to include his name in the list of officers for appointment by promotion to I.F.S. senior time scale and to place his name above the names of S/Sri Sultan Mohd.Mohiuddin and N.Linganna (Respondents 6 & 7 therein).

After the Administrative Tribunals ~~xxx~~ had come into existence, the above Writ Petition was transferred

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to this Bench and re-gistered as T.A. No.1183/86. It was dismissed by order dated 18-11-86. Review Application No.6/86 against the said order was dismissed on 25-8-87. S.L.P. No.14856/87 against the said order was dismissed on 9-12-88.

(iv) In letter dated 31-1-87 addressed by the Andhra Pradesh Government to the Central Government, it was stated that by the date of select~~xxx~~ list of 1976 there were 16 vacancies out of which only 15 were included in the select list for 1976. The applicant ~~xxx~~ made representation dated 18-7-90. Therein the applicant requested for inclusion of his name in the select list of 1976 below Sri N. Linganna as out of 16 vacancies for 1976 only 15 officers were selected and as one vacancy as on 21-12-76 was still available, as can be seen from the letter dated 31-1-87. The said representation was rejected by decision dated 3-12-1990. Being aggrieved, the applicant filed this O.A.

3. The contentions for the applicant are as follows:

In W.P. 1410/77 it was held that the reasons to the effect, "he (applicant herein) is reported to be just and average officer who has nothing to his credit. He should earn some good reports before he is considered for inclusion in the select list," by themselves might not ~~have been~~ held sufficient for superseding the officer. The reasons recorded

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at the time of review in pursuance of the direction in W.P. 1410/77 were described in judgment in W.P. No.7774/79 as "identical reasons recorded earlier minus the reference to the pendency of the alleged disciplinary proceedings". When the above reasons were not held as sufficient to supersede the applicant for inclusion in the select list, the name of the applicant should also be included in the list ^{and especially when} it now transpired that there were 16 vacancies and when only 15 candidates were included in the list.

4. When the claim of the applicant for inclusion in the select list of 1976 above the name of Sri Mohiuddin was rejected as per judgment in T.A. 1183/86, the present claim of the applicant that his name had to be included below that of Sri N.Linganna is barred by resjudicata for the following reasons:

In the judgment dated 18-11-86 in TA 1183/86 it was observed that the perusal of the minutes of the meeting of the selection committee held on 4-4-83 ~~and the~~ disclosed that the Committee had fully gone into the records of the three officers (Mohiuddin, Linganna and the applicant) and on the basis of the comparative performance, found the respondents 6&7 (Mohiuddin and Linganna) superior meriting their inclusion in the select list and the applicant not suitable for inclusion (emphasis supplied). When the selection committee felt

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that the applicant was not found suitable for inclusion and the same was not interfered with while dismissing TA 1183/86, it is not open for the applicant to again contend that he is suitable for inclusion. When the applicant was not found suitable for inclusion it is immaterial as to whether there were 15 or 16 vacancies by the time of selection for 1976 list. Thus when the reasons given by the selection committee which met on 4-4-83 for holding the applicant not suitable for inclusion in the select list of 1976 were held as sound and thereby his T.A. 1183/86 filed by the applicant praying for inclusion of his name in the select list of 1976 above Sri Mohiuddin and Sri Linganna was dismissed, there is a bar of resjudicata and hence the applicant cannot claim that his name had to be included in the select list of 1976. If the applicant is not found suitable for inclusion in the select list of 1976 the question of inclusion of his name above or below Sri Linganna does not arise. The further question as to whether there were 15 or 16 vacancies for consideration for inclusion in the select list of 1976 is not relevant for it was finally decided by this Tribunal (Review Application as against that order was dismissed and the SLP thereon was rejected) that the applicant was not found suitable for inclusion in the 1976 list. Thus, even though the prayer in this O.A. is for inclusion of the name of the applicant below Sri Linganna in the select list of 1976 while the relief claimed in TA 1183/86

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was for inclusion above the names of S/Sri Mohiuddin and Linganna, still the point for consideration in TA 1183/86 and this O.A. is as to whether the applicant was suitable for inclusion in the select list of 1976. As the reasons given by the selection committee for holding that the applicant was not suitable for inclusion & were held as good by this Tribunal in TA 1183/86, the same will operate as resjudicata.

5. Thus, this O.A. is liable to be dismissed on the bar of resjudicata and accordingly it is dismissed. In view of the bar of resjudicata, there is no need to refer to the various facts and grounds raised in the M.A. 530/93 and accordingly it is dismissed. No costs.

P. T. Thiruvengadam

(P.T.Thiruvengadam)
Member/Admn.

V. Neeladri Rao

(V.Neeladri Rao)
Vice-Chairman

Dated: 26th day of August, 1993.

mhb/

Deputy Registrar (J)

To

1. The Secretary, Govt. of India, Cabinet Secretariat, Central Secretariat, Dept. of Personnel, New Delhi.
2. The Secretary, U.P.S.C. Dholpur House, New Delhi.
3. The Principal Secretary, State of A.P., E.F.E.S. & T. Dept. Hyd.
4. One copy to Mr. Y. Suryanarayana, Advocate, CAT. Hyd.
5. One copy to Mr. N.R. Devraj, Sr. CGSC. CAT. Hyd.
6. One copy to Mr. D. Panduranga Reddy, Spl. Counsel for A.P. Govt. CAT. Hyd.
7. One copy to Library, CAT. Hyd.
8. One spare copy.

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COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

~~THE HON'BLE MR. A. B. GORTHY : MEMBER (A)~~

AND

~~THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL.)~~

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M(A)

Dated: 26-8-1993

~~ORDER/JUDGMENT:~~

~~M.A./P.A./C.A. No.~~

O.A. No. 220/91 with ⁱⁿ MA 1530/93
T.A. No. (W.P.)

~~Admitted and Interim directions
issued.~~

~~Allowed~~

~~Disposed of with directions~~

~~Dismissed~~

~~Dismissed as withdrawn~~

~~Dismissed for default.~~

~~Rejected/Ordered~~

~~No order as to costs.~~

