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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT
HYDERABAD.

C.A.NO. 674/92

DATE OF JUDGMENT: 20/21.6.95

BETWEEN:

B.S.YOUSUF SHARIF

APPLICANT

AND

S/Shri

1. Union of India rep. by its Secretary, Ministry of Environment and Forests, CGO Complex, Lodhi Road, New Delhi.
2. Selection Committee Constituted under Rule 3 of the IFS (Appointment by promotion) Regulations, 1966, Represented by its Chairman, Secretariat, State of A.P.
3. The Chairman, Union Public Service Commission, Dholpur House, New Delhi.
4. State of Andhra Pradesh rep. by the Chief Secretary, Secretariat, Hyderabad.
5. The Principal Chief Conservator of Forests, Dept. of Forests, Gagan Vihar, Hyderabad.
6. R.Sriramulu
7. H.Govind Rao
8. V.P.Adinareyana
9. A.H.Qureshi
10. M.Padmanabha Reddy
11. P.V.Padmanabham
12. G.Vidyasagar
13. D.Vasudeva Murthy
14. P.Upender Rao

RESPONDENTS

COUNSEL FOR THE APPLICANT: SHRI K.Sudhakar Reddy

COUNSEL FOR THE RESPONDENTS: SHRI N.R.Devaraj,
Sr/Asst.CGSC.
Shri ~~P.Ramachandra~~ IV Redhakrishnamurthy, for R2, R4 and R5

CORAM: Shri M.Panduranga Rao, for R 9 and 12.

HON'BLE SHRI JUSTICE V.NEELADRI RAO, VICE CHAIRMAN

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

I AS PER HON'BLE JUSTICE SHRI V. NEELADRI RAO,
VICE-CHAIRMAN I

J U D G E M E N T

Dt:20/21-6-1995.

Heard both the learned counsels.

2. The applicant was selected by the A.P. Public service commission in 1976 for appointment as Asst. Conservator of Forests in the A.P State Forest Service. The name of the applicant was considered by the select committee which met on 24.2.90 and 25.2.90 for drawing the select list for consideration for promotion to the Indian Forst Service. The select list was drawn for 8 officers whereas 4 vacancies existed. The name of the applicant did not find a place in the said select list or in the select lists that were prepared prior to 1990. The Selection committee did not meet in 1991. It again met on 16-3-92 and a select list for 9 officers was drawn when it was notified to the said committee that there were 7 vacancies then. The number was limited to 9 in that year on the basis of the emended rules. When the name of the applicant was not included in that list, this OA was filed on 7-8-92 praying for quashing select list of I.F.S. 1991 published as per the order No.17013/01/92/IFS-II on 23.6.91 by holding it as illegal, arbitrary and unconstitutional and for a direction to the Respondents 1 to 5 to constitute a Review Committee for doing re-evaluation of the relative merits of all the candidates and prepare a fresh list.

3. The 3 main contentions raised in the said O.A are

- (1) Prejudice was caused to the applicant who was one of the seniors considered for selection for I.F.S. as the ACRs for 8 years were considered in 1992 when the ACRs for only 4 years were considered earlier.
- (2) Even the names of the officers who have not been confirmed in the State service were included

72

- (3) On the basis of the comparative assessment, his name should have been included in the panel instead of empanelment of his juniors.

4. In the reply statement filed for UPSC it is stated that all the selection committees considered the entire record of service of all the eligible candidates and the allegation of the applicant that in 1992, the ACRs for 8 years were considered while the ACRs of 4 years were considered earlier was denied.

5. The learned counsel for the applicant has not pressed the contention that the officers whose services were not confirmed in the State Service were also empanelled. The Apex Court held in State Bank of India Vs. Mohd. Mynuddin (Civil Appeal No. 1387 of 1987 page 401 of Supreme Court Services Law, Judgement 1950-1988 Vol. I) that

"The assessment should ordinarily be left to be done by the expert individual of Committee and that the Court is not by its very nature, competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled by selection".

6. It is thus evident that it is not for this Tribunal to assess the comparative merit of the cases of the various candidates considered for selection for promotion to the post of Indian Forest Service. It is to be noted that the applicant has not attributed malafides to any Member of the Selection committee. Thus there are no grounds warranting a direction to the Respondents to constitute Selection committee on the basis of the mere

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assertion of the applicant that if his ACRs were properly assessed, his name would have been included in the panel prepared by the selection committee.
filed

7. The applicant/additional affidavit in this OA on 15-11-94. The two main pleas raised by this additional affidavit are

(1) In view of his seniority in the list of A.P Forest Service, he would have been empanelled if the selection committee met in 1991, for that selection committee would have considered only in regard to 2 vacancies.

(2) The vacancies that were available for consideration by the Selection Committee which met in 1992 were only 3 and then only 10 should been within the zone of consideration, and some of those who were included in the selection list that was prepared in 1992 were not even within the zone of consideration. Even in view of the grading given to the applicant, he would have been included in that list prepared in 1990 if the selection committee which met in 1990 had drawn the selection list in regard to 4 vacancies which had arisen on 1-7-90, 1-8-90 and 1-2-91.

8. As per the extant rules, the select list has to be prepared for ^{double the} ~~the total~~ number of vacancies ^{in 1990} and accordingly the list was prepared by including the names of the following 8 officers.

- 1.Sri B. Venkat Reddy
- 2.Sri V. Subba Raghavaiah
- 3.Sri B. Trinadha Rao
- 4.Sri K.N. Banerji
- 5.Sri Mir Masood Ali Khan
- 6.Sri D. Vasudeva Murthy
- 7.Sri A. Upender Rao
- 8.Sri D. Satyanarayana

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74

The first 4 of them were appointed to I.F.S. on 14-3-⁻⁹¹~~94~~.

9. When another retirement vacancy had arisen on 1-3-91 and when the selection committee did not meet by then, a proposal was sent by the State Government for consideration of the case of Shri Masood Ali Khan who was at the Sl. No. 5 of the selection list prepared in 1990. But Shri C. Lakshma Reddy filed OA 561/90 and then an Interim ~~order~~ was issued on 14-3-91 for keeping the vacancy which had fallen on 1-3-91 reserved for him. The Central Government by letter No. 17013/91-IFS-II dated 8-8-91 advised the State Government to send the proposals to UPSC for appointment of Shri Masood Ali Khan to the post of I.F.S. as the proposals in regard to revised strength on the basis of cadre review were being sent to the department of Personnel & Training. By notification dated 13-9-91, The strength of the A.P cadre of I.F.S. was increased from 28 to 32.

10. The provisions of I.F.S. (appointment by promotion) (Regulations) were amended by notification No. 14015/16/91-AIS(I) dated 28-11-91. That notification inter alia lays down that the relevant year commences from 1st April and ends on 31st March of the succeeding year, while as per the pre-amended regulations, the year was the calendar year. Thus as per pre-amended rules, those who were qualified ^{by} on the 1st of January were being considered for inclusion in the zone of consideration, while as per the amended regulation, those who ~~were~~ qualified ^{by} as on 1st April of the relevant year were being included for being considered for ^{inclusion in the} zone of consideration. That amended rule also states that the select list

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has to be drawn for the number of vacancies + 20% of such number ~~of~~ ^{double} whichever is greater, while as per the pre-amended regulation, the select list has to be prepared for the ~~total~~ number of vacancies.

11. It is stated for the A.P. State Government that as the vacancy ^{which} had arisen on 1-3-91 was directed to be reserved for Shri C.Lakshma Reddy as per the Interim order of this Tribunal and ^{as} no other vacancy was anticipated by 31-12-91, A.P Public Service Commission suggested that there need not be any meeting of the selection committee in 1991 for merely drawing the list for the vacancies not anticipated.

12. In the above view, the contention for the applicant that the Selection committee did not, purposefully meet in 1991 has to be negated.

13. After the strength of the A.P.cadre was increased by 4, by notification dated 13-9-91 referred to supra, the State Government sent proposals ^{on 9-3-92} for appointment of the remaining 3 in the select list that was prepared in 1990. Shri Masood Ali Khan was appointed to I.F.S. on 5-3-92.

14. The vacancies in the I.F.S. for A.P. State cadre for which the A.P. State officers are eligible by promotion had arisen on 31-1-92, 30-6-92 and 30-9-1992. The A.P. State Government sent proposals for drawing the select list for the above 3 vacancies which were available upto 31-3-93, and the 4 vacancies which had arisen due to the increase in the cadre strength. Accordingly, ~~the~~ 27 should be in the zone of consideration. But as only 26 were available including the applicant, they were considered by the Selection committee which met on 16-3-92.

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15. Shri D.Satyanarayana who was at Sl.No.8 filed OA 276/92 and Shri A.Upendra Rao who was at Sl.No.7 of the list prepared in 1990 filed OA 515/92 praying for a direction to the Respondents to appoint them to the posts of I.F.S. on the basis of their empanelment in 1990 and as the vacancies had arisen in 1991 due to the increase in cadre strength and as the next selection committee met only in 1992. This Tribunal by its order dated 21.7.1993 in OA 515/92 and its orders dated 27.8.1993 and 10.9.1993 in OA 276/92 directed that S/Shri A.Upender Rao and D.Satyanarayana shall be appointed to IFS retrospectively from 9.3.1992. The SLPs filed thereon were dismissed in 1994. Shri D. Satyanarayana and A.Upender Rao were given appointments to IFS with effect from 9.3.1992.

16. Can it then be stated on the basis of the above facts that with oblique motive, the selection committee which met in 1992 was informed that there were seven vacancies instead of notifying only five vacancies. It can be seen that when there were proposals from the A.P. State Government for the appointment of the remaining three in the panel of 1990, they were under consideration of the selection committee and ultimately when the Central Government had not accepted the proposals, S/Shri D.Satyanarayana and A.Upendera

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Rao moved this Tribunal, and when the OAs filed by them were allowed, they were given appointments on the basis of their empanelment in the select list of 1990. It cannot be stated that either the A.P. State Government or the Central Government deliberately misinterpreted the relevant provisions. It may be noted that the SLPs were also filed against the orders of this Tribunal in the OAs filed by S/Shri D.Satyanarayana and A.Upender Rao. It is not uncommon that when the matter is not beyond doubt, the possibility of the competent authority coming to one decision while the Court/Tribunal may take a different view, cannot be ruled out. But on that basis alone it cannot be stated that such a decision was taken to favour one or the other officers.

17. Thus, there is nothing to indicate that for extraneous reasons, the selection committee did not meet in 1991, and the Central Government had not accepted the proposal to appoint S/Shri D.Satyanarayana and A.Upender Rao on the basis of their empanelment in 1990 in the two out of four vacancies which had arisen due to the cadre review.

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18. It may be noted that when the select list which is impugned in this OA was drawn in 1992, the applicant had come up with the relevant pleas in the additional affidavit filed on 15.11.1994. Then the question arises as to whether such pleas have to be negatived on the ground of laches.

19. The applicant is relying upon the judgment of the Apex Court reported in AIR 1991 SC 424 (A.Sagayanathan Vs. Divisional Personnel Officer, Southern Railway). It is a case where the applicant therein challenged the act of the concerned authority in promoting his juniors while superseding him when promotion had to be considered on the basis of the seniority-cum-suitability. In view of the same, it was held that the matter had to be considered on merits even though there was delay on the part of the applicant therein in approaching the Tribunal.

20. But the present case is one of selection. We already observed that on the basis of the actual facts which existed by the date the selection committee met in 1992, seven vacancies were notified. Out of those seven vacancies, five vacancies existed ^{by the date Selection Committee met} (four which had arisen because of the cadre review plus one which had arisen due to the retirement on 31.1.1992), and two which were anticipated before 31.3.1993. We already observed that there was ^{oblique motive} no oblique motive on the part of the State or the Central Government in not filling

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the two out of those posts from among those who were already in the panel that was prepared in 1990. In fact one more (Shri D.Vasudeva Murthy) in the panel of 1990 had not approached the Tribunal and hence he was not given the appointment to the post of IFS. In the absence of challenge on the ground of malafides and as the concerned authority had proceeded on the basis of the actual vacancy position, we feel that laches assume importance when the attack was after more than two years from the date of preparation of the select list. So, we feel that the attack of the select list that was prepared in 1992, on the basis of the pleas in the additional affidavit filed on 15.11.1994, has to be rejected on the ground of laches. So, we will not advert to the question as to whether it is necessary to set-aside the select list when it was prepared in accordance with the rules on the basis of the facts which existed by the date of preparation of the select list if the vacancies as on the date of preparation of the select list had become less on the basis of the subsequent orders of Courts/Tribunals/competent authorities, and thereby some of those who were empanelled would not have been in the zone of consideration and we will leave it open for consideration as and when it arises.

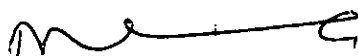
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21. Thus, this OA does not merit consideration.

Accordingly it is dismissed. No costs./


(R. RANGARAJAN)
MEMBER (ADMN.)


(V. NEELADRI RAO)
VICE CHAIRMAN

DATED: 20th/21st June, 1995.
Open court dictation.


Deputy Registrar (J) CC

vsn

To

1. The Secretary, Ministry of Environment and Forests,
Union of India, CGO Complex, Lodhi Road, New Delhi.
2. The Chairman, Selection Committee Constituted
under Rule 3 of the IFS (Appointment by promotion) Regulation,
1966, Secretariat, State of A.P. Hyderabad.
3. The Chairman, U.P.S.C. Dholpur House, New Delhi.
4. The Chief Secretary, Secretariat, Hyderabad. State of A.P. Hyd.
5. The Principal Chief Conservator of Forests,
Dept. of Forests, Gagan Vihar, Hyderabad.
6. One copy to Mr. K. Sudhakar Reddy, Advocate, CAT. Hyd.
7. One copy to Mr. N. R. Devraj, Sr. CGSC. CAT. Hyd.
8. One copy to Mr. I. V. Radhakrishna Murthy, Spl. Counsel for A.P. Govt.
CAT. Hyd.
9. One copy to Mr. M. Panduranga Rao, Advocate, CAT. Hyd.

10. one copy to Library, CAT. Hyd.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD.

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

A N D

THE HON'BLE MR. R. RANGARAJAN: (M(ADMN))

DATED 20/21/6, 1995.

ORDER/JUDGMENT:

M.A./R.A./C.A.No.

in

OA.No.

674/92.

TA.No.

(W.P.)

Admitted and Interim directions
issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default

Ordered/Rejected.

No. order as to costs.

No spare copy

