

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD**

O.A No. 1277/ 1998, 1308/ 1998 & 749 OF 1999

DATE OF ORDER: THE 6TH MARCH, 2009

Between:

OA 1277/1998

1. Shri G. Vidya Sagar
2. Shri A.H. Qureshi
3. Shri M. Padmanabha Reddy ... Applicants

And

1. Union of India
through Secretary
Ministry of Forests &
Environment, CGO Complex
Lodhi Road, New Delhi.
2. Govt. of Andhra Pradesh.
through Chief Secretary
Secretariat, Hyderabad.
3. Principal Chief Conservator of
Forests, Deptt. of Forests
Aranya Bhavan, Saifabad
Hyderabad ... Respondents

Counsel for Applicants : Mr. K. Sudhakar Reddy, Advocate
Counsel for Respondent : Mr. V. Rajeswara Rao, CGSC
Counsel for Respondent : Mr. D.Y. Setty, for State Government.

OA 1308/1998

Shri Mir Masood Ali Khan ... Applicant

And

1. Union of India
through Secretary
Ministry of Forests &
Environment, CGO Complex
Lodhi Road, New Delhi.
2. Govt. of Andhra Pradesh.
through Chief Secretary
Secretariat, Hyderabad.

3. Principal Chief Conservator of
Forests, Deptt. of Forests
Aranya Bhavan, Saifabad
Hyderabad. ... Respondents

Counsel for Applicants : Mr. Siva for Mr. P.S. Rajasekhar, Advocate
Counsel for Respondent : Mr. V. Rajeswara Rao, CGSC
Counsel for Respondent : Mr. D.Y. Setty for State Government.

OA 749/1999

Shri Mir Masood Ali Khan ... Applicant

And

1. Union of India
through Secretary
Ministry of Forests &
Environment, CGO Complex
Lodhi Road, New Delhi.
2. Govt. of Andhra Pradesh
through Chief Secretary
Secretariat, Hyderabad.
3. Principal Secretary
Environment Forests Science
and Technology (Forest-V)
Hyderabad.
4. Principal Chief Conservator of
Forests, Deptt. of Forests
Aranya Bhavan, Saifabad
Hyderabad.
5. Pay and Accounts Officer
Govt. of A.P.
Tilak Road, Hyderabad.

... Respondents

Counsel for Applicants : Mr. Siva for Mr. P.S. Rajasekhar, Advocate
Counsel for Respondent : Mr. V. Rajeswara Rao, CGSC
Counsel for Respondent : Mr. D.Y. Setty, for State Government.

Coram :

**The Hon'ble Mr. Justice P. Lakshmana Reddy, Vice Chairman
The Hon'ble Mr. R. Santhanam, Member (Admn.)**

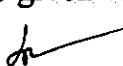
(Order per Hon'ble Mr. Justice P. Lakshmana Reddy, VC)

As the issue to be determined in all these cases is one and the same, all
these OAs are being disposed of by this common order.

2. The relevant facts in brief are as follows:

There are three applicants in OA 1277/ 1998 and one applicant in OA 1308/ 1998. The applicant in OA 1308/98 filed another OA 749/ 1999. All the four applicants in both the OAs had been promoted from State Forest Service (SFS) to Indian Forest Service (IFS) in the year 1993. Later, the Govt. of India modified the earlier notification reverting all the four applicants from Indian Forest Service to A.P. Forest Service on the recommendations of the State Government. The State Government made recommendations for reversion of the applicants on the ground that A.P. Administrative Tribunal directed the State Government to revise the seniority list of State Forest Service Officers and in pursuance of those orders the seniority list was revised after due notice to all the affected parties and finalised the seniority on 7.12.95 revising the seniority of State Forest Service Officers from the year 1976 onwards maintaining the quota of 50 : 50 among direct recruits and promotees to State Forest Service. As per the revised seniority list, the applicants herein who were promotees did not fall within the zone of consideration to recommend their names to the Central Government for promotion to IFS. But, as per the pre-revised seniority list, the applicants had been recommended subject to the result of the litigation pending in respect of the seniority. There are 25 officers still in the State Forest Service who are seniors to the applicants herein as per the revised seniority list. Hence, the State Government addressed a letter to the Central Government to revert the applicants herein from Indian Forest Service to State Forest Service. In pursuance of the request made by the State Government, the Central Government issued impugned notification dated 22.9.98 reverting all the four applicants herein and also one D. Satyanarayana to the State Forest Service with immediate effect. The Government of India in its notification mentioned that the said notification was issued to comply with the orders passed by the Hon'ble Central Administrative Tribunal, Hyderabad Bench in OAs 48/ 96, 136/ 96, 158/96, 159/ 96, 170/96,

203/96, 218/96 and 223/96. All those OAs were filed by the direct recruits who became seniors to the applicants in the revised seniority list in the State Forest Service. Aggrieved by the same, OAs 1277/98 and 1308/98 are filed challenging the very same notification contending that they were selected by the Selection Committee and were appointed to the IFS from SFS. As per the rules relating to appointments to IFS, an appointment to the IFS can be declared invalid only by Judgment or Order by a Court as per Rule 4 (3) (A) of the IFS Recruitment Rules 1966 and that there is no order of the Court declaring their appointment as invalid. The applicants were appointed by the President of India by way of a notification and that there is no rule empowering the respondents to revert an IFS officer to SFS cadre and that there can be no reversion in the same cadre. The applicants pleaded that the order of reversion passed by the respondents is in clear violation of sub-rule 3 (A) of Rule 4 of IFS Recruitment Rules 1966. Further, they were reverted with no fault of them and without giving any notice to them and thus, reversion order was issued in gross violation of principles of natural justice. It is further pleaded that the State Government issued final seniority list of Assistant Conservator of Forests in the year 1995 revising it from 1976 onwards and included the persons who retired 12 years back and who died by then and on the basis of such revised seniority list, reversion orders were issued to the applicants who were serving in the IFS cadre posts for the past five years. Reduction to a lower grade can be made only by way of imposing penalty after conducting departmental inquiry under All India Service (D&A) Rules, 1969. The impugned orders of reversion is issued in clear violation of the fundamental rights guaranteed under Article 14 & 16 of the Constitution of India. Unless the select list is made annually and reviewed and revised from time to time, the promotee officers stand to lose their chance of consideration for promotion which would be a legitimate expectation. The respondent authorities issued fresh notification after the review DPC on 19.5.98, but no reasons were given for not preparing the select list of the



years 1993 to 1997. The applicants relied on a decision of the Hon'ble Apex Court in **Gudur Krishna Rao and others Vs. Sudipta Bhattacharya and others**, reported in 1998 (2) SLR 2333 wherein the Hon'ble Supreme Court directed the respondents to permit about 27 officers to continue in the Indian Administrative Service without reverting them but without conferring them the right to count their seniority and the year of allotment and to adjust them in the subsequent years depending upon the number of vacancies and the posts available for such promotees and their year of allotment be re-determined accordingly. The applicants relying on the said judgement pleaded that they were also ought to have been continued to remain in Indian Forest Service till they are adjusted in the subsequent years.

3. The respondents contested the applications and filed reply stating that all the applicants were initially appointed to the Indian Forest Service vide notification dated 3.2.1993. The impugned order dated 22.9.98 reverting the applicants to the SFS was issued in implementation of the directions given by this Tribunal in OAs No. 48/96, 136/96, 158/96, 159/96, 170/96, 203/96, 218/96 and 223/96. In all those cases, this Tribunal directed that in view of the revision in the inter-se-seniority of SFS Officers of A.P., the Select Lists prepared earlier for promotion to the IFS would be reviewed. Consequently, the Selection Committee met on 8th & 9th January 1998 and also on 4th and 5th February 1998 to review the Select Lists prepared from the year 1976 to 1991-92 and none of the applicants in both these OAs fell within the zone of consideration for promotion to the IFS in view of their position in the revised seniority list as a result of which they were reverted to the SFS. The respondents further pleaded that the Selection Committee again met on 24.9.98 and prepared Select Lists for the years 1992-93, 1993-94, 1994-95 and 1995-96 for promotion to the IFS cadre of A.P., but even at that time none of these applicants fell within the zone of consideration. The respondents further pleaded that Rule 4 (3) (A) of the IFS (Recruitment) Rules

1966 quoted by the applicants is not at all relevant in this case and the said rule was incorporated with effect from 1.3.71 following the quashing of the initial recruitments to the IAS by the High Courts. The respondents further pleaded that there are 25 officers who are seniors to the applicants are yet to be promoted to IFS and therefore the applicants can not be continued in IFS. The respondents pleaded that there are no merits in the application and it is liable to be dismissed.

4. After hearing both sides in all the three OAs, this Tribunal passed a common order on 21.6.99 dismissing all the OAs. OA 749/99 is filed seeking direction to the respondents not to retire him till he reaches the age of 60 years pending disposal of OA 749/99. The said OA was filed when the applicant in OA 1308/98 was notified to be retired on attaining the age of superannuation of 58 years which is applicable to the SFS officers. The applicant obtained interim orders and continued till he attained the age of 60 years. However, this Tribunal passed common orders in all the OAs and dismissed all the three OAs.

5. Aggrieved by the same, the three applicants in OA 1277/98 filed writ petition No. 13821/99 whereas the sole applicant in OA 1308/98 filed writ petition No. 13134/99 and 13135/99 against the dismissal of OA 1308/98 and 747/99. The Hon'ble High Court remanded OA 1277/98 and 1308/98 for fresh disposal. So far as writ petition No. 13135/99 filed against the dismissal in OA 749/99 is concerned, the Hon'ble High Court observed that the petitioner has already retired on attaining the age of 60 years by virtue of interim order granted by the Hon'ble High Court with effect from 30.6.2001 and therefore, no orders are necessary to pass in the writ petition.

6. The reasons for remand are the following:

After the final seniority list dated 7.12.95 in respect of the SFS was prepared several applications were filed before this Tribunal and this Tribunal passed various orders in OA Nos 48, 136, 158, 159, 170, 203, 218 and 223/ 96 directing the review of Select Lists of promotees to IFS from the year 1976 to

1991-1992. Accordingly review select committee meetings were held in January and February 1998 and the select lists of promotees to IFS were reviewed and some of the SFS officers already promoted to IFS were reverted and the seniority position of some others in IFS cadre were altered. Aggrieved of alterations some of them filed OAs 780/98, 1360/98 and batch before this Tribunal. Against the orders passed by this Tribunal in those OAs several writ petitions were filed before the Hon'ble High Court of A.P. The High Court disposed of the W.P. No.s 20480 and 25730/ 1999 and W.P. No. 5884/ 2001 and batch by its common judgment dated 10.4.2001 remitting back to this Tribunal with the following observation:

"In the above circumstances, we are of the opinion that all the connected applications should be disposed of afresh by impleading the applicants in the implead petitions inasmuch as in a case of this nature and particularly having regard to the fact that in the Original Applications Nos.48 of 1996 and batch, pursuant whereto the impugned orders have been passed by the official respondents, the petitioners herein were not impleaded as parties, justice and fair play demands that all the Original Applications are disposed of either in presence of all the necessary parties or at least in the presence of some groups representing different groups."

The three applicants in OA 1277/98 and the sole applicant in OA 1308/98 are those who were reverted from IFS to SFS. They filed these OAs challenging their reversion. When this Tribunal dismissed these OAs they filed writ petitions 13821/99 against the orders in OA 1277/99 and W.P. No. 13134/99 and 13135/99 against the orders in OAs 1308/98 and 749/99. As the earlier writ petitions were remitted back with the above quoted observation, these writ petitions are also remitted back to the Tribunal without going into the merits of the cases. Thus, these OAs again came before this Tribunal. The other OAs 780/98, 1360/98 and batch ~~were~~ appear to have been already disposed of by this Tribunal, as the applicants therein not pressed their applications.

7. During the course of hearing, the learned counsel for the applicants in all the OAs reiterated the contentions raised in the applications. The contentions of the applicants can be briefly stated as follows:



(i) Their reversion from IFS to SFS is contrary to Rule 4 (3) (A) of the IFS (Recruitment) Rules, 1996;

(ii) As their appointment to IFS was through a Presidential Notification, the respondents are not empowered to revert them to SFS cadre;

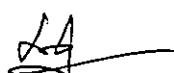
(iii) No notice was given to them before effecting reversion;

(iv) The impugned order of reversion is contrary to the judgment of Hon'ble Supreme Court in G. Krishna Rao and Ors., Vs. S. Bhattacharya & Ors., reported in [1998 (2) SLR 233];

(v) The applicant in OA 1308/ 98 was not a party to any of the cases filed before the Tribunal and therefore, the orders passed in those cases are not binding on him;

(vi) The Hon'ble Andhra Pradesh Administrative Tribunal (APAT) had merely directed to review the promotions made and there was no direction to the effect that such promotions already made were invalid and in the absence of any specific finding to that effect, the respondents are not empowered to revert them from IFS to SFS;

(vii) The Hon'ble APAT in its order dated 17.4.95 in RP 3183/88 had observed that the appointment made so far when the seniority list was provisional and not final would have to be regarded as adhoc only and will have to be reviewed in the light of seniority list when finalized. It was further stated therein that the question as to whether it was advisable to restrict the review in case of any class and persons appointed beyond any year could be examined only after the relevant material was made available by the State Government after the seniority list was finalized in accordance with law and it could be open for the State Government to approach the Tribunal for appropriate directions in the event of difficulties, if any, in reverting persons who were appointed in accordance with rules. But the respondents had failed to act upon those observations of the Tribunal;



(viii) A review of promotions/ appointments had to be undertaken from 1985 but the review has been done from 1976;

(ix) The applicants should have been merely slided down in the IFS and to consider them in the subsequent selections instead of straightaway ordering reversion.

8. On the other hand, the learned counsel for the respondents submitted that everything has been done only in accordance with the directions issued by both APAT and also by Central Administrative Tribunal (CAT) and that the reversions had to be made only to comply with the orders passed by the APAT and also the CAT in various OAs filed before the respective Tribunals. He further submitted that as there is no other alternative except to revert the applicants, the respondents had to resort to the reversions. He further submitted that if the applicants are allowed to be remained in IFS, 25 more officers who are still in the cadre of SFS are also to be conferred IFS which is not possible. He submitted that the decision of Hon'ble Apex Court relied on by the applicants are not applicable to the facts of this case as in the promotion orders of the applicants, it is clearly stated that their promotions are only provisional and subject to the result of pending litigation regarding their seniority in the State Forest Service cadre.

9. The points that arise for consideration in these applications are:

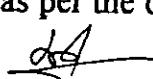
(i) Whether the impugned notification reverting the applicants from IFS cadre to SFS cadre is sustainable in law?

(ii) To what result?

10. Point No. (i):

It is not disputed that all the applicants originally belonged to State Forest Service and their seniority in the cadre of Assistant Conservator of Forest was under litigation for several years since the year 1988 till 1995. The litigation started when five direct recruit Assistant Conservators of Forest filed cases before the APAT in 1988 questioning the seniority list of Assistant Conservators of Forest

prepared without following the ratio of 5 : 5 between direct recruits and promotees as laid down in the special rules of A.P. Forest Service. It is also not disputed that the APAT on 27.6.88 directed that the promotions made during the pendency of the cases shall be subject to the outcome of RP 3183/88. It is also not disputed that on the directions of the Hon'ble Administrative Tribunals on various occasions a final seniority list from 1.1.76 to 1.1.95 was issued after giving due notice to all the officers including the applicants herein and the respondents have given reply to the individual representation made, on 7.12.95 and on the same day final seniority list was communicated to all the officers including the applicants. It is also not disputed that two of the applicants in OA 1277/ 1998, i.e. Shri G. Vidya Sagar and Shri A.H. Qureshi challenged the final seniority list before the Hon'ble Supreme Court by way of an SLP and the same was dismissed. Thus, for all purposes, the seniority list dated 7.12.95 has acquired finality and all further proceedings in the matter of promotions/ reversions proceeded on the basis of the final seniority list. As seen from Annexure A-II, the notification issued on 16.2.93 under which the applicants in these OAs were appointed to Indian Forest Service, it is clearly mentioned that the appointments are provisional and are being made subject to the final result in Original Applications Nos. 730/90, 203/92, 276/92 and 593/92 before the CAT, Hyderabad Bench and also in the review petition No.3183/88 before the APAT, Hyderabad. It is also not disputed that the review petition No. 3183/88 on the file of APAT dealt with litigation concerning the seniority in the cadre of Assistant Conservators of Forest and basing on that seniority subsequent applications were filed before the APAT and also before this Tribunal. It is also not disputed that consequent on the revision of the seniority list in the cadre of Assistant Conservator of Forests, the recommendations of the State Government to the Public Service Commission for preparation of Select List for promotion to the cadre of IFS were also reviewed and that the review committee meetings were held as per the directions of this Tribunal in the batch of



OAs 48/96 and batch, and the order passed in the said batch of OAs by this Tribunal had become final. The respondents have explained the reasons for reversion of the applicants. On account of review of Select Lists based on the revised seniority list in the cadre of Assistant Conservator of Forests as per the directions of this Tribunal in the above said batch of OAs, the applicants did not fall within the zone of consideration during any of the years for which the Select List was prepared and therefore, they could not be retained in the IFS. It is not disputed that as per the revised seniority list dated 7.12.95 which had become final, there are several seniors to the applicants herein who have not been promoted to the cadre of IFS. According to the respondents, there are 25 such officers. Therefore, as long as those seniors are considered for promotion to the IFS in accordance with rules, the applicants who are juniors to them cannot be considered and retained in the IFS. As the applicants did not even come within the zone of consideration, they could not be allowed to remain in IFS cadre, though they were recommended by the Select Committee. The decision of the Hon'ble Apex Court relied on by the applicants, in G. Krishna Rao and others Vs. S. Bhattacharya and others, does not come to the rescue of the applicants in this case as the facts of the said case are not similar to the facts of this case. Because in the cited case, the promotions had been given without any condition whereas in the instant case, even at the time of appointment to IFS by way of promotion, there was a dispute pending before the Administrative Tribunal regarding the seniority in the cadre of Assistant Conservator of Forests and therefore in the appointment orders it is clearly stated that the appointments are made only subject to the result of the said litigations. Further, in the cited case, by retention of 14 State Civil Service officers in the IAS cadre till they get their chance, none of the seniors are affected whereas in the instant case, if the applicants are to be retained in the IFS, 25 more officers are also to be promoted to the cadre of IFS. Admittedly, there are no vacancies. As per the cited decision, no supernumerary posts can be created by



way of a notification. In fact, such notification was set aside in the cited decision. Therefore, in our considered view, the said decision of the Hon'ble Apex Court does not come to the aid of the applicants in this case.

11. The contention of the applicants that the State Government ought to have approached APAT before recommending for reversion of the applicants, is not tenable. Merely because the APAT had observed that the State Government is at liberty to approach the Tribunal for appropriate directions in respect of any difficulty that may arise in respect of promotions/ reversions, it cannot be said that the State Government ought to have approached the State Administrative Tribunal. The said observation of the State Administrative Tribunal is only in respect of promotions/ reversions in the cadre of Assistant Conservator of Forests and Deputy Conservator of Forests and not in respect of IFS, which is outside the jurisdiction of the State Administrative Tribunal. Further, as the Central Administrative Tribunal gave directions to review the Select List on the basis of the revised seniority list in the cadre of Assistant Conservator of Forests and in the process of such review, the applicants are required to be reverted, the State Government cannot approach the State Administrative Tribunal. Therefore, we find no force in the contentions of the applicants in this regard.

12. The other contention of the applicants is that no notice was given prior to reversion and thereby violated the principles of natural justice. We are unable to find any force in this contention. As the applicants are very much aware about the pendency of the litigation before the APAT regarding their seniority and the said seniority has been finalized after due circulation of provisional seniority list. In fact, one of the applicants challenged the final seniority list before the Hon'ble Apex Court and the same was dismissed. Above all, in their appointment order itself, it is categorically stated that their appointment is subject to the result of the OAs specified there in the appointment orders. Admittedly, in those OAs, orders were passed which are adverse to the applicants. Merely because in some of the

OAs filed before this Tribunal, some of the applicants are not parties, it cannot be said that those orders are not binding on them. When the appointment to IFS was given subject to results of a particular OA, the applicants ought to have impleaded themselves as respondents in those OAs. but, they did not do so. As the respondents had to revert the applicants on account of review select committee meeting conducted in pursuance of the orders passed by this Tribunal, there was no need to issue any notice to the applicants before passing orders of reversion. The learned counsel for the applicants contended that in none of the orders passed by this Tribunal, the respondents are directed to revert the applicants. It is true that there is no specific direction to revert a particular officer. The direction is only to conduct review in respect of the select list basing on the final seniority list in the cadre of Assistant Conservator of Forests. As a consequence of review, none of the applicants had fallen in the zone of consideration and consequently there was no alternative for the State Government except to recommend for reversion of the applicants. Therefore, we find no force in the contention of the counsel for the applicants that in the absence of a specific direction to revert the respondents, the respondents have no power to revert the applicants. We also do not find any force in the further contention that the respondents have no power to revert the applicants by way of notification as they were appointed by a presidential order. Because the appointment of the applicants was only provisional and subject to the result of OAs pending before this Tribunal and in order to implement the orders of this Tribunal, the applicants are necessarily to be reverted. The applicants relied on Rule 4 (3) (A) of the IFS (Recruitment) Rules 1996. We are unable to understand as to how this rule is applicable to the applicants herein. It is useful extract the said rule:

“(3A) Notwithstanding anything contained in the rule, where appointments to the service in pursuance of the recruitment under sub-rule (1) have become invalid by reason of any judgement or order of any court, the central govt. may make fresh recruitment under that sub-rule and may give effect to the

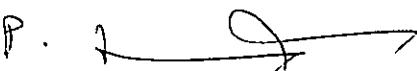


appointments to the service in pursuance of such fresh recruitment from the same date on which the appointments which have become invalid as, aforesaid had been given effect to."

As per this rule, in case any appointment made to the service have become invalid by reason of any judgement or order of any Court, the Central Govt. is given power to make fresh recruitment and to give effect to the appointments to the service in pursuance of such recruitment from the same date on which the appointments which have become invalid had been given effect to. This rule is only to enable the Govt. to make fresh appointments and to give retrospective effect. This rule is not at all relevant herein this case. In order to implement the orders passed by this Tribunal subsequent to the finalization of the seniority list in the cadre of Assistant Conservator of Forests dated 7.12.95, the respondents had to necessarily review the promotions already made to the IFS from SFS and in that process, the respondents had no other alternative except to revert the applicants as they did not fall within the zone of consideration in any of the years before the applicants completed the age of 54 years. We do not find any illegality or irregularity in the impugned notification dated 23.9.98. Thus, this point is found against the applicant.

13. In the result, all the three OAs are dismissed. There shall be no order as to costs.


(R. Santhanam)
Member (A)


(P. Lakshmana Reddy)
Vice-Chairman

Dated: 6th March, 2009

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