

Q9

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Date of Order: 22/12/2007

OA 90/94

R.C. Sharma son of Shri Nannu Ram Sharma aged 53 years at present working as Deputy Conservator of Forest, Social Forestry, Ajmer (Selection Scale of I.F.S.) resident of 181-B, Adarsh Nagar, Ajmer.

... Applicant

Versus

1. Union of India through the Secretary, Department of Forests and Environment, Government of India, New Delhi.
2. The State of Rajasthan through the Secretary to the Government, Department of Forest and Environment, Government of Rajasthan, Jaipur.
3. The Screening Committee through the Chief Secretary (Chairman), Government of Rajasthan, Jaipur.

.... Respondents.

Mr. P.V. Calla, Counsel for the applicant.
Mr. Shyam Sunder Sharma, Official Incharge, for the respondents.

CO RAM:

Hon'ble Mr. S.K. Agarwal, Member (Judicial)
Hon'ble Mr. A.P. Nagrath, Member (Administrative)

ORDER

(PER HON'BLE MR. S.K. AGARWAL, MEMBER (JUL.)

The relief claimed by the applicant in this OA are

- (i) to restrain the respondents to give promotion to any person junior to the applicant on the post of Chief Conservator of Forest.

- (ii) To direct the respondents to give promotion to the applicant on the post of Chief Conservator of Forests ignoring the fact of pendency of inquiry and adverse remarks of the year 1982-83.
- (iii) To direct the respondents to consider the case of the applicant for promotion to the post of Conservator of Forest on the date when his juniors were so promoted with all consequential benefits.
- (iv) Adverse remarks for the year 1982-83 may be struck down.

2. The applicant ~~was~~ initially entered in service as Assistant Conservator of Forest in the year 1965 and later on applicant was selected in Indian Forest Services in the year 1969. The applicant promoted in the Senior Scale of Indian Forest Services in the year 1972 and was posted as Deputy Conservator of Forests. It is stated in the cadre of IFS from the post of Deputy Conservator of Forest, the next higher post is Conservator of Forest in Super Times Scale and according to rules applicant was eligible for super times scale (Conservator of Forest) after 13 years i.e. in the year 1982. On completion of 13 years of service, the name of the applicant alongwith others was considered but junior to the applicant was promoted vide order dated 20.9.85 on the post of Conservator of Forests. It is stated that at that time the inquiry under Rule 8 of All India Services (Discipline & Appeal) Rules 1969 was pending against the applicant as charge-sheet was served on the applicant in the year 1982. It is stated that adverse remarks for the year 1982-83 were communicated to the applicant for the first time vide communication dated 17.5.85. The following were the adverse remarks against the applicant:-

"In your A.C.R. for the year 1982-83 you have been rated as Average Officer, but the following Adverse Remarks have been recorded:

" The Officer should be more conscientious

in the discharge of his duties. A departmental enquiry was contemplated regarding various acts of Misdemeanour."

Fitness for promotion to higher grade(s) in his turn - 'Not yet fit.' "

It is stated that on account of pendency of inquiry against the applicant, the applicant was superseded again & again and junior officers were promoted on the post of Conservator of Forests in the super time scale of Indian Forest services, scale Rs. 4500-5700. It is also stated that applicant challenged the order of D.O. inquiry by an OA 589/90, which dismissed as withdrawn vide order dated 17.7.92. The applicant also filed OA no. 590/90 for promotion on the post of Conservator of Forest which was also decided/disposed of vide order dated 18.3.93. A contempt Petition was also filed and in CP 48/93, this Tribunal passed an order dated 16.9.93 but despite directions given no order was issued. Therefore another OA no. 229/93 was filed in which prayer was made to promote the applicant on the post of Conservator of Forest as well as on the post of Chief Conservator of Forest w.e.f. the year 1985 and May, 1993 respectively. Reply was filed and OA 229/93 was also disposed of vide order dated 27.7.93 but no action was taken in respect of direction given in OA 229/93 on 27.7.93. It is stated that adverse remarks communicated to the applicant in the year 1985 after about 22 months. It is also stated that applicant has acquired the right of consideration for promotion on the post of Conservator of Forest in the year 1982 but promotion to the applicant was denied on the basis of pendency of inquiry and adverse remarks in the year 1983 which was arbitrary, unjust and in violation of Article 14 & 16 of the Constitution of India. There-

fore, applicant file this OA for the reliefs, as above.

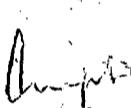
3. Reply was filed. It is stated in the reply that relief for quashing adverse remarks in ACR for the year 1982-83 is time barred as representation of the applicant was rejected on 27.12.85 and applicant failed to challenge the adverse remarks in the ACR within limitation, provided under section 21 of the Administrative Tribunals Act. It is also stated that applicant was considered for promotion on the post of Conservator of Forest in the year 1985 and thereafter in the year 1988 and 1991 but Screening Committee found the applicant not fit for promotion. Therefore, he was not promoted. It is also stated that the D.E. against the applicant was concluded on 7.3.94 and the applicant was awarded penalty of stoppage of one grade increment for two years. Therefore, during the currency of penalty period, applicant was not promoted and ultimately the applicant was promoted by order dated 1.1.97 in super time scale of Indian Forest Service, scale Rs. 4500-5700. It is reiterated that applicant was superseded for promotion to the post of Conservator of Forest in Super time scale as he was not found suitable by the Screening Committee in the year 1985, 1988 and 1991. It is denied that applicant was not given fair consideration and there has been any violation of the provisions of Article 14 & 16 of the Constitution of India in considering the candidature of the applicant. Therefore, respondents by filing the reply have requested to dismiss the OA with costs.

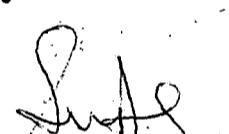
4. Rejoinder to the reply filed by the respondents has also been filed the applicant, which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.
6. On the perusal of the averments made by the parties, it is abundantly clear that the Screening Committee has considered the candidature of the applicant for promotion to the post of Conservator of Forest in the year 1985, 1988 and 1991 but he was not found fit for promotion. We have also perused the original record as produced by the Department. On perusal of original record, it is abundantly clear that after the applicant became eligible for promotion to the post of Conservator of Forest, he was considered in the year 1985 and thereafter in the year 1988 and 1991 but the applicant was not found suitable for promotion. After perusal of record, we do not find any infirmity, illegality, arbitrariness/malafides on the part of the Screening Committee. The inquiry was concluded on 7.3.94 and a penalty of stoppage of one increment for two years was imposed upon the applicant. Therefore, after currency period was over, the applicant was again considered for promotion to the post of Conservator of Forest and he was promoted w.e.f. 1.1.97.
7. Therefore, in view of the discussions, as above, we are of the considered opinion that applicant was considered for promotion to the post of Conservator of Forest again & again when it was necessary to consider him but he was not found suitable for promotion and ultimately when the applicant was found suitable, he was promoted w.e.f. 1.1.97. Therefore, we do not find any merit in the claim of the applicant regarding his promotion to the post of Conservator of Forest.

8. As regards adverse remarks for the year 1982-83, it is apparently clear that these adverse remarks were communicated to the applicant. The applicant filed representation, which was rejected vide order dated 27.12.85. Thereafter, applicant has challenged these adverse remarks by filing this OA in the year 1994. Therefore, in our considered view, the claim made by the applicant in expunging adverse entry given to the applicant in the year 1982-83 are accordingly barred by limitation as per provisions contained in section 21 of the Limitation Act. We, therefore, find no merit in the claim of the applicant regarding expunging of adverse entries made against the applicant in the year 1982-83 at such a belated stage.

9. In view of above all, we do not find any merit in this OA and this OA is liable to dismissed. We, therefore, dismiss this OA with no order as to costs.


(A.P. NAGRATH)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)