

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

11.07.2007**OA 8/2004 A/W MAs 7/2004 & 62/2004**

Present : Mrs. Shashi Sharma, proxy counsel for
 Mr. Rajendra Soni, counsel for the applicant.
 Mr. Kunal Rawat, counsel for the respondents.

This case has been listed before the Deputy due to non-availability of Division Bench. Be listed before the Hon'ble Bench on 24.07.2007.

akv



(GURMIT SINGH)
DEPUTY REGISTRAR

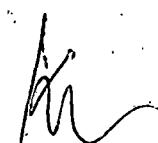
24.07.2007**OA No. 8/2004 with MA 7/2004 & 62/2004**

Mr. Rajendra soni, Counsel for applicant.
 Ms. Kavita Bhati, Proxy counsel for
 Mr. Kunal Rawat, counsel for respondent No. 1.
 Mr. V.D. sharma, Counsel for respondent Nos 2 to 6.

On the request of the learned counsel for the applicant, list it on 26.07.2007.



(J.P. SHUKLA)
MEMBER (A)



(KULDIP SINGH)
VICE CHAIRMAN

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 26th day of July, 2007

ORIGINAL APPLICATION No.8/2004

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN
HON'BLE MR. J.P.SHUKLA, ADMINISTRATIVE MEMBER

1. K.K.Garg s/o Shri R.N.Garg, aged about 48 years, r/o II/2, Forest Colony, Sector No.4, Jawahar Nagar, Jaipur at present Deputy Conservator of Forest, Jaipur south, Jaipur.
2. A.S.Champawat s/o Shri Nawal Singh Ji, aged about 55 years, r/o Malari, Distt. Pali (Raj) at present Dy. Conservator of Forest, Udaipur.

.. Applicant

(By Advocate: Shri Rajendra Soni)

Versus

1. Union of India through its Secretary, Forest Department, Paryavaran Bhawan, Central Government Office Complex, New Delhi.
2. The State of Rajasthan through its Chief Secretary, Government of Rajasthan, Government Secretariat, Jaipur
3. Principal Secretary, Forest Department, Government of Rajasthan, Government Secretariat, Jaipur.
4. Principal Secretary, Department of Personnel, Government of Rajasthan, Government Secretariat, Jaipur



5. Principal Chief Conservator of Forest, Van Bhawan, Government of Rajasthan, Jaipur
6. Dy. Secretary, Forest Department, Government of Rajasthan, Government Secretariat, Jaipur.

.. Respondents

(By Advocate: S/Shri Kunal Rawat and V.D.Sharma)

O R D E R (ORAL)

Through this OA the applicants claim rectification of the order dated 3rd April, 1995 (Ann.A12) vide which the applicants have been allotted 1988 as year of allotment to Indian Forest Service.

2. Facts, as alleged by the applicants in brief, are that both the applicants were initially working under the State Forest Service and they were promoted to Indian Forest Service (IFS) and were given the year of allotment as 1988. The applicants has prayed that they should be treated in IFS against the vacancies of the year 1987. It is stated that seniority list of Rajasthan Forest Service (RFS) officers working as Assistant Conservator of Forest was published on 15th March, 1990 in which name of the applicants appeared at Sl.No. 36 and 35. The applicants also state that their record is totally neat and clean and there is no clog in their service through out their career.



The applicants further state that Rule 8 of the IFS (Recruitment) Rules, 1966 provide that the Central Government on the recommendation of the State Government and in consultation with the Union Public Service Commission (UPSC) from time to time shall recruit the State Forest Officers in the Indian Forest Service by promotion. It is further stated that these rules also provide that number of persons recruited by each method of direct recruitment and by promotion shall be determined by the Central Government with consultation of the State Government concerned. It is further stated that the UPSC further promulgated the regulations for promotion from State Forest Service to the IFS as Indian Forest Service (Appointment by Promotion) Regulations, 1966. The Regulation provide for constitution of Selection Committee which shall ordinarily meet every year and prepare a list of State Forest Service officers found suitable for promotion to the IFS and the number of members of the State Forest Service shall be determined by the Central Government in consultation with the State Government concerned. It is further stated that the State Government had issued orders mentioning strength and composition of the IFS cadre as on 27th October, 1987 in Rajasthan and according to which the authorized strength of IFS cadre is 105 posts, out of which 81 posts are for the direct recruitment and 24 posts are for promotion from RFS cadre, which is at Ann.A5. It

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is further stated that out of above 24 posts, 12 persons were already working and 12 posts were vacant as on 23rd March, 1991.

The Selection Board for promotion from RFS to IFS has held its meeting on 23rd March, 1991 and after due consideration of the service record of the persons who were coming in the zone of consideration including the applicants has selected the persons for promotion to IFS against the vacancies of the year 1987 and the applicants were awaiting of their promotion on the basis of Selection Board held on 23rd March, 1991 against 12 vacant posts of IFS against the vacancies up till the year 1987, vide order dated 26th February, 1992. Out of 12 selected persons, only 7 persons have been promoted vide order dated 26th February, 1991 and promotion orders, inspite of their selection against the vacancies of the year 1987, have not been issued.

The applicants thereafter filed representation but to no avail. Subsequently, the applicants were promoted in IFS cadre vide order dated 15.12.1992. The applicant also stated that subsequently vide order dated 31st May, 1993 the persons who were selected by the Selection Board held on 23rd March, 1991, the persons who were promoted vide order dated 26th February, 1991 have been allotted the year upto 1987 but the applicants have been granted the year of allotment as 1988. The applicants again represented



that they should be allotted 198⁹ as year of allotment instead 198⁸, but to no avail. So it is stated that action of the respondents is violative of Article 14 and 16 of the Constitution.

It is further stated that it is quite evident that as per the cadre strength shown by the respondents upto 27th October, 1987 12 posts were lying vacant in IFS cadre for promotion from RFS cadre and the applicants have been selected by the Selection Board against the aforesaid posts, but not promoting the applicant against the year 1987 and treating them promotees of the year 1988 is illegal and arbitrary. Therefore it is prayed that the action of the respondent deserves to be quashed and set-aside.

3. The respondents are contesting the OA. Respondent No.1, the Union of India, have submitted that they have limited role in the selection and appointment to IFS under the Promotion Regulations, as these are made on the basis of the documents supplied by the State Government to the UPSC and the list is prepared by the Selection Committee which is headed by the Chairman/Member of the UPSC and appointments of the members of the State Forest Service to the IFS are to be made by the Central Government on the recommendations of the State Government in the order in which names of the members of State Forest Service officers appear in the Select List. Since the State



Government did not recommend names of the applicants, so the applicant could not be appointed. However, it is admitted that in the list prepared by the Selection Committee held on 23rd March, 1991 names of the applicants did appear at Sl.No.11 and 12. Since the Government of Rajasthan recommended names of 7 persons only, so first 7 persons were appointed.

The State Government in their reply submitted that when the select list was taken up for consideration of the Central Government, it was found that one officer Shri R.K.Khetrapal, who was at Sl.No.8 and whose name was placed as unconditional had come under cloud, inasmuch as, a departmental enquiry was pending against him. Other officer namely Shri Sukhbir Singh Sharma was included as provisional at Sl.No.9 due to pendency of disciplinary proceedings against him. Further, name of another officer Shri L.K. Sharma was also included on provisional basis at S.No.10 but it was subsequently found that no proceeding were pending against Shri L.K.Sharma but departmental proceedings were pending against another officer Shri Laxmi Kant Sharma. Thus, a reference was required to be made to UPSC, but since it was a time consuming process so it was decided to defer the matter till the next meeting of the Selection Committee. Thus it is submitted that appointment was restricted to 7 candidates only. Apart from this, no reason has been given as to why when 12 vacancies were

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available and there were names of 22 persons in the select list, why 12 persons who were not under cloud were not recommended for appointment. The mere fact that two persons were under cloud and were facing disciplinary proceedings cannot be a valid ground to deny appointment to the applicants, since they were within first 12 officers who were in the select list prepared by the Screening Committee. It is pertinent to mention that Shri R.K.Khetrapal who was at Sl.No.8 and Shri L.K.Sharma, who was initially not considered for being considered as it was revealed that some disciplinary proceedings were pending against him but later on it was revealed that there was some other L.K.Sharma against whom disciplinary proceedings were pending, but his case was also not sent merely on the ground that it will be a time consuming process and his name was also kept pending till the meeting of the next Screening Committee. The facts remain that since the candidates at Sl.No 8 and 9 were undergoing some disciplinary proceedings and despite the fact that there were 12 vacancies available but applicants appearing at Sl.No. 11 and 12 were not recommended.

4. We have heard the learned counsel for the parties and gone through the record.

5. In our view the contention of the learned counsel for the respondents has no merit because for the



misconduct of persons who were at Sl.No. 8 and 9 and particularly so when 12 vacancies were available, promotion to other persons cannot be denied. It will amount to punishing those persons against whom there is no cloud at all.

Besides that, we may also illustrate that if a person is at Sl.No. 12, that would mean that the State Government would not have recommended ~~his~~ ^{any} name for promotion to the IFS despite the fact that 12 posts were lying vacant. So this reasoning for not recommending name of the applicants merely because two persons above them were undergoing some disciplinary proceedings cannot be sustained. So we are of the considered opinion that the State Government had arbitrarily withheld names of the applicants by not recommending them for promotion to the post of IFS.

The learned counsel for the respondents also taken an objection that the case is time barred and the same should not be entertained. The learned counsel submitted that since the applicants are praying for rectification of the order dated 3rd April, 1995 vide which they were allotted the year as 1988 for the purpose of promotion to IFS and the OA has been filed in January, 2004, so the same is belated and it should be dismissed on the ground of limitation. However, in reply the learned counsel for the applicants submitted that the applicants have been



the applicants submitted that the applicants have been making representations and vide Ann.A1 it is clear that their representations could not be decided as it was still under consideration as comments from one of the officer was awaited and the applicants were sent copies of the letter dated 16th October, 2003 which gives an impression that representations were still pending. The learned counsel for the applicants further submitted that when representation are pending then the relief cannot be declined on account of delay and laches and in support of this, the learned counsel referred to a judgment Haryana State Electricity Board vs. State of Punjab and Haryana, reported in AIR 1974 SC 1806, where a "Government servant shown to have made representations and moved the appropriate authorities at all stages - Held, it was not a case where relief could be declined on the ground of laches and delay".

In reply to the learned counsel for the respondents has stated that Ann.A1 which is merely a exchange of correspondence in between departments and it does not give any cause of action to the applicants. Had it been so, the copy of this order would not have been address to the applicants. In these circumstances, we find that the applicants cannot be denied the relief merely on the ground of delay and latches since representation of the applicants is still pending.

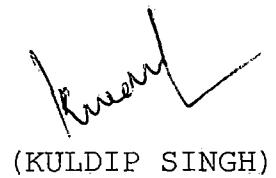


On the same lines, the learned counsel for the applicants also referred to the case in the State of Madhya Pradesh vs. Bani Singh, reported in AIR 1990 SC 1308, wherein it was held that where the employee is making representation to the Government, delay in filing application due to pendency of representation is not a ground of dismissal of application.

6. In view of above, we are of the considered opinion that the OA deserves to be allowed. Accordingly, we allow the OA and direct the respondents that applicants be allotted the year 1987 instead of 1988 and necessary corrections be made in the office order. This exercise be completed within three months from the date of receipt of a copy of this order. No costs.


(J.P. SHUKLA)

Administrative Member


(KULDIP SINGH)

Vice Chairman

R/