

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

O.A. NO. 326/1998

Date of order: 12-7-2002

Mahesh Kumar Vijayvargiya son of Shri Rameshwar Prasad
Vijayvargiya, aged about 48 years, resident of 566,
Chavni, Kota at present posted as Deputy Conservator
of Forest, Nagaur.

...APPLICANT.

v e r s u s

1. Union of India
Through Secretary,
Ministry of Forest & Environment,
Central Secretariat, New Delhi.
2. The Union Public Service Commission,
through its Chairman, Dholpur House,
New Delhi.
3. State of Rajasthan through its
Chief Secretary, Govt. of Rajasthan,
Govt. Secretariat, Jaipur
4. The Principal Chief Conservator of
Forest, Govt. of Rajasthan,
Van Bhawan, Jaipur.

...RESPONDENTS.

Mr. M.K. Sharma, counsel for the applicant.

Mr. U.D. Sharma, counsel for the respondents.

CORAM:

HON'BLE MR. A.P. NAGRATH, ADMINISTRATIVE MEMBER

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER

: O R D E R :

(per Hon'ble Mr. J.K. Kaushik, Judl. Member)

Mahesh Kumar Vijayvargiya has filed this Original

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Application under Section 19 of the Administrative Tribunals Act, 1985, praying therein the following reliefs: -

- "(a) by issuing an appropriate writ, order of direction this Hon'ble Tribunal may kindly quash the entire record relating to selections to Indian Forest Service made on 28.7.1998 by selection Board as the selections have been made in violation of the mandate as expressedly laid down in the Indian Forest Service Appointment by Promotion Regulation, 1966.
- (b) that a direction may kindly be given to the respondents that the applicant be considered for appointment to Indian Forest Service considering the seniority in the post of Assistant Conservator of Forest at No. 1.
- (c) That a further direction may kindly be issued to the Chief Secretary to the Govt. of Rajasthan that Appointment to the I F S should not be made on the strength of selections made by the selection made by the selection board on 28.7.1998.
- (d) any other appropriate order which may be deemed just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- (e) Costs of the original application and suitable compensation may also be awarded in favour of the applicant;"

2. The genesis of this case is the outcome and resultant action of the respondents on the judgement dated 10 March, 97 passed by Hon'ble High Court in S.B. Civil Writ Petition No. 5526/94, Mahesh Kumar Vijayvargiya v. State of Rajasthan & Ors. In the said writ petition the applicant was granted the ^{after} due relief prayed for whereby he was confirmed ~~for~~ 2 years of probation from 5.5.1985 instead of 6.2.1993 and the writ petition was dismissed having become infructuous. It seems that inadvertently there was a typographical error in the last 5 lines of paragraph one of the ibid judgement. The same is extracted as under:-

"The petitioner has also prayed that seniority list dated 24.12.84 be modified, placing the petitioner at serial number 44, confirming the petitioner on the post of Asstt. Conservator, Forest w.e.r. 4.5.85."

The placement of the applicant on seniority list has been mentioned as at Sl. No. 44 whereas as per the applicant it was supposed to be at Sl. No. 1-A in the order. A specifi

order was also passed vide order dated 8.11.1995 (Annex. A/2). However, no seniority list was issued and the applicant came to know that his position in the seniority list for selection of Rajasthan Forest Officer to Indian Forest Service was again being shown as at Sl. No. 44 instead of Sl. No. 1. Further the applicant came to know that certain vacancies were notified in the Indian Forest Service by clubbing the vacancies in the year 1995-96, 1996-97 and 1997-98 and clear violation of the rules in force.

3. On the other hand the respondents have refuted the position and have submitted that as per the order of the Hon'ble High Court he was assigned seniority on provisional basis at Sl. No. 1 from his earlier seniority at Sl. No. 44 and the seniority so assigned was provisional subject to the decision of the aforesaid writ petition and as per the prayer of the applicant he was placed at Sl. No. 44. And therefore his name has been placed at Sl. No. 44 and not at Sl. No. 1 and the subsequent action were being taken considering him at Sl. No. 44 which action is being done as per the judgement of Hon'ble the High Court.


4. The learned counsel for the applicant has brought to our notice that there was typographical error and instead of Sl. No. 1, the name of the applicant was placed at Sl. No. 44 as indicated in para 3 above. This has happened since the aforesaid order was passed by the learned Single Judge in absence of the counsel for the applicant and therefore an application was moved for recalling the order and the same has been admitted and notices were issued to the parties. He has also filed another fresh writ petition in the matter which was admitted and registered as S.B. Civil Writ Petition No. 1879/97 which is pending ~~xxx~~ in the High Court. It has been contended by the learned counsel for the applicant that there has been a typographical error in mentioning the Sl. No. 44 instead of Sl. No. 1 in respect of applicant in the

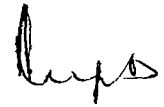
seniority list and the same is accepted to be corrected in due course. This Hon'ble Tribunal may proceed in the matter and direct the respondents to consider the candidature of the applicant by considering his correct position treating him to have been placed at Sl. No. 1 in the relevant seniority list and he may be allowed all the consequential relief as per his prayer in the Original Application.

5. We were finding difficult to persuade ourself as to whether the basic matter is under adjudication before the Hon'ble High Court inasmuch as the seniority list is required to be prepared by the State Government and the assignment of the seniority to the applicant at State level does not fall within the jurisdiction of this Tribunal in addition to the factum then the matter is subjudice before High Court. The learned counsel for the applicant tried to sidetrack the matter and repeated certain facts which were having bearing on the case which is pending before the High Court.

6. In this view of the situation we have not been able to comprehend the contentions of the applicant and are of the considered opinion that until and unless the applicant is assigned proper seniority none of the relief as prayed in the O.A., cannot be granted to him. We also find unable to agree with the contention of the learned counsel for the applicant that by treating the applicant at Sl. No. 1 the consequential action should be taken in the matter. We have not been shown any provision of the law in the service jurisprudence which enables for assuming such seniority and to grant further reliefs in the matter. We do not find any infirmity, illegality or arbitrariness in the action of the respondents and the applicant does not have any legal ground in the Original Application and the same ~~is~~ deserve to be dismissed.

7. In the result, the O.A. is devoid of any merit and same deserves to be dismissed. ^{we do so} However, in the facts and circumstances of the case, the parties are left to bear their own costs.


(J.K. KAUSHIK)
Judl. Member


(A.P. NAGRATH)
Adm. Member

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