

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 16.03.2000

OA No.374/98

K.L.Badgujar S/o Shri Gopal Lal Badgujar, aged 48 years, presently posted as Deputy Conservator of Forest, Dausa (Raj.)

.. Applicant

Versus

1. Union of India through Secretary, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi.
2. The Secretary to the Govt. of India, Ministry of Environment and Forest, Paryavaran Bhawan, CGO Complex, New Delhi.
3. The Secretary, Department of Personnel, Administrative Reforms, Govt. of Rajasthan, Jaipur.
4. The Secretary Forest, Govt. of Rajasthan, Jaipur.
5. Shri A.S.Chauhan, Deputy Conservator of Forest, Departmental Operation Division, Suratgarh.

.. Respondents

Mr. Ajay Rastogi, counsel for the applicant

Mr. U.D.Sharma, counsel for the respondents Nos. 3 and 4

CORAM:

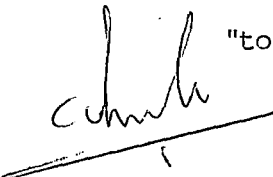
Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

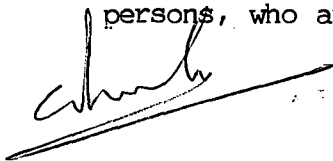
In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought following reliefs:

 "to quash and set aside the order dated 12.10.98 and the

: 2 :

respondents may kindly be directed to consider the candidature of the applicant for promotion to Indian Forest Service under the Indian Forest Service (Appointment by Promotion) Regulations, 1966 and if he is found suitable he may be appointed in the Indian Forest Service cadre from the date the similarly situated officers are appointed with effect from 12.10.1998 with all consequential benefits."

2. The facts of the case, as stated by the applicant, are that he is a member of the Scheduled Caste category and was promoted as Assistant Conservator of Forest (for short ACF), which is the lowest post included in the schedule appended to the Rajasthan Forest Service Rules, 1962 (for short, Rules of 1962) against the quota of 1980 on the recommendations of the DPC and thus became the member of the Service. He was further promoted on the basis of recommendations of the DPC to the cadre of Deputy Conservator of Forest (for short DCF) against the quota of 1985-86 vide order dated 6th May, 1997 (Ann.A2) and was placed at Sl.No.14 in the said order. The main grievance of the applicant is that inspite of being eligible, he had been ignored for consideration and those junior to him having been promoted in the cadre of DCF against the vacancies of subsequent years like 1986-87, 1989-90, 1991-92 and 1992-93 were considered, superseding his right of consideration in clear violation of Articles 14 and 16 of the Constitution of India. He had served a notice for demand of justice through his counsel on the respondents but his grievance had not been redressed. In the scheme of Rules of 1962, the lowest available post is ACF and the next higher post in the hierarchy is of DCF. The still higher posts are filled up by members of Indian Forest Service (for short, IFS). The seniority of the officers who are members of the Rajasthan Forest Service (for short, RFS) is determined in accordance with Rule 35 of the Rules of 1962 and Rule 35(5) clearly postulates that persons, who are appointed as a result of selections, which is not subject



to review and revision shall rank senior to the persons selected and appointed as a result of subsequent selection. Thus the applicant who was selected against the quota of 1985-86 in the cadre of DCF has to rank senior than those selected against the quota of 1986-87 and subsequent years in the cadre of DCF. The Govt. of Rajasthan has failed to publish the seniority list of DCF which is the feeder post for promotion to IFS, but in the absence of this, those who are senior and eligible in the cadre of DCF cannot be ignored in making promotions to the IFS. According to regulation 5 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 (for short, Promotion Regulations) an obligation is cast on the authority for inclusion of the names of the members of the State Forest Service (for short, SFS) in the order of seniority and such names should be three times of the number of vacancies determined by the Selection Committee. The applicant by virtue of his seniority was eligible for consideration for promotion but for no reason, his name was not included in the zone of consideration and those who were junior to him and promoted later as DCF were considered for promotion in clear violation of regulation 5(2) of the Promotion Regulations such persons included private respondent No.5, Shri A.S.Chauhan apart from some other officers. The applicant was appointed on the post of DCF against the vacancies of the year 1985-86 (Ann.A2) whereas Shri H.K.Yadav, who has been at Sl.No.1 in the promotion notification dated 12.10.98 (Ann.A4), Shri K.P.Gupta at Sl.No.5, Shri K.S.Sharma at Sl.No.7, Shri U.S.Ranawat at Sl.No.8, Shri S.K.Pal at Sl.No.6, Shri L.S.Kumpawat at Sl.No.9 and Shri A.S.Chauhan at Sl.No. 10 of the said notification were promoted to the cadre of DCF subsequently in the years 1986-87, 1989-90, 1991-92 and 1992-93 respectively. Thus except for officers mentioned at Sl.Nos. 2,3 and 4 of the impugned promotion notification dated 12.10.98, all are junior to the applicant in the cadre of DCF as per the details given in para 4.10 of the Original Application. The main contention of the applicant is that the very action in making promotions to IFS of some juniors, ignoring his claim for consideration is violative of Rule 35(5) of

Chauhan

: 4 :

the Rules of 1962. Sub-rule (2) of the Promotion Regulations postulates that senior most available and eligible persons in the SFS should be included in the list to be prepared under Sub-rule (2) of regulation 5. The seniormost available post in the said SFS is of DCF and thus officers who are appointed in substantive capacity in the SFS on the post of DCF are required to be considered in the order of seniority for inclusion of their names in the select list. He had an apprehension that his name will not be included in the zone of consideration and that is why he had sent a Notice for demand of justice, which also did not evoke any response. Thus the applicant who is one of the senior officers available for consideration has been ignored in an arbitrary and illegal manner.

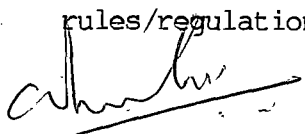
3. Notices of the Original Application were given to all the respondents. A reply has been filed on behalf of respondents Nos. 3 and 4 i.e. the State Govt. No rejoinder has been filed by the applicant to this reply.

4. In their reply the respondent State Govt. has stressed the point that the relief sought by the applicant is for consideration of his candidature for promotion to IFS under the Indian Forest Service (Appointment by Promotion) Regulations, 1966 (for short, Promotion Regulations). A reading of the averments made by the applicant will also reveal that his plea is always for being considered for promotion since he is senior and eligible. It has been stated that the applicant was coming within the zone of consideration in respect of 11 vacancies and his case was duly and properly considered by the Selection Committee and thus the relief sought by the applicant was already conceded and the OA has, therefore, become infructuous and should be dismissed on this ground itself. It has also been stated that all the 11 officers who were promoted were senior to the applicant and promotion in the cadre of DCF has no relevance for promotion to IFS as the seniority in the cadre of SFS is



required to be taken into consideration for preparation of the zone of consideration. The seniority in the SFS is reckoned from the cadre of ACF and accordingly the seniority lists issued vide orders dated 21.7.1993 and 24.12.1994 (Ann.R3/1 and R3/2) had been taken into consideration for preparation of the zone of consideration. It has also been mentioned that separate seniority of the officers in the grade of ACF and DCF has no relevance for the purpose of consideration of officers for promotion to the IFS as the seniority in the SFS, as such, is taken into consideration for preparation of the zone of consideration (emphasis added) and this is how the suitability lists have been prepared in all the preceding years. It has also been stated that the post of DCF is not a feeder post for promotion to the IFS as the expression used in Promotion Regulations is "State Forest Service" and as such only the seniority in the SFS is taken into consideration which means initial entry in the Service as ACF. It has also been stated on behalf of the State Govt. that no officer junior to the applicant in the SFS has been appointed to IFS vide notification dated 12.10.1998 and all the SFS officers so appointed were senior to the applicant in the SFS and all the officers appointed have been confirmed on the post of ACF w.e.f. 1.1.1985 like the applicant. The application has also been opposed on the ground of non-joinder of the necessary and appropriate parties since the applicant has challenged the promotion notification dated 12.10.1998 as also disputed the seniority of various officers included in the said notification; impleading Shri A.S.Chauhan who is the last person in the promotion notification would not cure the lacuna of misjoinder.

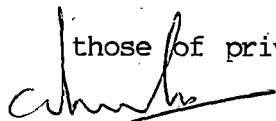
5. We have heard Shri Ajay Rastogi, counsel for the applicant and Shri U.D.Sharma, counsel for respondent Nos. 3 and 4. We have also carefully perused the material on record have gone through the relevant rules/regulations.



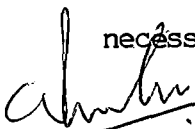
6. It does appear from the relief sought and averments made that the applicant had essentially felt aggrieved that his name was not being included in the list of suitable officers in the zone of consideration and sought relief through this OA for inclusion of his name in the said list and if found suitable, inclusion of his name among the officers promoted vide the order dated 12.10.1998. In their reply, the respondents have clearly stated that the name of the applicant was very much included in the list of suitable officers and if he did not get selected and did not find a place in the select list prepared by the Selection Committee/UPSC for the given number of vacancies, it was because he could not make it on the basis of comparative assessment which the Selection Committee makes. We have ourselves perused the record of the meeting of the Selection Committee and are satisfied that he was assessed by the Selection Committee as required under the provisions of Promotion Regulations. We, therefore, feel that the applicant has got the relief he was seeking through this OA and the OA could, therefore, be considered as having become infructuous on this count alone.

7. The applicant has also challenged the impugned promotion order dated 12.10.1998 and it was contended that it contains names of seven officers who were promoted to the post of DCF later than him. He has, however, impleaded only one of these seven officers viz. Shri A.S.Chauhan whose name finds place at Sl.No.10 of the said promotion order. As the applicant has challenged the entire impugned promotion order dated 12.10.1998, he should have arrayed all such seven officers as proper and necessary parties in this OA. The OA, therefore, also suffers from the vice of non-joinder and of proper and necessary parties.

8. The learned counsel for the applicant argued that the name of the applicant should have been placed in the list of suitable officers over those of private respondent No.5 and six other officers who were promoted

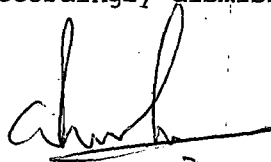


to the post of DCF later than him and if his name had been so placed, he might have been promoted to the IFS. This contention was based on the averment that the grade of DCF is the feeder grade for promotion of SFS officers to the IFS. He has drawn our attention to Rule 35(5) of the Rules of 1962. The learned counsel for the applicant has also cited the case of Fateh Chand Soni reported in 1996 SCC (L&S) 340 but we feel that it is distinguishable since it was concerned basically with the question as to whether grant of Selection Scale in Rajasthan Police Service was a promotion and also with the question of determination of seniority in the Selection Scale. On the other hand, the learned counsel for the respondents argued that the list of suitable officers has been prepared strictly in terms of Regulation 5 of the Promotion Regulations by considering the seniority of the SFS officers in the Service, which is seniority at the time of entry in the Service, which is the grade of ACF and, therefore, seniority lists for the grade of ACF have been used to prepare the list of suitable officers. It has also been contended by the respondents that the name of the applicant also figured in the said list of suitable officers and his name was duly considered by the Selection Committee/UPSC and that no officer junior to him in the Service has been promoted vide the impugned notification dated 12.10.1998. We have given our serious consideration to the rival contentions in this regard. We find that the applicant has failed to show to us that the applicant had fairly superseded in a selection process, all the seven officers who were senior to him at the time of entry into the State Forest Service. The contention of the official respondents that these seven officers were senior to the applicant in the entry level grade of ACF and none of those promoted to IFS were junior to the applicant has not been controverted by the applicant by filing any rejoinder. Apart from just one, Shri A.S. Chauhan, whose name figures at the last serial (No.10), the other six such officers, whom the applicant claims to be junior to him in DCF cadre, have also not been arrayed as proper and necessary parties by the applicant. The applicant admittedly belongs to the

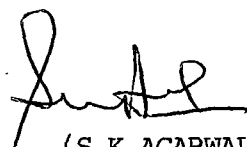


Scheduled Caste community and the applicant has not contended before us that he did not get the promotion to the post of DCF under the scheme of reservation for SC/ST. If the applicant happens to have been promoted to the post of DCF under reservation, the law recently reiterated by Hon'ble the Supreme Court in Ajit Singh-II, JT 1999 (6) SCC 631 will become applicable. In these circumstances, it will not be possible for us to accept the contention of the applicant that simply because he got promotion to the post of DCF before the seven officers who are among the list of officers promoted to the IFS vide the impugned order dated 10.12.1998, the said order should be quashed and set aside.

9. In view of above discussions, the OA does not succeed and is accordingly dismissed with no order as to costs.


(N.P.NAWANI)

Adm. Member


(S.K.AGARWAL)

Judl. Member