

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 214 of 2004

Jabalpur, this the 17<sup>th</sup> day of December, 2004

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri Madan Mohan, Judicial Member

Haresh Chandra Tiwari, S/o. Shri  
Rajeshwari Tiwari, Date of birth-  
10.10.1956, Divisional Forest Officer,  
(Working Plan), Bilaspur, R/o. DFO  
Working Plan, Bhakt Kanwar Ram Marg,  
Bilaspur - 495 001 (CG). ... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

Union of India, through its  
Secretary, Ministry of Forest and  
Environment, CGO Complex, Lodhi  
Road, New Delhi,

and 10 others. ... Respondents

(By Advocate - None)

O R D E R

By Madan Mohan, Judicial Member -

By filing this Original Application the applicant has  
claimed the following main reliefs :

"(ii) set aside the impugned orders dated 20.2.2004  
Annexure A-1 and Annexure A-2,

(iii) upon holding that the action of the official  
respondents in not considering and promoting the  
applicant by treating him to be an officer in respect  
of whom prosecution for criminal charge is pending, is  
bad in law and; accordingly, command the respondents  
to hold a review DPC and consider the case of the  
applicant on merits without treating him to be an  
officer in respect of who a prosecution for criminal  
charge is pending, for the post of Conservator of  
Forest,

(iv) on selection of the applicant on the post of  
Conservator of Forest, it be directed to provide all  
consequential benefits to him including seniority,  
arrears of wages and other benefits from the date his  
juniors and contemporaries have been promoted pursuant  
to DPC dated 12.3.2003 or in alternatively 20.2.04."

2. The brief facts of the case are that the applicant is  
holding a civil post being an Indian Forest Service 1985  
batch officer. He was served with a charge sheet. The  
applicant preferred representation against it. After

conducting the enquiry vide order dated 27.6.2003, the charge sheet and departmental enquiry was dropped/ cancelled. No other departmental enquiry or charge sheet is pending against the applicant. No adverse CR is ever communicated to the applicant. The whole service record of the applicant is clean and unblemished. Presently he is working as Divisional Forest Officer, Bilaspur in the pay scale of Rs. 12000-16500/-. He became eligible for the next selection grade in the pay scale of Rs. 14300-18300/-. The applicant's junior were considered for selection grade and the applicant's case was kept in a sealed cover because of pendency of the disciplinary enquiry aforesaid. However, on cancellation of the departmental enquiry the respondents opened the sealed cover on 27.6.2003 and issued an order dated 22.8.2003, whereby the applicant was given the said pay scale w.e.f. 30.8.2001 the date when the applicant's juniors were given the selection grade by the DPC. The private respondents i.e. respondent No. 4 to 11 are junior to the applicant. The next promotional post for the applicant is Conservator of Forest in the pay scale of Rs. 16400-20000/-. The DPC for the said post had taken place in February, 2003 and vide order dated 12.3.2003 the private respondents were promoted on the said post. Since the disciplinary proceedings were pending against the applicant, his name was not considered for promotion to the said post. Since Vide order dated 22.8.2003 the applicant was given selection grade with retrospective effect from 30.8.2001, he is well within the zone of consideration in the original DPC pursuant to which promotion order of juniors dated 12.3.2003 were issued. Accordingly, the applicant preferred a representation dated 27.8.2003, for convening a review DPC to consider the case of the applicant on the post of Conservator of Forest. Although the applicant's case was registered by the

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Lokayukt of MP, way back in the year 1999, but till date even sanction for prosecution has not been granted by the respondent No. 1 to proceed further. The applicant in his representation brought it to the notice of the respondents that in earlier DPCs other officers S/Shri D.P. Sagar, V.L. Saran and Kapoor Singh were considered for promotion and were further promoted as Conservator of Forest inspite of the fact that Lokayukt cases were registered against them and after taking consent of the State Government, the matter was sent to the Central Govt. for seeking permission of prosecution. The applicant is similarly situated to the said officers. The promotion order of the applicant have not been issued by the review DPC held on 12.9.2003. Thereafter the applicant filed a OA No. 756/2003 which was disposed of at the admission stage by the Tribunal vide order dated 3.11.2003 with a direction to the respondents to consider the representation of the applicant. The applicant promptly communicated the order of the Tribunal to the official respondents but the respondents were sitting tight over the matter for a considerable long period and vide impugned order dated 20.2.2004 rejected the applicant's representation and issued promotion orders from the post of Deputy Conservator of Forest to the post of Conservator of Forest. The applicant belongs to 1985 batch, whereas a perusal of the order dated 20.2.2004 clearly shows that the private respondents who belonged to 1986 and 1987 batches were promoted leaving aside the applicant. Hence, this OA is filed.

3. The respondents in their reply filed have stated that the representation dated 27.8.2003 submitted by the applicant was considered by a Scrutiny committee headed by Chief Secretary and consisted of Principal Secretary (Forests), Principal Chief Conservator of Forest,



Chhattisgarh and Additional Principal Chief Conservator of Forests (Administration). This meeting was held on 12.9.2003. The applicant's case for promotion was discussed in great detail by the Committee. After great deliberation the committee came to the conclusion that applicant's case is not a fit case for promotion, as his integrity is not beyond doubt. The respondent No. 2 vide letter dated 20.2.2004 informed the decision of the committee and in this letter, the reasons for rejecting the review of DPC was also assigned. Hence, the submission of the applicant that his representation for review DPC was rejected on flimsy, cryptic and illegal ground is thus devoid of substance and ill founded. The principles laid down in AIR 1991 SC 2010 is clearly distinguishable on facts and not applicable to the present case. The respondents further mentioned in the reply that while the applicant was posted as DFO, Capital Project Division, Bhopal, he was allegedly caught red handed, while accepting a bribe amounting to Rs. 10,000/- and a criminal case was registered by the Lok Ayukta, MP on 29.1.1999. The Lok Ayukta after conducting detailed enquiry, recommended his case for prosecution and Government of MP at that time had granted approval for prosecution. Since, the applicant belongs to All India Services, permission to prosecute him was obtained from the Central Government. The permission is still awaited. The respondents also submitted in the reply that at the time of DPC in the month of February, 2003 not only the outcome of Departmental enquiry was pending but permission to prosecute the applicant in Lok Ayukta case was also awaited from the Govt. of India, and the cases of S/Shri D.P. Sagar, V.L. Saran and Kapoor Singh were totally on different footings. Hence, this Original Application was liable to be dismissed.

to dispose of this Original Application by invoking the provisions of Rule 16 of CAT (Procedure) Rules, 1987.

5. The learned counsel for the applicant argued that a similar matter was considered and decided by this Tribunal in OA No. 311 of 2003 decided on 17th October, 2003.

6. We have given careful consideration to the rival contentions and carefully considering the records and pleadings find that it is an admitted fact that the applicant was caught red handed by accepting bribe of Rs. 10,000/- and a criminal case was registered by the Lok Ayukta of Madhya Pradesh on 29.1.1999. After conducting a detailed enquiry the Lok Ayukta recommended his case for prosecution and the Government of MP has also granted approval for the prosecution. Since the applicant belongs to All India Services, the matter was referred to the Government of India (central Govt.) for granting sanction to prosecute the applicant. The sanction of the Central Govt. in this regard is still awaited. As the charge levelled against the applicant is serious and the sanction of the Government of India is awaited for prosecuting the applicant in the matter, we are of the considered view that the applicant is not entitled to get any relief sought for in this OA. The Hon'ble Supreme Court in the case of Union of India Vs. Kewal Kumar, (1993) 24 ATC 770 held that "The question to examine in each case, is : Whether, the decision to initiate the disciplinary proceedings had been taken or steps for criminal prosecution initiated before the date on which the DPC made the selection? The decision would depend on the facts of the case, keeping in view the object sought to be achieved by adopting the sealed cover procedure. Where the CBI had recorded the FIR; sent the same to the superior authorities.

of the respondent for taking necessary action; and the competent authority had taken the decision, on the basis of the FIR, to initiate disciplinary proceedings against the respondent for imposition of major penalty, the sealed cover procedure is attracted to avoid promoting the respondent, unless exonerated of those charges. These facts which led to the adoption of the sealed cover procedure undoubtedly very material to adjudge the suitability of a person for promotion to higher post. When the competent authority takes the decision to initiate a disciplinary proceeding or steps are taken for launching a criminal prosecution against the Government servant, he cannot be given the promotion, unless exonerated, even if the Government servant is recommended for promotion by the DPC, being found suitable otherwise." In the instant case as stated above the criminal case has already been registered against the applicant and the State Govt. has granted approval for prosecution. Therefore, keeping in view the verdict of the Hon'ble Supreme Court in the aforesaid case the applicant is not entitled to get any relief. In this view of the matter the Original Application is dismissed as having no merits. No costs.

(Madan Mohan)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

"SA"

पूछांकन सं. ओ/व्हो..... जवलपुर, दि.....

यादिलिति ओ/वो जिल:-

- (1) सरपिल, राजा नारायण वार मुख्यमन्त्री, जवलपुर  
(2) अधिकारी श्री/महाराजा/..... के कार्यसल  
(3) प्रसादी श्री/महाराजा/..... के कार्यसल  
(4) विधायक, दोपांडा, नारायण वार, जवलपुर  
सूचना एवं अनुदर्शन कार्यालय, जवलपुर

S. Govt. No. 221

P. Shriya Regarun

23/1/2017

अप्रैल 2017

लिखा

Issued  
On 22-12-2017