

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
CIRCUIT COURT SITTING AT BILASPUR
Original Applications No 958 of 2004

Jabalpur, this the 3rd day of August, 2005.

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

I.H.Khan
S/o Shri I.H. Khan
Aged about 56 years,
R/o 72, sundar Nagar, Raipur

Applicant

(By Advocate - Shri S.Paul)

VERSUS

1. Union of India
Through its Secretary
Ministry of Forest & Environment
Govt. of India,
New Delhi.
 2. The Union Public Service Commission,
Through its Secretary
Dhaulpur House
Shahjahan Road,
New Delhi.
 3. The State of Chhattisgarh
Through its Principal Secretary
Forest Department
Raipur.
 4. The Principal Chief Conservator of Forest
State of Chhattisgarh
Raipur
- Respondents

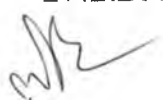
(By Advocate - Shri A.P. Khare) for respondents No.1 & 2
Shri Ajay Ojha for respondent Nos 3 & 4

O R D E R

M.P. Singh, Vice Chairman -

By filing this Original Application, the applicants have sought
the following main reliefs :-

“(ii) Upon holding that the inaction of the respondents in not
deleting the word ‘provisional’ from notification dated
27.2.2003 and not treating the applicant as regular/substantive



IFS from 1.1.2001 is bad in law, command the respondents to consider the treat the applicant as regular IFS from 1.1.2001 with all consequential benefits including seniority, arrears of wages and other attendant benefits arising thereto.

2. The brief facts of the case are that the applicant is a member of the State Forest service of Chhattisgarh. He was promoted as Assistant Conservator of Forest vide order dated 17.8.1987. The disciplinary proceedings were initiated against him by the Government and after concluding the enquiry, a penalty of withholding of one increment without cumulative effect and refunding of an amount of Rs. 1,14,215/- was imposed on the applicant vide order dated 8.5.2003. In the meantime the applicant has been considered by the selection committee for induction into Indian Forest Service under IFS (Appointment by Promotion) Regulations for the vacancies of the years 2001 and 2002. Since the disciplinary proceedings were pending against the applicant, his selection was made on provisional basis and the applicant could not be appointed to IFS as he was not clear from vigilance angle. Subsequently, he had filed a Writ Petition No. 329/03 and the Hon'ble High Court vide its order dated 26.4.2004 has passed the following order :-


"28. In the result, the petition of the petitioner is partly allowed. Order dated 8.5.2003 of the Disciplinary Authority withholding one increment without cumulative effect and for recovery of 60% amount of Rs.1,90,458-35 ps. i.e. Rs.1,14,275/- is quashed and respondents 2 & 3 are directed to consider the case of the petitioner for grant of Selection grade in accordance with law. The matter is lingering on since 1987, thereby about 17 years time has elapsed and even then the Department has not been able to prove the charge against the petitioner, therefore, it is expected that now, the Department will think to give the matter finally.

3. The contention of the applicant is that since the penalty imposed by the disciplinary authority stood quashed by the Hon'ble High Court, he should have been inducted into IFS on the basis of his selection made by the selection committee which met on 9.12.2002

for preparing the yearwise select list of 2001 and 2002. Since the respondents have not inducted him into IFS, he has filed this OA.

4. The UPSC i.e the respondent No.2 in their reply have stated that a meeting of the selection committee was held on 9.12.2002 to prepare the year-wise select list for the years 2001 & 2002 for promotion of State Forest Service officers to the IFS of Chhattisgarh cadre against 6 (six) and 4 (four) vacancies respectively determined by the Government of India. Accordingly the zone of consideration for the years 2001 and 2002 was 18 and 12 respectively. The committee considered the name of the applicant at S.No.4 in the eligibility list for the year 2001. On an over all assessment of his service records up to the year 1999-2000 the Committee assessed the applicant as 'Very Good'. On the basis of this assessment his name was included in the select of 2001 at Sr.No.3. However, his name was provisionally included in the list of suitable officers, subject to clearance of the disciplinary proceedings pending against him. In terms of Regulation 7(4) of the IFS (Appointment by Promotion) Regulations, this select list was valid till 24.7.2003. As per the Promotion Regulations, an officer's name can be made unconditional only when and if a proposal for the same is received from the State Government while the Select List is still valid. In the present case, during the validity of the select list, the Commission did not receive any proposal from the State Government for making the name of the applicant as unconditional. Therefore, the applicant could not be appointed to the IFS cadre of Chhattisgarh from the select list of 2001.

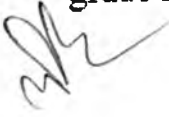
4.1 The respondent-UPSC have further submitted that the Committee considered the name of the applicant for the year 2002 in addition to the normal zone of consideration under the 2nd proviso to Regulation 5(4) of the IFS (Appointment by Promotion) Regulations, 1966. On an over all assessment of his service records, upto the year 2000-2001, the Committee graded the applicant as 'Very Good'. On



the basis of this assessment his name was included as serial no.1A in the select list of 2002, in addition to the normal size of the select list and subject to the clearance of disciplinary proceedings pending against him. During the validity of these select lists, the Commission did not receive any proposal from the State Government for making the applicant's name as unconditional and, therefore, the Government of India, Ministry of Environment and Forests, could not appoint the applicant to the IFS cadre from either the select list of 2001 or 2002.

4.2 The respondent-UPSC have further stated that for the subsequent year 2003, the selection committee meeting was held on 10.10.2003 to prepare the select list of 2003. The name of the applicant was considered at serial no.1A of the eligibility list under 1st proviso to Regulation 5(3) as his name was provisionally included in the select list of 2002 and he had not been appointed to the IFS. The State Government informed that a penalty of withholding an increment with non-cumulative effect and recovery of Rs.1,14,275/- was imposed on the applicant vide order dated 8.5.2003. Since the penalty was in currency as on the date of the meeting of the Selection Committee, the committee graded him as 'unfit' on an overall assessment of his service records. Thus, his name was not included in the select list of 2003. As per the procedure adopted by the selection committee, State Service officers undergoing currency of penalty are not recommended for promotion. This select list was approved by the Commission on 4.12.2003 and ceased to be in force on 3.2.2004.

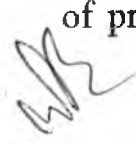
4.3 The respondent-UPSC have further submitted that the State Government vide their letter dated 31.7.2004, i.e. after the select list of 2003 ceased to be in force, informed that the applicant had filed writ petition no.329/2003 challenging the order of punishment. The Hon'ble High Court vide its order dated 26.4.2004 partly allowed the writ petition by quashing the order of punishment dated 8.5.2003. The Hon'ble High Court has also directed the respondent State Government to consider the case of the applicant for grant of selection grade in the State Forest Service.



4.4 The respondent-UPSC have also submitted that the validity of the select lists for the years 2001 and 2002 remained in force till 24.4.2003 as per the Promotion Regulations. The disciplinary proceedings which were pending against the applicant culminated into a punishment vide State Government's order dated 8.5.2003. The said punishment was quashed by the Hon'ble High Court vide their order dated 26.4.2004, but by that time the select lists of 2001 and 2002 had ceased to exist.

5. The respondent-State Government of Chhattisgarh have filed their reply more or less on the same lines as that of respondent-UPSC.


6. The respondent no.1- Union of India, in their reply have stated that the applicant was included in the select lists of 2001 and 2002 at serial nos. 3 and 2 respectively, as provisional, on account of pending disciplinary proceedings against him. The applicant was, however, not included in the select list of 2003. According to the Promotion Regulations, the candidates who are included in the select lists as provisional cannot be appointed unless the name of such candidates is made unconditional by the UPSC on the basis of the recommendations of the State Government. Since the inclusion of the applicant in the select lists was not continuous, he cannot claim any relief for appointment from the select list of 2001. The disciplinary proceedings against the applicant have been closed only in 2004. It is for the State Government now to take follow up action for making his name unconditional and recommending to the UPSC accordingly. There is no action pending on the part of the Central Government in this matter, till such recommendation is made by the State Government to the UPSC, and the UPSC recommends his appointment. The respondent- UOI have further submitted that the name of the applicant can be considered for inclusion in the select list after the State Government recommends his name as unconditional for the purpose of promotion to the IFS and sends the requisite integrity clearance.



Upon receipt of the recommendations of the UPSC for inclusion of his name as unconditional, the Central Government can consider his name for promotion to the IFS. The Central Government in the Ministry of Environment and Forests has not so far received any proposal in this behalf.

7. Heard the learned counsel of parties and perused the records carefully. We have also given careful consideration to the rival contentions.

8. The undisputed facts of the case are that the applicant, who is a member of the State Forest Service was considered for promotion for induction to the IFS by the selection committee in its meeting held on 9.12.2002 for preparing the yearwise select lists of 2001 and 2002. The applicant was assessed as 'very good' and included in the select list of 2001 at serial no.3. He was also considered for the select list of 2002 and included at serial no.1-A. Since disciplinary proceedings were pending against the applicant during that period, his name was included as provisional. Thereafter, a penalty of withholding of one increment without cumulative effect was imposed on the applicant vide order dated 8.5.2003. By that time the validity of the select lists of 2001 and 2002 has also expired. A meeting of the selection committee was held on 10.10.2003 to prepare the select list of 2003. Since the applicant was undergoing punishment during that period, the selection committee has assessed the applicant as unfit, as per procedure adopted by the Selection Committee. Thereafter, the applicant had filed a writ petition no.329/2003 and the Hon'ble High Court vide its order dated 26.4.2004 have quashed the disciplinary proceedings and have directed the respondents to consider the applicant for grant of selection grade in the State Forest Service. Since the High Court has quashed the penalty imposed on the applicant, the applicant stands exonerated of the charges leveled against him. The net result of the order passed by the Hon'ble High Court would be that the penalty has become non-est and, therefore, the name of the applicant included in the select lists of 2001 and 2002, as provisional,



will also undergo a change. As rightly mentioned by the respondent-UIO in their reply that the respondent-State Government has now to take action by sending the requisite integrity clearance and request the UPSC to make his name unconditional and thereafter the Central Government could consider the applicant for promotion to the IFS. In view of the facts mentioned above, the proceedings of the selection committee which met on 9.12.2002 to prepare the yearwise select lists of 2001 and 2002 require to be reviewed.

9. In the result, the O.A. is allowed. The respondents are directed to take immediate steps to convene a meeting of the selection committee to review the proceedings of the selection committee meeting held on 9.12.2002 and consider the case of the applicant for promotion to IFS of Chhattisgarh cadre for the select list of 2001, by taking into consideration the order dated 26.4.2004 passed by the Hon'ble High Court in writ petition no.329/03, whereby the disciplinary proceedings have been quashed against the applicant. If the applicant is found suitable, he should be promoted to the IFS from the date his immediate junior was promoted into IFS, with all consequential benefits. This exercise should be completed within a period of two months from the date of communication of this order. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

पूठकम सं ओ/व्या.....जबलपुर, दि.....

प तिलिपि अजो शित:-

- (1) सतिव, उच्च न्यायालय वार एडमिनिस्ट्रेशन, जबलपुर
- (2) आर्केस्ट वी/श्रीमती/रतु..... के वडाउराल
- (3) प्रसयी श्री/श्रीमती/रतु..... के वडाउराल
- (4) वंथपाल, के.प्र.अ., जबलपुर न्यायपीठ

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

S. P. Raw D. N. M. S.
D. P. Khare D. N. M. S.
D. P. Khare D. N. M. S.

Filed
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5-8-05