

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

Original Application No. 568 of 2003

Bilaspur, this the 18th day of March, 2005

CORAM

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

N.K.Jadhav

I.F.S.

S/O Shri N.B.Jadhave

Dy.Conservator of Forests

D.F.O., Damoh (M.P.).

Applicant

(By advocate Shri K.S.Wadhwa)

Versus

1. Union of India through
The Secretary
Ministry of Environment & Forest
Paryaravan Bhavan
CGO Complex
Lodhi Road, New Delhi.
2. The State of Madhya Pradesh
Through the Principal Secretary
Forest Department Mantralaya
Bhopal.
3. The Princial Chief Conservator of Forest
Governement of M.P., Bhopal.
4. Mr.Harbans Singh
Minister of Forest Department
Government of M.P.,
Bhopal.

Respondents

(By advocate : Shri B.da. Silva)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant has sought the following main reliefs:

- (i) To quash the communication dated 3.7.03 Annexure A6 as being illegal and arbitrary.

- (ii) To direct the respondents to issue orders granting the applicant selection grade from the date his juniors were granted.
- (iii) To direct the respondents to promote the applicant to the post of Conservator of Forest in pursuance to the recommendation of the DPC from the date when his juniors were promoted with all consequential benefits.

2. The brief facts of the case are that the applicant was appointed to the State Forest Service and after completing requisite years of service was eligible for consideration to the All India Service. The respondents issued notification on 14.12.88 by which they did not notify the applicant to the IFS. Hence he filed an OA which was allowed by the Tribunal holding that the applicant is entitled to be notified for appointment to the IFS in pursuance to the select list which was approved by the UPSC on 3.7.87. The respondents issued a notification on 29.2.94 appointing the applicant to the IFS w.e.f.14.12.88. The Tribunal vide its order dated 7.11.94 ordered that as the State Government had sent the proposal dated 15.12.87 it was clear that the vacancy existed on that date. The Tribunal directed the respondents to implement the proposal dated 15.12.87 and make appointment of the applicant and further held that the select list of 1987 had come to an end on 24.6.88 when the application of the UPSC was received for the next select list. In pursuance of the direction the UOI vide its notification dated 23.1.95 substituted the date of promotion of the applicant from 15.12.87. Even after the issuance of the direction by the Tribunal in the OA and in the execution application, the respondents did not fully comply with the decision of granting seniority to the applicant. Again the applicant moved an application for execution of the order by filing a fresh application through an MA No.1128/2001. The respondents did not grant consequential benefit of seniority and pay fixation. The respondents vide order dated 4.9.2001 had assigned the seniority of the applicant by fixing the year of allotment as 1983 and to place the name of the applicant below A.K.Choudhary (Annexure A4). A gradation list was issued showing the position as on 1.4.02 with regard to IFS officers borne on the M.P. cadre and the name of the applicant is placed at Sl.No.104. As

on 1.5.2001 there were 16 posts vacant of selection grade plus 7 posts of deputation totaling 23 posts which were to be filled up. The zone of consideration for promotion to the selection grade post was 1983 batch to 1985 batch. In the DPC which was held on 10.5.2001 the case of the applicant could not be considered as the Govt. of India did not assign the year of allotment. The respondents after assigning the year of allotment to the applicant convened a DPC on 27.3.02 for promotion to the post of Conservator of Forest. The applicant was within the zone of consideration and found fit for promotion to the post of Conservator of Forest. No order of promotion was issued in spite of the fact that there were 4 vacancies of Conservator of Forest who were to retire during the year. The respondents considered the case of officers mentioned in the gradation list from Sl.No.91 to 106. The contention of the respondents that due to non-availability of the post, promotion order of the applicant could not be issued in pursuance of the recommendation made by the DPC dated 27.3.02 is absolutely false, misconceived and contrary to the records of the respondents. The respondents convened a review DPC on 29.4.02 for grant of selection grade and in the said DPC as per the information received the applicant was again found fit along with his junior U.Prakasham and others. No orders granting him selection grade was issued but his juniors were granted selection grade. The respondents having found the applicant fit for promotion in the DPC held on 27.3.02 cannot now come forward and say the applicant was not found fit for promotion in the subsequent DPC held on 29.4.02. The respondents in great haste convened another DP C on 17.2.2003. His records for the year 2002 were outstanding but he has not been granted selection grade. The DPC which was held in February 2003 could not have been convened as till such time the earlier list approved is exhausted and vacancy is filled up. The whole action of the respondents is liable to be quashed. Hence this OA is filed.

3. None is present for the applicant. Hence the provision of Rule 15 of the CAT (Procedure) Rules, 1987 is invoked.

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4. Heard the learned counsel for the respondents who argued that the eligibility criteria for promotion to the post of Conservator of Forests requires a candidate to be first extended the benefit of selection grade before he can be promoted to the post of Conservator of Forests. In the instant case, the applicant was recommended by the DPC but he was not extended the benefit of selection grade as the recommendations of the DPC were not accepted by the State Government/respondents. The DPC while considering the case of the applicant for selection grade had given him a higher grading than that reflected from his ACRs. The learned counsel for the respondents further argued that the recommendations of the DPC are not binding on the respondents. The respondents can disagree with the recommendations of the DPC by way of a speaking order as the respondents did not find any justification in upgrading the ACRs. The applicant was considered by both the DPCs and being found unfit for selection grade was denied promotion to the post of C.F. Hence the action of the respondents is perfectly legal and justified.

5. After hearing the learned counsel for the respondents and on perusal of the ACR dossiers of the applicant as well as the minutes of the selection committee which met on 17.2.2003 for grant of selection grade to the IFS Officers, we find that during the years 1997 to 2002 the applicant has either been granted as outstanding or very good except in the ACR for the year 1998 and 2000. In the year 1998 the applicant has been granted as good by the DPC and in the year 2000 the applicant has been granted as average.

5.1 As regards the ACR for the year ending 31st March, 2000, we find that the reporting officer has graded the applicant as 'good' but the reviewing authority has upgraded his ACR to 'Very good' by giving sufficient reasons. The Additional Principal Chief Conservator of Forests has accepted this ACR of the applicant. However, the Principal Chief Conservator of Forests has down graded the ACR of the applicant as 'average' and stated that "I agree with reporting officer and assess him as

'average' grade officer". We find that the reporting officer has graded the applicant as good. Thus, the remarks recorded by the Principal Chief Conservator of Forests Mr. R.D. Sharma in the ACR of the applicant for the year 2000 cannot be accepted as he has not given any sufficient reasons for down grading the ACR of the applicant from very good to average. The Hon'ble Supreme Court in the case of U.P. Jal Nigam and Ors. Vs. Prabhat Chandra Jain and Ors.,

(1996) 2 SCC 363 has held that "As we view it the extreme illustration given by the High Court may reflect an adverse element compulsorily communicable, but if the graded entry is of going a step down, like falling from 'very good' to 'good' that may not ordinarily be an adverse entry since both are a positive grading. All that is required by the authority recording confidentials in the situation is to record reasons for such downgrading on the personal file of the officer concerned, and inform him of the change in the form of an advice." In the instant case we have seen the ACR of the applicant and find that down grading has been made from very good to average & no reason for the change is mentioned. We also find that in the meeting of DPC held on 10.5.2001 the applicant's ACR for the year 2000 had also been upgraded to Very good by the members of the DPC. Keeping in view the aforesaid discussion, the ACR of the applicant for the year ending 31st March, 2000 should be treated as very good.

5.2. As regards the meeting of the DPC which met on 17.2.2003, we find that one Mr. V.N. Ambade (1988 as year of allotment) who is much junior to the applicant as the year of allotment of the applicant is 1983, has been granted the selection grade, whereas the applicant has not been recommended. The gradings of the applicant as well as of Shri V.N. Ambade during the relevant period from 1997 to 2002 is as under :

	1997	1998	1999	2000	2001	2002
Applicant	VG	G	VG	VG	VG	O
Mr. V.N. Ambade	VG	VG	VG	VG	G	O

Note - G- Good
VG- Very Good
O- Outstanding

From the above it is clear that the said Mr. V.N. Ambade does not have superior record as compared to the applicant for the relevant period, but he has been granted the selection grade whereas the applicant has not been granted. This amounts to hostile discrimination. Hence, the impugned order dated 3.7.2003 (Annexure A-6) by which the applicant's representations were rejected is liable to be quashed and set aside.

review

5.3. As regards the DPC which met on 29.4.2002, we find that the review DPC has considered the case of the applicant as on 10.5.2001. The criteria fixed by the DPC which met on 10.5.2001 was that the overall assessment of the last 5 years should be very good. But for the year 1996 the applicant was graded as good. Thus he was not found fit for the selection grade by the DPC. We have also perused the ACRs of the applicant for the year 1996 and find that the applicant in this year has been graded as good. In this view of the matter we do not find any irregularity and illegality has been committed by the review DPC which met on 29.4.2002 holding the applicant as unfit for grant of selection grade.

6. Considering all the facts and circumstances of the case, the Original Application is partly allowed and the impugned order dated 3.7.2003 (Annexure A-6) by which the applicants's representations were rejected is quashed and set aside. The respondents are directed to convene a DPC to review the minutes of the DPC which met on 17.2.2003 and consider the case of the applicant for grant of selection grade from the date his juniors were granted keeping in view the aforesaid observations made by us in this judgment. within a period of three months from the date of receipt of a copy of

this order. If the applicant is found fit for grant of the selection grade, he may be granted all consequential benefits within the period stipulated above. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"/aa.

पृष्ठांकन से ओ/जस.....जवलपुर, दि.....
प्रतिनिधि का स्थान:-
(1) सचिव, जवलपुर.....काउंसल
(2) आदेशदाता श्री/श्रीमती.....काउंसल
(3) प्रत्यक्षी श्री/श्रीमती.....काउंसल
(4) अध्यक्ष, कोषाध्यक्ष, जवलपुर.....काउंसल
सूचना एवं आवश्यक कार्यवाही हेतु

K.S. Wadhawa
B.D. Singh
B.D. Singh
S. Y. Singh

Issued
On 22.8.05
BS