

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 146 of 2001

Jabalpur, this the 15th day of June 2004

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

Subhash Vasantryao Kharate,
son of Shri Vasantryao Kharate,
aged about 59 years,
Occupation - Assistant Conservator of
Forests, attached officer in the office
of Conservator of Forests, Ujjain,
Distt. Ujjain (MP).

... Applicant

(By Advocate - Shri N.S. Ruprah)

V e r s u s

1. Union of India,
through Secretary,
Forest and Environment Deptt.
New Delhi.
2. Union Public Service Commission,
through Secretary, Dhoulpur House,
New Delhi.
3. State of M.P. Through Secretary,
Forest Department, Govt. of MP,
Bhopal (MP).

... Respondents

(By Advocates - Shri B.da.Silva for respondent No. 1,
Shri Harshit Patel on behalf of Shri
S.C. Sharma on behalf of respondent No. 2
and Shri Om Namdeo on behalf of respondent
No. 3)

O R D E R

By Madan Mohan, Judicial Member -


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

"ii) to direct the respondents to implement the
promotion order dated 21.3.1997 Annexure A-4 and the
reinstatement order dated 28.4.2000 Annexure A-6
immediately by promoting the applicant to the cadre
of IFS wef 1994,

iii) to pass any such other orders as this
Hon'ble Tribunal may deem fit under the circumstance
of the case including as to the payment of difference
in salary, if any."

2. The brief facts of the case are that the applicant
was appointed as Forest Range Officer on 3.10.1962. He was

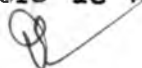
promoted to the post of Assistant Conservator of Forests on 26.6.1975. In the seniority list dated 1.4.1996 of ACF the name of the applicant finds place at serial No. 9 and in the seniority list dated 1.10.2000 the name of the applicant finds place at serial No. 1. The applicant was considered for the promotion to the Indian Forest Service under the IFS (Appointment by Promotion) Regulation, 1966. The applicant was duly selection alongwith 13 others. The selection proceedings were held on 21.3.1997. The applicant was facing suspension from 14.2.1994 because of a false and fabricated case against him arising out of an incident dated 14.9.1987. The allegation against the applicant was that he was having assets which were having a value of Rs. 60,000/- more than his explainable by his own source of income. Under these circumstances a case under the Prevention of Corruption Act was framed against the applicant. The applicant was reinstated on 7.9.1994 but in the Session Trial, the applicant was convicted under Sections 5(1)(c) read with 5(2) of the Prevention of Corruption Act, 1947 and was sentenced to undergo one year R.I. and fine of Rs. 60,000/- on the ground that the assets of the applicant were found to be of such value out of Rs. 60,000/- could not be explained. The applicant preferred an appeal No. CA/904/1997 against his conviction and sentence dated 17.9.1997. The criminal appeal was allowed vide order passed by the Hon'ble High Court on 3.1.2000 and the applicant was acquitted of the alleged charges. The acquittal of the applicant was honourable and not even an iota of stigma remained. Finally an order has been passed wherein the applicant was reinstated and the entire period of suspension and dismissal was considered as period on duty for all purposes. The applicant has also been paid the arrears and salary alongwith the increments for the entire period of suspension and dismissal. The applicant



immediately joined on 1.5.2000. After joining the applicant gave a representation dated 8.5.2000, making a request for confirmation of promotion to the IFS cadre. No action has been taken by the respondents on his representation. The applicant without any fault on his part has already suffered great financial hardship as also the social stigma of conviction in a criminal case and dismissal from service for a period of nearly 3 years. Now the interest of justice demand that the orders passed in favour of the applicant be atleast implemented in the fag end of his service.

3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that now the applicant has retired from service. He further submitted that the applicant was considered for promotion to IFS cadre and was duly selected with 13 others. The selection proceedings were held on 21.3.1997. On that day a criminal trial was pending against the applicant, hence his promotion was not considered. Subsequently after passing the judgment of the Hon'ble High Court dated 3.1.2000, the applicant was reinstated and the respondents had paid his whole arrears of salary etc but has not considered his promotion, while he was entitled for his promotion from 21.3.1997. The applicant has drawn our attention towards the judgment of the Hon'ble Supreme Court in the case of Sulekhchand and Salek Chand Vs. Commissioner of Police and Others, 1994 Supp(3) SCC 674, in which the Hon'ble Supreme Court has held that "once the acquittal was on merits the necessary consequence would be that the delinquent is entitled to reinstatement as if there is no blot on his service and the need for the



departmental enquiry is obviated. The material on the basis of which his promotion was denied was the sole ground of the prosecution under Section 5(2) and that ground when did not subsist, the same would not furnish the basis for DPC to overlook his promotion. Moreover, since the departmental enquiry was itself dropped the very foundation of which the DPC had proceeded is clearly illegal. The appellant is entitled to the promotion with effect from the date his immediate junior was promoted with all consequential benefits. Hence the applicant is entitled for all the consequential benefits and he should be treated as promoted with effect from 21.3.1997.

5. The learned counsel for the respondents argued that the applicant has retired from service and he should have obtained the integrity certificate from the respondents. After passing the judgment of acquittal by the Hon'ble High Court the respondents have paid all the arrears of his salary and other due benefits of his service. The case of the applicant was not considered for promotion because a criminal trial was pending against him on the date of his consideration for promotion i.e. on 21.3.1997.

6. After hearing the learned counsel for the parties and on careful perusal of the records we find that the applicant was considered for promotion to the IFS in the selection proceedings held on 21.3.1997. The applicant was selected alongwith other 13 candidates. We have also perused the relevant records relating to his promotion and we find that there is nothing adverse against his work, conduct and integrity. We have also perused the the Hon'ble Supreme Court in the case of judgment of Sulekhchand and Salek Chand (*supra*), and we find that the facts of this case is similar to the present

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case. Hence we are of the considered opinion that the applicant is entitled for promotion to IFS with effect from the date his immediate juniors have been promoted i.e. from 21.3.1997 with all consequential benefits. Accordingly, the respondents are directed to promote the applicant to IFS with effect from the date his immediate juniors have been promoted i.e. from 21.3.1997. Further the respondents are also directed to grant the applicant all consequential benefits within a period of four months from the date of receipt of copy of this order.

7. Accordingly, the Original Application is allowed.
No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

पृष्ठांकन सं. ओ/न्या. जयपुर, दि.
प्रतिनिधि नाम :-

- (1) राक्षस, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जयपुर
 - (2) अवेकश श्री/श्रीमती/कु. के काउंसल N S Rupach
 - (3) प्रत्यक्षी श्री/श्रीमती/कु. के काउंसल B. dambra
 - (4) कायस्थ, कोषाज, जयपुर जयपुरी 3 SC Sharma
- समस्त एवं आवश्यक कागजाती हेतु
21.6.04

Issued
On 21-6-04
PS