

OA.No.170/00483/2017/CAT/Bangalore Bench
**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00483/2017

DATED THIS THE 19th DAY OF JUNE, 2018

HON'BLE DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Sri.B.J.Hosmath
S/o.Sri.J.R.Hosmath
Aged about 61 years
Retired Principal Chief Conservator of Forests
C/o.S.S.Hiremath
#2A 2nd Cross, Patel Pille Gowda Layout
Ramchandrapura, Vidyaranyapuram
Bangalore-560 013.

.....Applicant

(By Advocate M/s.B.B.Bajentri Assts.)

Vs.

1. Union of India
Represented by its Secretary
Ministry of Environment and Forests
Department of Forests and Wildlife
Paryavarna Bhavan, CGO Complex
New Delhi-110003.
2. The Secretary to Government of India
Department of Personnel & Training
North Block
New Delhi-110 001.
3. The State of Karnataka
Represented by its Chief Secretary
Department of Personnel and Administrative
Reforms (Services-IV), Vidhana Soudha
Bangalore-560 001.
4. Special Selection Committee for
Selection to the posts of PCCF (Head of
Forest Force) in Apex Scale of IFS
Represented by its Chairperson
The Chief Secretary to Government
of Karnataka, Vidhana Soudha
Bangalore-560 001.
5. Sri.Kishan Singh Sugara
Aged about 59 years
Principal Chief Conservator of Forests

and HOFF, Aranya Bhavan
18th Cross, Malleswaram
Bangalore-560 003.

6. The Additional Chief Secretary
Forest, Ecology & Environment Dept.
M.S.Buildings, Sachivalaya-II
Bangalore-560 001.

....Respondents

(By Advocates Sri V.N.Holla for R1 & 2 and Sri T.S.Mahantesh for R3, 4 & 6)

O R D E R

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicant aggrieved by his non-promotion to the post of Principal Chief Conservator of Forests(PCCF)(Head of Forest Forces) in the Apex scale has filed the present OA seeking the following relief:

i.To call for records relating to issue of the impugned order bearing No.DPAR 31 SFP 2017 dated 28.04.2017 vide Annexure-A8 and Endorsement No.SI.Aa.Ee.104 SFP 2017 dated 11.08.2017 of the 3rd respondent vide Annexure-A10 and after perusal set aside the same.

ii.To quash the proceedings of the 4th respondent dated 06.04.2017 vide Annexure-A7, on the ground that the same contrary to guidelines issued by the 1st respondent and Indian Forest Service Pay Rules 2016, in so far as it relates to forwarding the assessment of the applicant and 5th respondent are concerned;

iii.To direct the 3rd respondent to promote the applicant to the post of Principal Chief Conservator of Forests & Head of Forest Forces, retrospectively with effect from 28.04.2017 and grant him the Apex Scale of Rs.80,000/- (fixed) Grade Pay and grant all consequential benefits that the applicant is entitled to and grant all such retrospective promotions.

2. According to the applicant, he belonged to 1982 batch of Indian Forest

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Service Officer borne on Karnataka Cadre and was promoted to Super Time Scale on 20.03.1997. In the list of officers borne on Karnataka Cadre of IFS as on 01.01.2017, the name of the applicant appears at Sl.No.2 while the name of the 5th respondent is at Sl.No.3. He submits that the 2nd respondent by way of notification dtd.27.09.2008(Annexure-A2) has amended the Rule 3 (1) (D) (iii) of IFS (Pay) Rules and the existing IFS cadre post of Principal Chief Conservator of Forests, Karnataka; which was in the “above Super Time Scale (HAG+) of Rs.75,500/- (Annual increment at 3%) – Rs.80,000/- (fixed), Grade Pay- Nil” was upgraded and designated as Principal Chief Conservator of Forests (Head of Forest Force) (PCCF (HOFF) for short) from 27.9.2008. The said post had to be filled up by ‘selection’ from amongst the IFS officers, holding the post of PCCF in the State Cadre. Pursuant to the notification dtd.27.09.2008, the 3rd respondent by order dtd.10.02.2009(Annexure-A3) upgraded and designated the existing IFS cadre post of Principal Chief Conservator of Forests as Principal Chief Conservator of Forests (Head of Forest Force), Karnataka, Bangalore in the ‘Above Super Time Apex Scale of Rs.80000/- (fixed), Grade Pay- nil w.e.f. 27.9.2008, i.e. the date of issue of notification of IFS (Pay) Amendment Rules 2008. The notification also stated that the post of PCCF (HoFF) shall be filled by selection from amongst the IFS officers holding the post of PCCF in the State Cadre as per Note 2 below Rule 3 (1) (D) of IFS Pay 2nd Amendment Rules, 2008. The 3rd respondent, in terms of the letter dtd.16.04.2009(Annexure-A4) has constituted a Special Selection Committee for selection to the post of PCCF(Head of the Forest Force) in the Apex Scale of IFS(Annexure-A5).

3. According to the applicant, he was working as Principal Chief Conservator of Forests(Wildlife) from 1.4.2016 in the HAG+Scale of Rs.2,05,100-2,24,400 and was eligible for being considered for the selection as PCCF(HoFF)-

Karnataka, in the Apex scale-level 17 of Rs.2,25,000. In terms of IFS (Pay) Rules, 2016(Annexure-A6), the appointment to the Selection Grade and to posts carrying pay above selection grade in the Indian Forest Service shall be made by selection on merit, as per criteria that may be prescribed by the Central Government, with due regard to seniority. The Special Selection Committee Meeting for selection to the post of PCCF(HoFF) met on 6.4.2017 and considered the names of the three officers in the order of seniority. The applicant being the senior most has been followed by the 5th respondent at Serial No.2 and Sri Ashok Kumar Garg at Serial No.3. The Special Selection Committee considering the eligibility of the each of the three officers with reference to all relevant factors namely outstanding merit, competency, absolute integrity and suitability for the post, came to the conclusion that all the three officers under consideration are placed similarly. However, the Committee ignored the seniority, having found all the three officers similarly placed in all relevant factors, proceeded to place the assessment before the 3rd respondent for consideration for appointment as PCCF(HOFF) Karnataka in the Apex Scale by referring 'balance of service left before superannuation' as criteria for selection(Annexure-A7). Thereafter, the 3rd respondent appointed the 5th respondent who was junior to the applicant and the case of the applicant was ignored only on the ground that he was left only with one month service though it was not a relevant factor to be considered by the Selection Committee. Aggrieved by his non-selection, the applicant submitted a representation dtd.22.5.2017(Annexure-A9). However, the same was not considered prior to his superannuation on 30.04.2017. Subsequently, they sent a communication dtd.11.08.2017(Annexure-A10) saying that since his claim for promotion as PCCF (HoFF) was not considered, it is not possible to consider his case for grant of Apex Scale of Indian Forest Service. Aggrieved

by the same, the applicant has preferred this OA seeking the relief as earlier mentioned.

4. The applicant further mentioned that in the guidelines to be followed for selection to the post of PCCF(HoFF), the criteria of tenure left has not been prescribed. Therefore, while holding that the applicant as well as all the three officers are similarly placed, the action of the Special Selection Committee in holding the assessment of the three officers for consideration by the 3rd respondent keeping in view balance of service left before superannuation is blatantly illegal and violates the mandatory guidelines. He further mentioned that the State Government has considered the case of one Sri Ashok Kumar Singh when he had a left over service of three months only. He also referred to the promotion orders of Indian Forest Service officers and similar officers in Government of Tamilnadu, Kerala and Assam where officers were allowed to hold the Apex Scale post for shorter period and the issue of balance of service left before superannuation has not been taken by the Government for consideration. He has also referred to the judgment of the Hon'ble Apex Court in *Union of India vs. Mohan Lal Capoor & Ors. in AIR 1974 SC 87* wherein it was held that the merit and suitability of two eligible candidates when come to a conclusion, seniority would tilt the scale. He has also referred to an order of this Tribunal in OA.No.59/2010(Annexure-A17) wherein the Tribunal had quashed the order of the Special Selection Committee which has failed to give credence to the seniority of the applicant over the 5th respondent who are equally meritorious saying that the decision making process is against the statutory rules in force. Therefore, he prayed for granting the relief sought by him.

5. The State Government in the reply statement have referred to the Constitution

of Special Selection Committee saying that guidelines provided for the parameters of selection and states that the eligible candidates must be of outstanding merit, competence, absolute integrity and having specific suitability for the post. In the instant case, all the three eligible candidates fulfilled all the eligibility criteria for the selection to the post of PCCF(HOFF). Under this circumstance, the Selection Committee placed its comments for the consideration of Competent Authority. Thereafter, the Competent Authority was pleased to select the respondent No.5 to the post of PCCF(HOFF). It is not the case of promotion to the higher post but it is the case of selection and thus discretion vest with the competent authority. In so far as All India Service is concerned, the Chief Minister of the State is vested with the power to select the candidate since the transaction of the business rules provides for such an exercise of power. Hence, there is no infirmity, illegality in the appointment of 5th respondent. Therefore, the allegation of the applicant with regard to the malafide, arbitrariness and discrimination does not arise. The applicant has not chosen to question the selection. The Selection Committee has considered the relevant factors for the selection and thereafter the respondent No.5 was appointed to the post of PCCF. At that juncture, the applicant did not raise any objection for the selection of the respondent No.5. It is true that the applicant submitted his representation dtd.22.5.2017 and retired on superannuation on 31.5.2017. The representation was duly considered and a suitable endorsement issued. Since the applicant was not promoted to the post of PCCF, his claim for granting him Apex Scale Rs.2,25,000 and other consequential benefits is also unsustainable. Therefore, they submit that the contention made by the applicant does not merit any consideration.

6. The applicant has filed a rejoinder in which he has reiterated the fact that Sri A.K.Singh was earlier selected as PCCF(HoFF) Karnataka Forest Department

for a period of 3 months only. Further the Special Selection Committee in its meeting held on 18.12.2017 selected the senior most from amongst the three eligible candidates Sri A.K.Garg who was left with only two months of service before superannuation. He also gave the instances of many other officers who were promoted to the higher post with a very short tenure of one month to three months. He told that in one instance, an officer was sent for two months' leave to enable another officer to occupy the coveted post. Therefore, depriving the applicant from the Apex scale citing short tenure is grave injustice done to the applicant. The issue of tenure left before superannuation is a non-existing criteria which was invoked in this case. Due to non-selection, he is not only denied the promotion to the post of PCCF(HoFF), Karnataka Forest Department but also the Apex Scale level-17.

7. We have heard the Learned Counsel for both the parties. The Learned Counsel for the applicant while highlighting the submission made in the OA mentioned earlier particularly placed emphasis on the fact that the Special Selection Committee held all the three candidates as equally competent and eligible but did not make any specific recommendation but left the decision to the Chief Minister. It was incumbent on the part of the Special Selection Committee to submit specific recommendation giving reasons for the same. Without doing so, they left the matter citing the issue of tenure. Moreover, the issue of tenure is not a factor or laid down parameter of selection. When there are many instances of officers being posted for shorter tenures, his non-selection to the post is clearly arbitrary and unjustified. He specifically referred to the case of Sri Arun Kumar Singh who had only three months tenure left prior to his superannuation when he was posted as PCCF(HoFF) and the case of Sri A.K.Garg who was appointed as PCCF when he had only two months tenure left before superannuation. He highlighted the fact that this is

not only deprived him the promotion to the post of PCCF(HoFF), Karnataka Forest Department but also the Apex Scale level-17 which is permanent loss to him since grant of Apex scale would have entitled him the higher pension throughout his life. Therefore, he submits that he should be granted notional promotion when his junior was appointed to the Apex Scale and he should be granted Apex Scale from that date.

8. The Learned Counsel for the respondents, on the other hand, submitted that the Special Selection Committee considered the matter in detail and found that all the three candidates put on outstanding competency and absolute integrity and having specific suitability for the post. Therefore, they placed the matter for consideration before the competent authority who was empowered to select the candidates for the post of PCCF in Forest Department. Hence, the decision of the Chief Minister to choose the 5th respondent who have longer tenure cannot be said as arbitrary. Since the applicant was not appointed to the post of PCCF, he cannot claim the Apex Scale available for that post only.
9. We have carefully considered the facts of the case and submissions made by either side. The only issue involved in the present case is whether non-consideration of the applicant to the post of PCCF(HoFF) in the Apex Scale on the ground of short tenure is justified or not. Consequent to the amendment of rules whereby the post of Principal Chief Conservator of Forests(Head of Forest Force) in the Apex Scale of Rs.80000(fixed) was notified, Govt. of India communicated the same to the State Governments suggesting to constitute the Special Selection Committee and also indicated the parameters of selection which is outstanding merit, competence, absolute integrity and having specific suitability for the post. The State Government

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vide order dtd.12.05.2009 constituted the Special Selection Committee for selection to the post of PCCF(HoFF) reiterating the same parameters of selection and adding that these qualities can be assessed on the basis of ACRs/PARs and Service records.

10. We note from the proceedings of Special Selection Committee held on 06.04.2017 that they considered three officers for the Apex Scale Level-17 which includes the applicant at Sl.No.1, Shri Kishan Singh Sugara at Sl.No.2 and Shri Ashok Kumar Garg at Sl.No.3. The Committee was of the view that with regard to all the relevant factors of outstanding merit, competency and absolute integrity, all the three officers under consideration are placed similarly. However, they did not make any specific recommendation as to who should be considered for the post and left the matter to be decided by the Government adding that with respect to the specific suitability, the Committee took note of the tenure left with each of the officers and noted that as on 30.04.2017, the applicant was left with the service of only one month whereas Sri Kishan Singh Sugara had 8 months and Sri Ashok Kumar Garg had ten months of service left. Thereafter Govt. appointed Sri Kishan Singh Sugara who had 8 months service left ignoring the applicant who is the senior most amongst the three. While the applicant has taken the contention that he being the senior most should have been considered for appointment to the Apex scale since officers having short tenure have been selected on earlier occasion, the respondents have taken the contention that since this is a matter of selection, the competent authority has the discretion to choose the best among the persons to be appointed to the Apex scale. There is no dispute to the fact that this is a matter of selection and the Special Selection Committee can recommend a person depending on his suitability. However, the peculiarity of the case is that all the three persons have been considered

as equally competent and suitable in the context of the laid down parameters. The only issue considered is the service period left though it is not an integral part of the selection parameters. While the authority can take a view regarding the tenure of service left while selecting a person, this principle should be adopted uniformly and not selectively. It is a matter of record that on earlier occasion, one Sri Arun Kumar Singh was appointed to the Apex Scale when he is left with the tenure of three months. Similarly, Sri Ashok Kumar Garg who was considered for appointment to Apex scale subsequently he had only two months of service left. If left over service of 3 months and 2 months can make an officer eligible for consideration to the Apex scale post, then ignoring the same facts in the case of the applicant and denying him on the plea that he has only one month's service left appears to us as unfair and illogical. In fact from the list of Principal Chief Conservator of Forests, Karnataka produced by the applicant in his rejoinder and which shows the Principal Chief Conservator of Forests, Karnataka right from 1994 onwards, we find that there are many cases in which persons have been appointed for only one month to three months. Therefore, denying the Apex scale to the applicant only on this specific criteria does not appear justified. It is also to be kept in mind that appointment to the Apex scale not only gives a person a satisfaction of heading the organisation even for a limited period, it also brings in the financial benefit in getting the Apex scale which will have an impact on his pensionary benefits throughout his life.

11. On detailed consideration of the facts and circumstances of the case, we are of the view that denial of the Apex scale to the applicant solely on the ground of limited tenure of service left appears to us as unjustified more so when it is seen that persons with short tenure of two or three months of left over service have been appointed to the Apex scale by the respondents themselves.

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Therefore, we hold that the applicant is entitled to be appointed to the Apex scale post right from the date when his junior was appointed. Since the applicant has already retired on superannuation, his appointment to the Apex Scale post i.e. Principal Chief Conservator of Forest (HoFF) can only be on notional basis from the date when his junior was appointed to the Apex scale. However, he will get the benefit of the Apex scale right from that date with consequential implication on his pensionary benefits. Therefore, we direct the respondents to pass necessary orders giving notional appointment to the applicant right from the date when his junior was appointed to the Apex scale and give the consequential benefits. This shall be done within a period of two(2) months from the date of receipt of copy of this order.

12. The OA is accordingly allowed. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.170/00483/2017

Annexure-A1: An extract of the Civil list of IFS Officers – 2016; showing inter-se seniority

Annexure-A2: A Copy of the Notification dtd.27.9.2008 made in this regard
Annexure-A3: A Copy of the order No: DPAR 04 SFP 2009 dtd.10.2.2009
Annexure-A4: A Copy of the letter of the 1st respondent bearing No: 16019/1/2008-IFS-II dtd.16.4.2009 issued in this regard
Annexure-A5: A Copy of the Government order dtd.12.5.2009
Annexure-A6: A Copy of the IFS (Pay) Rules, 2016
Annexure-A7: A Copy of the impugned proceedings of the 4th respondent dtd.6.4.2017
Annexure-A8: A Copy of the impugned order of appointment dtd.28.4.2016 bearing No.DPAR 31 SFP 2017 issued by the 3rd respondent
Annexure-A9: A Copy of the representation dtd.22.05.2017
Annexure-A10: A Copy of the impugned endorsement dtd.11.08.2017 of the 3rd respondent
Annexure-A11: A Copy of the notification issued by the 3rd respondent dtd.31.03.2016
Annexure-A12: A Copy of the Notification issued by the 3rd respondent dtd.30.06.2016
Annexure-A13: A Copy of the order dtd.18.01.2017
Annexure-A14: A Copy of the OM dtd.25.01.2017
Annexure-A15: A Copy of the Notification dtd.27.02.2017
Annexure-A16: A Copy of the order passed in OA.No.823/2012 decided on 10.05.2012 by this Hon'ble Tribunal
Annexure-A17: A Copy of the order passed by this Hon'ble Tribunal dtd.27.05.2011 in OA.No.59/2010
Annexure-A18: A Copy of the order dtd.1.7.2011, passed by the Hon'ble High Court in WP.No.20898/2011 dtd.1.7.2011

Annexures with reply statement:

-NIL-

Annexures with rejoinder:

Annexure-A19: A Copy of the Notification dtd.29.12.2017 appointing Sri.A.K.Garg as the PCCF (HOFF)
