

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/01037/2016

DATED THIS THE 30TH DAY OF NOVEMBER, 2017

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

HON'BLE SHRI P. K. PRADHAN, MEMBER (A)

R.M.N. Sahai,
S/O R.N.Sahai,
Aged about 62 years.
PCCF(Wild Life)(Retired),
R/at #1D, 1st 'A' Main,
14th Cross, MCHS Colony(IAS Colony),
HSR Layout, Sector-VI,
Bangalore.560102

...Applicant

(By Shri Ajoy Kumar Patil, Advocate)

Vs.

1.State of Karnataka,
Represented by its
Chief Secretary,
Karnataka Govt. Secretariat,
Vidhana Soudha,
Bangalore-560 001.

2.The Secretary to Govt.,,
Department of Personnel and
Administration Reforms,
Karnataka Govt. Secretariat,
Vidhana Soudha,
Bangalore 560001.

3.The Union of India,
Represented by its Secretary,
Department of Personnel,
Public Grievance and Pension,
North Block
New Delhi - 110 001.

4.The Principal Accountant
General(A & E),
Residency Park Road,
Bengaluru – 560 001

5.The Principal Chief Conservator
of Forests(HFF),
4th Floor, Aranya Bhavan,
Malleswaram 18th Cross,
Bengaluru – 560 003

6. Ministry of Ecology, Environment,
Forests and climate Change,
Government of India,
Indira Pariyavaran Bhavan,
Jor Bagh Road,
New Delhi - 110 003.
Represented by its Secretary.

...Respondents

(By Shri PS.Prakash Shetty, Sr. Panel Counsel)

ORDER (ORAL)

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

1. On 31.12.2012 against a vacant cadre post which was apparently obtained by sending Shri Dipak Sarmah on leave, applicant was posted to cadre post. Since he was posted to a cadre post, the 1:1 ratio seems to be maintained. Even though, if we look more into it and lift the wheel of secrecy about the transactions may see that it was done to benefit the applicant.

2. But then, keeping a person in a cadre post or a non cadre post must be within the executive decision of the government, even though within the parameters of the rules concerned. The Union government in its reply would say that the applicant was initially promoted to officiate in PCCF grade on 31.12.2012 in Super Time Scale -II of IFS with immediate effect and was posted against vacant cadre post held by Shri Vinay Luthra, IFS. They would say that it is pertinent to mention that earlier on Shri Dipak Sarmah was holding the cadre post of PCCF(Wildlife), Bengaluru and had applied for earned leave and the same was granted by the Government, thereafter it was submitted by the Union Government that on promotion of Shri RMN.Sahai to the grade of PCCF the total number of officers holding the post of PCCF is 5 as against 4 permissible posts (3 cadre post & 2 in ex-cadre post) which in effect contravenes the provision of IFS (Pay) Rules, 1994. Hence, Respondent No.4 sought from Respondent No.1 the copy of prior permission obtained from Government of India for operating 5 posts in the PCCF grade. Respondent clarified that Shri RMN.Sahai, IFS was promoted to the grade of PCCF on 31.12.2012 and was posted against the vacant cadre post of PCCF (Wildlife), Bengaluru after the incumbent officer Shri Dipak Sarmah, IFS proceeded on a day's earned leave. While granting promotion to Shri RMN.Sahai, IFS to PCCF grade on 31.12.2012, the Government of Karnataka have operated PCCF grade posts in the ratio of 1:1 strictly in accordance with rule 11(7) of IFS (Pay) Rules. The Union Government would say that at no point of time were 5 Apex Level posts

(including ex-cadre posts) operated by the State Government in PCCF grade in excess of the permissible limit of 2+2. Hence, they would say that rule 11(7) of IFS (Pay) Rules cannot be made applicable in this case. The Union Government would further say that the officer was not posted against ex-cadre post after his promotion to PCCF grade. Hence, Respondent No.4 was requested to take necessary action to regularize the promotion of the applicant in the PCCF grade and fix his pay scale and grant consequential retirement benefits to him. Apparently, the 4th respondent objects to it. The 4th respondent has not filed any specific reply to justify it. But, then on examination we find that even though the reply seems to be filed by the State Government, it is in effect the reply is filed by the Accountant General, therefore, we stand corrected to this. They would say that the mistake occurred when on 31.12.2012 the State Government promoted the applicant to officiate as Principal Chief Conservator of Forest. The word officiate has created, according to them all these confusion. The State Government has clarified that in fact they had not intended to appoint the applicant on a officiating post, he was posted regularly which under rule they were eligible to do so.

3. The State Government would say that there is no provision to create or operate a leave reserved post and the promotion ordered against short leave vacancy cannot be considered as regular vacancy since such promotion will lead to excess in the respective cadre as Shri Dipak Sarmah went on leave for one day and they, therefore, would say that he continued

to draw leave salary which does not mean that there is a vacancy in PCCF. At this juncture, the learned counsel for the applicant would submit that it is the proximity and juncture that is involved, at the proximate that the applicant was holding a regular cadre post and not an excadre post that in the 15 years would have entitled him to be considered and appointed in a cadre post is apparently in the view promoted by the State Government as well as by the Union Government. The Accountant General in their reply would say further that they had received a letter from the State Government indicating that the ratio may be increased to 3:2 instead of 2:2 . They also would say that in the case of Shri SK.Pattanayak, IAS, Respondent No.3 have conveyed approval for operating excess ex-cadre post for a period of 6 days vide their letter dated 18.6.2014 and have also requested the Respondent No.1 to adhere strictly with the Rules in future and ensure prior approval of Respondent No.3 before operating posts both in cadre and ex-cadre.

4. At this point of time, the learned counsel for the applicant would submit that there is a distinction between these two. In Shri SK.Pattanayak's case it was an ex-cadre post and in the case of the applicant it is a cadre post. **Therefore, he having been appointed in the cadre post and held that post would have become eligible for the benefit relating to a cadre post.** Therefore, there will be a declaration to the effect that the applicant is eligible to be considered as appointed on a cadre post and therefore, be

eligible for benefits accordingly. OA is thus allowed. All consequential benefits to be made available to him within 2 months thereafter. No order as costs.

(P. K. PRADHAN)
MEMBER (A)

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

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Annexures referred to by the applicant in OA No. 170/01037/2016

Annexure-A1: Copy of order dated 31.12.2012

Annexure-A2: Copy of letter dated 29.2.2012 along with typed copy.

Annexure-A3: Copy of CTC dated 29.12.2012

Annexure-A4: Copy of CTC showing Vinay Luthra handing over the charge to the relieving officer, i.e. the applicant on 31.12.2012

Annexure-A5 : Copy of CTC of the applicant relieving the post on retirement and handing over the charge to the relieving officer, Vinay Luthra on afternoon of 31.12.2012

Annexure-A6 : Copy of the letter dated 23.1.2013

Annexure-A7 : Copy of the letter dated 23.3.2013

Annexure-A8 : Copy of the letter dated 24.8.2013

Annexure-A9 : Copy of the letter dated 5.9.2013

Annexure-A10 : Copy of the letter of the 5th respondent dated 26.9.2013

Annexure-A11 : Copy of the letter dated 8.11.2013

Annexure-A12 : Copy of the letter dated 8.11.2013

Annexure-A13 : Copy of the letter dated 19.12.2013

Annexure-A14 : Copy of the letter dated 21/24.1.2014

Annexure-A15 : Copy of the letter dated 17.7.2014

Annexure-A16 : Copy of the letter dated 4.8.2014

Annexure-A17 : Copy of the letter dated 25.11.2014

Annexure-A18 : Copy of the letter dated 29.11.2014

Annexure-A19 : Copy of the letter dated 12.12.2014

Annexure-A20 : Copy of the letter dated 26.12.2014

Annexure-A21 : Copy of the letter to the Respondent No.6 dated 2/5.3.2015, send to the applicant

Annexure-A22 : Copy of explanation dated 16.3.2016

Annexure-A23 : Copy of the letter of the Deputy Accountant General dated 23.5.2015

Annexures referred to by the respondents 3 &4 in the Reply.

Annexure R-1: Copy of Notification

Annexure R-2: Copy of State Cadre

Annexure R-3: Copy of IFS Cadre Rules 1966

Annexure R-4: Copy of Cadre and Ex-Cadre Rules

Annexures referred to by the applicant in rejoinder

Annexure-A24, 24(a),24(b),24(c) and 24(d) : Copies of Pay Slips No.IFS00062/GM/IFS/1125-26 dated 18.12.2009, 18.7.2009 ctc, 18.7.2009 ctc, 18.7.2009, Oms 17.7.2009 notification

Annexure-A25, 25(a),25(b),25(c): Copies of Pay Slips No.IFS00103/GM/IFS/123-24 dated 12.9.2013, 7.8.2013 GO, 27.7.2013 ctc, 26.7.2013 notification

Annexure-A26 : Copy of the letter dated 19.12.2013 (**Annexure-A13**)

Annexure-A27 : Copy of Govt. order No.DPAR 149 SSP 2016 dated 30.5.2017

Annexure-A28 : Copy of Certificate of Transfer of Charge dated 1.6.2017

Annexure-A29: Copy of Salary Slip dated 10.7.2017

Annexure-A30: Copy of Pay Slip of the applicant.

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