CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

ORIGINAL APPLICATION N0.061/00893/2017
Chandigarh, this the 16th day of February, 2018

CORAM: HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J) &
HON'BLE MS. PARVEEN MAHAJAN, MEMBER (A).

Ruplal Bharti, aged 65 years, S/o Shri Kharak Ram, R/o 104/5, Roop Nagar, Housing Colony, Jammu-180013.

……Applicant

(Argued by: Mr. S.S. Ahmed, Advocate)

VERSUS

1. State of Jammu and Kashmir, through Chief Secretary to Govt. Civil Secretariat, Jammu/Srinagar.
2. Secretary, General Administration Department, Civil Secretariat, Jammu / Srinagar.
3. Commissioner-Secretary to Govt. Environment, Forest & Wildlife Department, Civil Secretariat, Jammu/Srinagar.
4. Union of India through Under Secretary to Govt. Ministry of Environment and Forest, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.

….Respondents

(Argued by: Mr. Rohit Seth, Advocate for Respondents No.1-3
Mr. Ram Lal Gupta, Advocate for Respondent No.4)

ORDER (Oral)
JUSTICE M.S. SULLAR, MEMBER (J)

1. The challenge in the instant Original Application (OA) No.061/00893/2017 (previously SWP No.808/2013 in Hon'ble J&K High Court), instituted by applicant Ruplal Bharti, is to the impugned order dated 3.3.2010, (Annexure 'E'), whereby his repeated requests including representations dated 23.1.2006 (Annexure 'A') and 2.7.2012 (Annexure 'K'), for up-gradation of the post of Additional Principal Chief

Conservator of Forests (for brevity "APCCF") to the level of Principal Chief Conservator of Forests (for short "PCCF"), was declined by the competent authority.

2. The matrix of the facts and the material, which needs a necessary mention, for the limited purpose of deciding the core controversy involved in the instant OA, and exposited from the record, is that the applicant joined the Indian Forest Service (IFS) in the year 1976. Having completed the requisite 30 years of government service, as a directly recruited IFS, on 1.1.2006, he became eligible and made several representations to the respondents for his promotion from the post of APCCF to the next higher level of PCCF but in vain. Thereafter he was inducted as Member of J&K Public Service Commission, when he had still left about 1-1/2 years of his previous service, in a very senior position of APCCF. However, his request / representations were rejected illegally vide impugned order, Annexure 'E', by the competent authority.

3. Aggrieved thereby, the applicant has preferred the instant SWP, which was subsequently transferred to this Tribunal by Hon'ble J&K High Court for disposal and now numbered as OA No.061/00893/2017, challenging the impugned order dated 3.3.2010 (Annexure 'E'), inter-alia, on the following grounds :-

> (i) That Government order No. 355-FST of 2012 dated 12-09-2012 issued under endorsement No. FST/Ser/304/178-199-IFS-R-1 dated 12-09-2012 issued by the Govt. is not tenable as the authorities at helm of affairs in the State have never examined and considered the case carefully, meticulously prudently and in right perspective and in accordance with the rules and communications of Government of India.
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> (ii) That the State Government has rejected petitioner's case regarding up-gradation of the post of Chief Wildlife Warden (IFS Cadre post) to the level of Principal Chief Conservator of Forest w.e.f. 17.5.2006 to 29.5.2006 as held by petitioner before his appointment as Member, J&K Public Service Commission in relaxation of conditions provided under rule 9(7) of IFS (Pay) Rules, which the State Govt. itself had quoted in its letter to Government of India erroneously.
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> (iii) That as a result petitioner's case got unnecessarily dragged in protracted avoidable correspondence for longer and even warded off into litigation when State Govt. refused vide letter dated 3.3.2010 to act on DoPT guidelines dated 13.7.1995, as intimate by Ministry of Environment and Forests (MoEF) vide its No. 20019/02/2009-IFS dated 12-09-2012, Feb 16, 2009 and again vide G.O. No. 355-FST of 2012 referred to above on flimsy grounds.

(iv) That continuously pursuing his promotion case right from January, 2006, when the petitioner qualified for the post after completion of 30 years of his service and became eligible.

(v) That the State Govt. rejected the petitioners case of promotion simply on false, flimsy and baseless grounds for the sake of rejection alone.

4. Levelling a variety of allegations and narrating the sequence of events in detail, in all, the applicant claims that he is entitled to be promoted as PCCF, after completion of 30 years of service in IFS cadre, and if there is no post available, then the government should have created supernumerary post, as envisaged in the Indian Forest Service (Cadre) Rules, 1996 (Hereafter to be referred to as the "Cadre Rules"). On the strength of the aforesaid grounds, the applicant seeks to quash the impugned order dated 3.3.202010 (Annexure 'E'), in the manner, indicated herein above.

5. On the contrary, the respondents have refuted the claim of the applicant and respondent no.3 has filed the reply. It was pleaded that since no vacancy of PCCF was available at the relevant time, so the case of the applicant for promotion was rightly rejected by the competent authority, as no promotion can be granted without existence of any post. However, it was acknowledged that the applicant was holding the post of Chief Wild Life Warden in the grade of APCCF, before his appointment as a Member of J&K Public Service Commission on 30.5.2006. He made representations for release of the grade of PCCF on the ground that he had become eligible for this post w.e.f. 1.1.2006, but since such vacancy was not available, so the pointed grade of PCCF could not be granted to him. However, it was claimed that the Screening Committee in its meeting held on 7.2.2008 under the Chairmanship of the Chief Secretary made the following recommendations :

i. Up gradation of the post of Chief Wildlife Warden to the grade of PCCF w.e.f. 17.05.2006 to 31.05.2006.

ii. Placement of Shri Ruplal Bharti in the PCCFs grade against the upgraded post of Chief Wildlife Warden w.e.f. 17.05.2006 to

> 29.05.2006 i.e. when Shri Bharti ceased to be member of IFS consequent upon his appointment as Member of J&K Public Service Commission; and
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> iii. Grant of PCCFs grade in favour of Shri DK Vaid IFS 1976 shall be considered after his return from deputation".

6. Sequelly, the recommendations of the Screening Committee were placed before the Minister incharge Forests, and ultimately matter was referred to the Government of India, Ministry of Environment & Forest, for further advice, who in turn, vide communication dated 16.2.2009 informed that the issue be decided by the State Government, as per instructions contained in DoPT OM dated 13.7.1995. According to the respondents, that in the meantime, Government of India, Ministry of Personnel, Public Grievances and Pensions issued notification dated 15.09.2006 amending Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966, whereby cadre strength was revised. Consequently, the proposal was not agreed to by the General Administration Department after it was considered in a meeting taken by the Chief Secretary on 9.12.2009. In all, the respondents claim that since no vacancy was available, so the claim of the applicant could not be accepted, at the relevant time. Instead of reproducing the contents of the reply in toto, and in order to avoid the repetition of facts, suffice it to say that while virtually acknowledging the factual matrix and reiterating the validity of the impugned order and action, the respondents have stoutly denied all other allegations and grounds contained in the OA, and prayed for its dismissal. That is how we are seized of the matter.

7. Having heard the learned counsel for the parties, having gone through the record with their valuable help and after considering the entire matter, we are of the firm view that the instant OA deserves to be partly accepted, in the manner, and on the grounds, mentioned herein-below.

8. As is evident from the record that the applicant became eligible to be promoted to the grade of PCCF, after completion of 30 years of service in the IFS cadre in 2006. Thereafter, he was inducted into J&K Public Service Commission on 30.5.2006, when he was left with only 1-1/2 years of service, in the parent cadre.

9. Admittedly, the applicant made various representations for up gradation of the post. It is not a matter of dispute that the government of J&K, initially sent a reference No.FST/Ser/304/78-199-IFS-R-1 dated 12.12.2008 (Annexure D) to the Secretary to Government of India, Ministry of Environment &Forests, New Delhi requesting to consider the up-gradation of the post of Chief Wildlife Warden to the level of PCCF w.e.f. 17.5.2006 to 29.5.2006, held by the applicant. Surprisingly enough, the government of J&K took a summersault and rejected the claim of the applicant by passing a very brief impugned order dated 3.3.2010, (Annexure E), mainly on the ground that the applicant could not be promoted for want of vacancy, in the relevant connection. Undisputedly, the applicant has, inter-alia, specifically pleaded in his representation, Annexure K, that a supernumerary post is liable to be created under rule 4 (2) of the Cadre rules. Thus, it would be seen that the facts of the case are neither intricate nor much disputed and fall within a very narrow compass to decide the real controversy between the parties.

10. Such thus being the position on record, now the short and significant question that arises for our consideration in this case is as to whether the claim of the applicant should have been considered under rule 4 (2) of the Cadre Rules, in the given peculiar facts and special circumstances by the Competent Authority, or not?

11. Having regard to the rival contentions of the learned counsel for the parties, to our minds, the answer must obviously be in the affirmative in this relevant connection.

12. What cannot possibly be disputed here is that Rule 4 (2) of the Cadre Rules, deals with the formation of Cadre Strength, which postulates that the Central Government shall, ordinarily at the interval of every five years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit. Not only that, the proviso to this rule, further posits that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any other time. Further, proviso envisages that the State Government concerned may add for a period not exceeding two years, and with the approval of the Central Government for a further period not exceeding three years to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts.

13. Thus, it would be seen that a co-joint and meaningful reading of these provisions would reveal that the Central Government and State Government, with the prior approval of the Central Government, have the power to create additional posts, under special circumstances.

14. As indicated hereinabove, in the various representations, including Annexures 'A' and 'K', the applicant has specifically pleaded that he is entitled to promotion by creation of a supernumerary post, under rule 4 (2) of the Cadre Rules, besides raising other various important issues, which were turned down by passing a very brief impugned order mainly on the ground of non availability of the post at the relevant time by the competent authority.

15. That means, that the competent authority has not, at all, adhered to the important and valid issues including rule 4 (2) of the Cadre Rules, raised by the applicant in his various representations, which goes to the root of the case. Once the applicant has claimed his promotion / release of grade of PCCF, under rule 4(2) of Cadre Rules, in that eventuality, the competent authority was required to examine the matter in the right perspective, to deal with the all issues including the applicability and import of rule 4 (2) of Cadre Rules, and then to pass detailed and speaking order, which is totally lacking in the present case.

16. Meaning thereby, the impugned order, Annexure E, is not only sketchy & non-speaking but result of non-application of mind as well. Had the competent authority considered the applicability and import of rule 4 (2) (supra), then the consequences may have been different. Moreover, the impugned order was passed in a very casual manner, without assigning any cogent reasons. Such authority is required to consider entire matter contained in the representation, in the right perspective, and then to pass speaking and reasoned order to decide the grievance of the applicant, which is totally lacking in the present case.

17. Exhibiting the necessity of passing of speaking orders, the Hon'ble Apex Court in the well celebrated case of ***M/s Mahavir Prasad Santosh Kumar Vs. State of U.P. & Others*** 1970 SCC (1) 764 which was subsequently followed in a line of judgments. Having considered the legal requirement of passing speaking order by the authority, it was ruled that "recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim". It was

also held that "while it must appear that the authority entrusted with the quasi-judicial authority has reached a conclusion of the problem before him: it must appear that he has reached a conclusion which is according to law and just, and for ensuring that he must record the ultimate mental process leading from the dispute to its solution". Such authorities are required to pass reasoned and speaking order.

18. Sequelly, in the case of ***S.N. Mukherjee Vs. Union of India***, 1990 (5) SLR 8 (SC), the Apex Dispensation has observed as under :-

> **"**38**.** The object underlying the rules of natural justice "is to prevent miscarriage of justice" and secure "fair play in action." As pointed out earlier the requirement about recording of reasons for its decision by an administrative authority exercising quasi-judicial functions achieves this object by excluding chances of arbitrariness and ensuring a degree of fairness in the process of decision-making. Keeping in view the expanding horizon of the principles of natural justice, we are of the opinion, that the requirement to record reason can be regarded as one of the principles of natural justice which govern exercise of power by administrative authorities.xxx
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> 39. For the reasons aforesaid, it must be concluded that except in cases where the requirement has been dispensed with expressly or by necessary implication, an administrative authority exercising judicial or quasi-judicial functions is required to record the reasons for its decision."

19. An identical view was also taken in the decisions in ***MMRDA Officers Association Vs. Mumbai Metropolitan Regional Development Authority & Another***, 2005 (2) RSJ, 362 SC and ***Divisional Forest Officer, Kothagudem Vs. Madhusudhan Rao*** JT 2008 (2) SC 253.

20. Again, a similar question came to be decided by the Hon'ble Apex Court in the case of ***State of Uttranchal Vs. Sunil Kumar Singh Negi*****,** 2008 (2) SCT 429, and the Court has ruled as under :-

> "6.xxxx The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in State of U.P. vs. Battan and Ors. (2001) 10 SCC 607). About two decades back in State of Maharashtra vs. Vithal Rao Pritirao Chawan, (1981) 4 SCC 129, the desirability of a speaking order was highlighted. The requirement of indicating reasons has been judicially recognized as imperative. The view was reiterated in Jawahar Lal Singh vs. Naresh Singh and Ors. (1987) 2 SCC 222.
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> 7) In Raj Kishore Jha vs. State of Bihar and Ors. (2003) 11 SCC 519, this Court has held that reason is the heartbeat of every conclusion and without the same, it becomes lifeless.

> 8) Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made.

21. Still further, in the decision in the case of ***State of Haryana Vs. Ramesh Kumar*****,** 2009 (2) SCT 145 (SC), the Hon'ble Court has ruled as under:-

> "6. Reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of its mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable. Similar view was expressed in State of U.P. v. Battan and Ors (2001 (10) SCC 607). About two decades back in State of Maharashtra v. Vithal Rao Pritirao Chawan (AIR 1982 SC 1215) the desirability of a speaking order while dealing with an application for grant of leave was highlighted. The requirement of indicating reasons in such cases has been judicially recognized as imperative. The view was re-iterated in Jawahar Lal Singh v. Naresh Singh and Ors. (1987 (2) SCC 222). Judicial discipline to abide by declaration of law by this Court, cannot be forsaken, under any pretext by any authority or Court, be it even the Highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950 (in short the `Constitution').
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> 7. Even in respect of administrative orders Lord Denning M.R. in Breen v. Amalgamated Engineering Union (1971 (1) All E.R. 1148) observed "The giving of reasons is one of the fundamentals of good administration". In Alexander Machinery (Dudley) Ltd. v. Crabtree (1974 LCR 120) it was observed: "Failure to give reasons amounts to denial of justice". Reasons are live links between the mind of the decision taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance. Chairman and Managing Director United Commercial Bank and Others Vs. P.C. Kakkar, 2003 (4) SCC 364 : [2003(2) SLR 445 (SC)."

22. Not only that, the Hon'ble Supreme Court in the case of **Chairman, Disciplinary Authority, *Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and Others*** (2009) 4 SCC 240 has in para 8 held as under:-

> "8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of **S.N.Mukherjee vs. Union of India** reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation".

23. Sequelly, the Hon'ble Apex Court has held in ***M/s Kranti Associates Pvt. Ltd. & Another Vs. Sh. Masood Ahmed Khan & Ors***, 2010 (4) RCR (Civil) 600 (SC), has held as under :-

> a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
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> b. A quasi-judicial authority must record reasons in support of its conclusions.
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> c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
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> d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
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> e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
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> f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.
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> g. Reasons facilitate the process of judicial review by superior Courts.
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> h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
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> i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
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> j. Insistence on reason is a requirement for both judicial accountability and transparency.
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> k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
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> l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.
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> m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).
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> n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

> o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

24. Even Hon'ble High Court of Punjab and Haryana has taken similar view in a number of cases including in ***Dhani Ram Chaudhary Vs. State of Haryana***, 1998 (3) RSJ, 609 (DB) and ***Balbir Singh Dharni Vs Union of India & Others***, 2002 (2) RSJ 197 DB P&H.

25. Therefore, it is held that the impugned order, Annexure E, is cryptic, brief, non-reasoned and cannot legally be sustained. The ratio of law laid down by the Hon'ble Apex Court in the indicated judgments is, *mutatis mutandis*, applicable to the instant controversy, and is the complete answer to the problem in hand.

26. No other point, worth consideration, has either been urged or pressed by the learned counsel for the parties.

27. In the light of the aforesaid prismatic reasons, and without commenting further anything on merit, lest it may prejudice case of either side, during the course of fresh consideration, the instant O.A. is partly accepted. The impugned order dated 3.3.2010 (Annexure E) is hereby set aside, in the obtaining circumstances of the case. As a consequences thereof, the case is remitted back to the competent authority to consider all the indicated issues including implication and import of Rule 4(2) of Cadre Rules, raised by the applicant in his representations, and then to decide the issues in the right perspective, by passing a speaking/reasoned order, and in accordance with law, within a period of two months from the date of receipt of a certified copy of this order. However, the parties are left to bear their own costs.

(PARVEEN MAHAJAN)
MEMBER (A)

(JUSTICE M.S. SULLAR)
MEMBER (J)

16.02.2018

HC*