

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
JABALPUR

Original Application No.200/00763/2017

Jabalpur, this Wednesday, the 03rd day of October, 2018

HON'BLE SHRI NAVIN TANDON, ADMINISTRATIVE MEMBER
HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER

Amit Kumar Dubey
S/o Shri Ram Mani Sharma
Aged about 50 years presently
Posted as Conservator of Forest
Working Plan, Gwalior,
Distt. Gwalior (M.P.)
PIN code 474003 M. No.NIL

-Applicant

(By Advocate –**Shri Piyush Bhatnagar**)

V e r s u s

1. Union of India,
Through its Secretary
Ministry of Environment
Forest and Climate Change
Indira Paryavaran Bhavan
Jorbagh Road, New Delhi
PIN 110003

2. State of Madhya Pradesh
Through its Principal Secretary
Forest Department Mantralaya
Vallabh Bhawan
Bhopal PIN 462004 (M.P.)

- Respondents

(By Advocate –**Shri Vijay Pandey**)

(Date of reserving the order: 31.07.2018)

O R D E R

By Ramesh Singh Thakur, JM:-

This Original Application is filed against the order dated 25.02.2017(Annexure A/4) passed by the respondent No.2 whereby the applicant has been transferred as Conservator of Forest (Working Plan) Gwalior.

2. The applicant in this Original Application has sought for the following reliefs:-

“8.1 This Hon’ble Tribunal be pleased to quash impugned order dated 25.02.2017 passed by the Respondent No.2 (Annexure A-4) only to the extent of posting of posting as Conservator of Forest (Working Plan) Gwalior.

8.2 Any other relief as deemed fit by the Hon’ble Tribunal may also be granted.”

3. The applicant is an IFS Officer of 2002 batch and is borne in Madhya Pradesh Cadre and presently posted as Conservator of Forest (Working Plan), Gwalior M.P. The respondent No.2 vide circular dated 05.10.2005 (Annexure A/1) issued for posting of IFS Officers in Working Plan in Forest Department, State of Government of M.P. As per Clause 3 of the said circular, a member of Indian Forest Service Officers borne on the Madhya Pradesh cadre are to compulsorily posted as Conservator of Forest (Working Plan) on the basis his seniority.

3.1 It has been further submitted by the applicant that as per last posting order in Working Plan was issued in favour of one Shri A.K. Singh i.e. on the post of Conservator of Forest (Working Plan) Hoshangabad vide order dated 05.03.2016 (Annexure A/2). As per seniority list of IFS Officer, M.P. Cadre as on 01.09.2016 (Annexure A/3), name of Shri A.K. Singh in list of IFS Officer appears at Serial No.148 and name of applicant appears at Serial No.186. So, as per IFS Posting Policy issued vide circular dated 05.10.2005 prior to posting of applicant in Working Plan, incumbents in terms of their seniority, whose name appears in seniority list of IFS officer as on 01.09.2016 from serial no.149 to Sr. No.185, are thus compulsorily required to be posted in Working Plan.

3.2 The applicant has been transferred by way of promotion from the post of Divisional Forest Officer, Alirajpur (T) Division to the post of Conservator of Forest (Working Plan) Gwalior. The said order has been issued pursuant to the promotion of the applicant from post of Deputy Chief Conservator of Forest to the promoted post i.e. Conservator of Forest, Level 13A. The applicant has submitted his joining on post of Conservator of Forest (Working Plan) in pursuant to order dated 25.02.2017 (Annexure A/4).

3.3 The applicant submits that the impugned order dated 25.02.2017 by passing about 36 senior IFS Officers, posting of applicant have been made in Working plan, which is in violation of IFS Posting Policy issued vide circular dated 05.10.2005. So the order dated 25.02.2017 is issued in utter violation of mandatory clause 3 of IFS Posting Policy issued vide circular dated 05.10.2005. The applicant further submitted that vide Para 3(a) and 3(b) of circular dated 16.08.2017 (Annexure A/5) issued by respondent No.2 certain amendments have been incorporated in IFS Posting Policy dated 05.10.2005. As per Para 3(a) of circular dated 16.08.2017, an officer should have minimum three years of service left from his date of his superannuation before he could be posted in working plan and as per Para 3(b) an officer should not have any promotional potential for promotion on the post of Chief Conservator of Forest for upcoming three years so that tasks in Working Plan could be completed during three years. As on date of applicant's transfer, circular dated 05.10.2005 was in force and thus provisions of circular dated 16.08.2017 cannot be made applicable in case of the applicant. The applicant submitted the detailed representation dated 06.09.2017 (Annexure A/6) and has specifically pointed that in terms of mandatory Clause 3 of IFS Posting Policy issued vide circular dated 05.10.2005 prior to

posting of applicant in Working Plan, incumbents in terms of their Seniority in Seniority List as on 01.09.2016, are thus compulsorily required to be posted in working plan. No action has been taken on the said representation till date.

4. The respondent No.2 has filed his reply. The answer respondents have submitted that State Government, Forest department formulated posting policy to the cadre of Indian Forest Service Officer in the Working Plan. In the policy dated 05.10.2005 directed posting of the IFS Officer in the Working plan, in terms of Clause 1 mentioned that in all the working plan unit in charge Conservator of Forests or Deputy Conservator of Forests as per the circumstance shall be work under the Technical Administrative and Financial control of the Regional Additional Principal Chief Conservator of Forest, Working Plan. In terms of Clause 3 of posting of IFS Officers made as per the gradation list and prior to posting of IFS Officers in working plan as per Sub Clause (a) IFS Officer giving posting in working plan whose service remain more than 3 years. As sub Clause (b) further clarified that those IFS Officers giving posting in working plan who available about 3 years for completion of the working plan and possibility they could not promoted within 3 years on the post of Chief Conservator of Forest. Further clarified in Clause 6 in the

execution of policy IFS Officers are not entitled for any relaxation posting in the working plan. It has been specifically submitted by the replying respondents that as per policy dated 05.10.2005 the name of the IFS Officer considered for posting in the working plan units by the respondent No.2. As Clause 6 of the policy there was no relaxation provided to the IFS Officers posting in the Working Plan Unit, consequently, as per the gradation list as on 01.09.2016 30 IFS Officers of cadre allotment year 1997 to 2000 will be promoted on the post of Chief Conservator of Forests and without assigned duty in the working plan unit because post of conservator not available in the working plan units. It is submitted that 17 IFS Officers as on date retiring from 1 month to 2 years, thus, revision of working plan could not be completed by those IFS Officers who left service within 2 years, and there are practical difficulties for completion of remaining work by other IFS Officers. It is relevant to mention here that 2 $\frac{1}{2}$ to 3 years time consumed for completion of a revision of working plan, accordingly 3 years continue posting of IFS Officer is necessary. So, the policy was amended for posting in the Working Plan. In the meanwhile IFS Officers year of 1997 to 2000 as per gradation list have been entitled for promotion on the post of Chief Conservator of Forest, hence the name of the applicant comes in the zone of consideration for posting in the

working plan. The applicant vide order dated 25.02.2017 along with 5 other IFS Officer promoted on the post of Conservator of Forests and the applicant and another officer namely Shri Prabhat Kumar Verma has been posted in the working plan unit and they continued minimum 3 years service remaining on the said cadre. The IFS Officers cadre 1997 to 2000 batch will be entitled for promotion from the post of Conservator of Forests to Chief Conservator of Forest, and as per the existing policy they are entitled for posting in the working plan units. It has been further submitted by the replying respondents that the applicant vide order dated 25.02.2017 reported duty on the post of Conservator of Forests, Working Plan, Gwalior and proceed on revision of working plan as allotted to him. The applicant challenging the posting order dated 25.02.2017 after a long time about 1 year of passing by the respondent No.2. It has been specifically submitted by the replying respondents that the applicant concealed the fact that since the posting order 'Conservator of Forest, Working Plan Gwalior has already been executed by him and is working on the said post. So, the Original Application deserves to be dismissed.

5. We have heard the learned counsel for the parties and gone through the pleadings and documents attached therewith.

6. It is clear from the pleadings that the applicant is challenging his posting as Conservator of Forest (Working Plan) Gwalior M.P. Though, the applicant is not challenging his promotion as Conservator of Forest. The contention of the applicant is that as per clause 3 of the circular dated 05.10.2005 (Annexure A/1), a member of Indian Forest Service Officer borne on the Madhya Pradesh cadre are to compulsorily posted as Conservator of Forest (Working Plan) on the basis his seniority.

7. At the outset, the law is clear regarding the posting of the employees. Though some circular has been issued by the department regarding posting which is a guiding principle for posting of the employees. It is clear from the pleadings itself, that this circular dated 05.10.2005 is not statutory in nature. In the matter of *Union of India Vs. S.L. Abbas*, (1993) 4 SCC 357 the Hon'ble Supreme Court has specifically held that who should be transferred where, is a matter for the appropriate authority to decide. In the matters of *State of M.P. Vs. S.S.Kourav*, (1995) 3 SCC 270 the Hon'ble Supreme Court has held that the wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such

decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background or foundation. So, from the judgment itself this settled law that the posting of employee is the prerogative of employer etc.

8. In the instant case, the applicant belongs to IFS cadre of M.P. and he has been promoted and posted as Conservator of Forest (Working Plan) Gwalior M.P. Though, the applicant has expected his promotion as Conservator of Forest but by way of this O.A. has challenged the order of posting.

9. In the reply of the respondents it has been submitted that the State Government, Forest department formulated posting policy to the cadre of Indian Forest Service Officer in the Working Plan. It has been specifically mentioned that all the working plan unit in charge Conservator of Forests or Deputy Conservator of Forests as per the circumstance shall be work under the Technical Administrative and Financial control of the Regional Additional Principal Chief Conservator of Forest, Working Plan. It has been further submitted by the relying respondents that the posting of IFS Officers in working plan are to be done for completion of working plan unit and those IFS Officers giving posting in working plan who available about 3 years for completion of the working plan and possibility they could not promoted within 3 years on the post

of Chief Conservator of Forest. The purpose behind the policy seems to be that the working plan is to be completed approximately in 3 years for a particular area. Secondly, the posting of senior officer, infers the idea that experience persons and senior persons are to be posted for completion of working plan. The replying respondents has clearly spelt out in the reply that as per the gradation list as on 01.09.2016, 30 IFS Officers of cadre allotment year 1997 to 2000 will be promoted on the post of Chief Conservator of Forests and without assigned duty in the working plan unit because post of conservator not available in the working plan units. It is submitted that 17 IFS Officers as on date retiring from 1 month to 2 years, thus, revision of working plan could not be completed by those IFS Officers who left service within 2 years, and there are practical difficulties for completion of remaining work by other IFS Officers. It has been specifically mentioned that 2 ½ to 3 years time consumed for completion of a revision of working plan, accordingly 3 years continue posting of IFS Officer is necessary. So, the policy was amended for posting in the Working Plan. In the meanwhile IFS Officers year of 1997 to 2000 as per gradation list have been entitled for promotion on the post of Chief Conservator of Forest, hence the name of the applicant comes in the zone of consideration for posting in the working plan.

The applicant vide order dated 25.02.2017 along with 5 other IFS Officer promoted on the post of Conservator of Forests. The applicant and another officer namely Shri Prabhat Kumar Verma has been posted in the working plan unit and they continued minimum 3 years service remaining on the said cadre.

10. In the matters of *N.K.Singh Vs. Union of India, (1994) 6 SCC 98* wherein it has been held that assessment of worth must be left to the bona fide decision of the superiors in service and their honest assessment accepted as a part of service discipline. Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a subjective opinion in that sphere may be involved, at times. The only realistic approach is to leave it to the wisdom of that hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm or principle governing the transfer, which alone can be scrutinised judicially, there are no judicially manageable standards for scrutinising all transfers and the courts lack the necessary expertise for personnel management of all government

departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.

11. In view of the above, we are of the opinion that we do not find any reason to interfere with the impugned order dated 25.02.2017 (Annexure A-4) of the respondent-department.

12. Resultantly, this Original Application is dismissed. No costs.

(Ramesh Singh Thakur)
Judicial Member
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(Navin Tandon)
Administrative Member