



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/01561/2018

Date of order: 10.10.2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Kedar Chandra Dalai,
Aged about 58 years,
Son of Late Ananda Dalai,
At- Ankula, P.O. Khuntakata,
P.S. Athagarh, Dist. Cuttack,
Presently working as Dy. Conservator of
Forest, Foresters Training School,
G. Udaygiri,
Dist. Kandhamal.

... Applicant.

Versus

1. Union of India,
represented through the
Ministry of Environment, Forest and
Climate Change, Jobagarh,
Lodhi Colony,
New Delhi - 110 003.

2. State of Odisha,
Represented through its
Chief Secretary,
Odisha Secretariat Building,
Bhubaneswar, Dist. Khurda,
Pin - 751 001.

3. Additional Chief Secretary/
Principal Secretary to Govt.,
Forest and Environment Department,
Odisha Secretariat Building,
Bhubaneswar, Dist. Khurda,
Pin - 751 001.

... Respondents.

For the Applicant : Dr. J.K. Lanka, Counsel

For the Respondents : None

ORDER (Oral)

Per Ms. Bidisha Banerjee, Judicial Member:

Ld. Counsel for the applicant is present.

2. Seeking cancellation/modification of the transfer order dated 24.9.2018 the applicant has preferred a representation to the Addl. Chief Secretary to Govt., Forest and Environment Department, Odisha Secretariat, Bhubaneswar, which is extracted hereunder:-

" I have filed O.A. No. 361/2018 claiming posting to any one Territorial Division which is meant for IFS cadre post as per the IFS Schedule and further prayed for my posting to any cadre post of IFS either in the district of Dhenkanal, Gajapati, Bargarh, Nayagarh, Deogarh or Boudh basing on special consideration of Officers working in KBK areas and in the district of Kandhamal, Gajapati and Boudh district.

After the order dtd. 13.7.2018 passed by the Hon'ble CAT, the authority posted OFS officers to IFS cadre post as per Notification Nos. 20439 and 20440 dtd. 20.9.2018 totally ignoring my genuine claim to the said post meant for IFS cadre.

Again as per Notification No. 20647/F&E dtd. 24.9.2018, the authority posted me as DY. CF, M&E , O/o the Pr. CCF, Odisha, Bhubaneswar which is meant for OFS post and not a cadre post of IFS contrary to IFS schedule list.

I being a senior IFS officer having the allotment in the year 2000, I have not been posted in the cadre post of IFS (In any Territorial Division as DFO) even if I have rendered more than twelve years in KBK district and more than 4 years in Kandhamal district and discharged the duties as Dy. Conservator of Forests with utmost satisfaction of the authorities and entitled for choice posting as per G.A. Department circular No. 24003/Gen dated 16.8.2001 relating to special consideration of Officers working in KBK areas and in the district of Kandhamal, Gajapati and Boudh district.

The Hon'ble CAT as per order dtd. 13.7.2018 directed that my case for posting to IFS cadre be considered as per rules and regulations in force and after considering if the grievance is found to be genuine, then steps should be taken for my posting to any IFS cadre post preferably either in Dhenkanal, Nayagarh, Gajapati, Boudh or Baragarh district. The Hon'ble Tribunal further directed to communicate the result within a period of 4 weeks from the date of receipt of the order.

Without considering the said order of the Hon'ble CAT, the Govt. as per notification No. 20648/F&E transferred me to the post of Dy. CF, M & E office of the PCCF, Odisha which is a cadre post of OFS, but not a cadre post of IFS.

Under the above circumstances, I would request you to re-consider my case once again as per my earlier representation and direction of the Hon'ble CAT, Cuttack for my posting to IFS cadre post as mentioned above.

Encl.-1 CAT order dated 13.7.2018.

2. Notification Nos. – 20439 and 20440 dtd. 20.9.2018

3. Notification No – 20647/F&E dated 24.9.2018

(Kedar Chandra Dalai)
Dy. CF, FTS, G. Udaya"

2. He has come up with this Original Application seeking the following relief:-

"(i) Quash the order No. 20648/F&E dt. 24.9.2018 at Annexure A/11 by holding that the said transfer and posting is contrary to IFS schedule at Annexure A/5.

(ii) Declare the applicant is entitled for posting in any one of the Territorial Division which is meant for IFS Officer as per IFS cadre at Annexure A/5 and non-consideration of the case of the applicant in spite of direction of this Hon'ble Tribunal is illegal and contemptuous;

(iii) Direct the Respondent No. 2 and 3 to transfer and post the applicant in any one of the Territorial Division which is meant for IFS Officer as per IFS cadre schedule at Annexure A/5 and as mentioned in his representations at Annexure-8 series;

(iv) And pass such other order/orders as may be deemed fit and proper in the facts and circumstances of the case."

3. In the earlier round the authorities were directed to consider the following:-

"4. Taking into account the submissions made by Dr. Lenka, we do not think that it will be prejudicial to either of the sides if this O.A. is allowed to be disposed of. Accordingly, without going into merits of the matter, we dispose of this O.A. by directing Respondent No. 3 to consider the representation dated 10.6.2018 (Annexure A/10 series), if any such representation has been preferred and is still pending consideration, and pass a reasoned and speaking order within a period of six weeks from the date of receipt of copy of this order.

5. Although, we have not expressed any opinion on the merit of the matter and all the points raised in the representation, stated to have been made is still pending consideration before Respondent No. 3, be considered as per Rules and Regulations in force, still then we hope and trust that if after such consideration applicant's grievance is found to be genuine then expeditious steps may be taken by the Official Respondents within a further period of eight weeks to redress his grievance. However, we also make it clear that if in the meantime the said representation under Annexure A/10 series dated 10.6.2018 has already been considered and disposed of then result of the same be communicated to the applicant within a period of four weeks from the date of receipt of this order."

4. Despite such clear mandate, the authorities have not issued any order on the representation instead they have issued order dated 24.9.2018 posting the applicant to an OFS post, which is extracted as under:-

"No. 20647/F&E, Shri Kedar Chandra Dalai, IFS (SFS-2000) at present Deputy DF, FTS G. Udaygiri is transferred and post as Dy. CF, M&E, O/o. PCCF, Odisha."

5. Despite service, none appears for the respondents. Therefore, Rule 16(1) of CAT (Procedure) Rules, 1987 is invoked. Affidavit of service is taken on record.

6. Ld. Counsel for the applicant submits that the applicant shall be satisfied if a direction is given to consider the representation dated 25.9.2018 in the light of circulars G.A. Department Circular No. 24003/Gen dt. 16.8.2001 relating to Special consideration for KBK and also Rule 8 & 9 of the Indian Forest Service (Cadre) Rules, 1966:-

"8. Cadre and ex-cadre posts to be filled by cadre officers – 8(1) Save as otherwise provided in these rules, every cadre post shall be filled by a cadre officer.

8(2) A cadre officer shall not hold an ex-cadre post in excess in the number specified for the concerned State under item 5 of the Schedule of the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.

8(3) The State Government may, with the prior approval of the Central government, appoint a cadre officer to hold an ex-cadre post in excess of the number specified for the concerned State in item 5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 and for so long as the approval of the Central Government remains in force, the said ex-cadre post shall be deemed to be an addition to the number specified in item 3 of the said Schedule."

9. Temporary appointment of non-Cadre officers to cadre post-(1) A cadre post in a State shall not be filled by a person who is not a cadre officer except in the following cases, namely:-

(a) If there is no suitable cadre officer available for filling the vacancy;

Provided that when a suitable cadre officer becomes available, the person who is not a cadre officer shall be replaced by the cadre officer:

Provided further that if it is proposed to continue the person, who is not a cadre officer, beyond a period of three months, the State Government shall obtain the prior approval of the Central Government for such continuance;

(b) If the vacancy is not likely to last for more than three months;

Provided that if the vacancy is likely to exceed a period of three months, the State Government shall obtain the prior approval of the Central Government for continuing the person who is not a cadre officer beyond the period of three months.

9(2) A cadre post shall not be filled by a person who is not a cadre officer except in accordance with the following principles, namely:-

(a) If there is a Select List in force, the appointment or appointments shall be made in the order of names of the officers in the Select List;

(b) If it is proposed to depart from the order of names appearing in the Select List, the State Government shall forthwith make a proposal to that effect to the Central Government the post and may in the light of the advice given by the Union Public Service Commission give suitable direction to the State Government concerned."

7. Accordingly, without going into the merits of the matter ^{but B} or taking note of the fact that the respondents have already flouted the directions of this Tribunal by not issuing any reasoned and speaking order on the order passed in the earlier round, we dispose of the present O.A. with a direction upon the respondent No. 3 or any other competent authority to consider the grievance in the light of the circular referred to above and pass an appropriate reasoned and speaking order within a period of 4 weeks and till such time the transfer order dated 24.9.2018 shall remain stayed.

8. The O.A. is disposed of accordingly. No costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

