

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/01709-01710/2015

DATED THIS THE 28TH DAY OF NOVEMBER, 2017

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

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

1. Sri. Narayananamurthy D.C,
S/o Late N. Channakeshavaiah,
Aged about 57 years,
Working as Deputy Conservator of Forest,
Kalburgi Division,
Kalburgi r/a Iwan E Shahi Government Quarters,
Behind Irrigation Department,
Kalburgi, Kalburgi District.

2. Sri. Dilipkumar N. Aghore,
S/o Late Narayana R Aghore,
Aged about 58 years,
Working as Deputy Conservator of Forest,
OECF-JEPM, Dharwad,
Dharwar District.
r/a Forest Training Institute Quarters,
No. 1, Gungaraghatti Post,
Mummy Ghatti – 580 011,
Dharwar District

.....Applicants

(By Advocate Shri B. Krishna)

Vs.

1. Union of India,
Represented by its Secretary,
Department of Personnel and Training,
Ministry of Personal Public Grievances
And Pension, North Block,
New Delhi – 110 011.

2. The Union of India,
Represented by its Secretary,
Ministry of Environment, Forests and
Climatic Change,
Indira Paryavaran Bhavan,

6th Floor, Prithvi Block,
Jorbagh Road, Ali Ganj,
New Delhi – 110 003.

3. The Union Public Service Commission,
Dholpur House, Shahajan Road,
New Delhi – 110 011.

Represented by its Commissioner.

4. The Chief Secretary,
State of Karnataka,
Department of Personnel and
Administrative Reforms,
Vidhana Soudha,
Bangalore – 560 001.

5. The State of Karnataka,
Represented by Additional Secretary,
Department of Forests, Environment
And Ecology,
Vikasa Soudha,
Bangalore – 560 001.

6. The Principal Chief Conservator of Forests,
Aranya Bhavan,
Malleshwaram,
Bangalore – 560 003.

7. Sri. Sabakath Hussain H.C.,
Aged major,
Working as Deputy Conservator of Forests,
Dharwad Division,
Dharwad – 580 001

....Respondents

(By Shri S. Prakash Shetty, Senior Panel Counsel for Respondent No.2,
Shri M. Rajakumar, Counsel for Respondent No.3
Shri S. Mahanthesh, Counsel for Respondent No. 4 to 6 &
Shri Girish S. Jambagi, Counsel for Respondent No. 7)

ORDER

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

The applicants have filed the present OA seeking the following reliefs:

1. *To issue Writ of certiorari or appropriate writ or order or direction to quash the impugned orders No. 17013/20/2013-IFS-II dated 13.10.2015 and 26.11.2015 passed by the Respondents No. 2 & 5*

respectively (Annexure-A14 & A15) in so far as it relates to the appointment of Respondent No. 7 is concerned as the said orders are illegal, arbitrary, unjust and contrary to the Rules and also the same is in utter contravention of Articles 14, 21, 300 (A) and 335 of the Constitution of India.

2. *To issue an order or direction, directing the Respondent No. 1 to 6 to include the names of the applicants in the eligibility list and to promote him to the next cadre of Indian Forest Services, granting all the consequential benefits, to meet the ends of justice.*
2. The applicants belong to the State Forest Service cadre. Referring to the provisions of Indian Forest Service (Appointment by Promotion) Regulations, 1966, they submit that from 2007-2014 no appointment has been made for the IFS cadre by promotion from the State Forest Service cadre in Karnataka. Based on the vacancies for 2008-12, the 5th respondent prepared the particulars of State Forest Service officers who are eligible for consideration for promotion to IFS cadre in the order of seniority as on 01.01.2008 (Annexure-A5). In the said list, the name of the applicants did not figure whereas the name of 7th respondent finds place in Sl. No. 1 and the name of Shri D. Yatishkumar finds place at Sl. No. 3. However both Respondent No. 7 and Shri D. Yatishkumar were facing departmental proceedings and hence should not have been eligible for consideration of their case for promotion to IFS. They also refer to the eligibility list prepared for the years 2009, 2010, 2011 and 2012 making similar contention regarding inclusion of Respondent No. 7 and Shri D. Yatishkumar in the list. They also mentioned that in response to the records forwarded by the State Government to the UPSC for convening the Selection Committee meeting the UPSC found various discrepancies regarding missing ACRs and asked the 5th respondent

to ratify the same. The discrepancy of non-availability of ACRs was also mentioned in respect of Respondent No. 7 and Shri D. Yatishkumar.

3. The applicants submits that to their best knowledge their ACRs were 'Outstanding'. However for the 7th respondent two departmental enquiries were pending. While in one case charge memo was filed, in other case penalty of withholding of 3 increments with cumulative effect was imposed on him during 2010. Similar situation also prevails in case of Shri D. Yatishkumar. They contend that if the name of Respondent No. 7 and the name of Shri D. Yatishkumar was excluded in the eligibility list the names of the applicants could have been included in the zone of consideration for selection and promotion for IFS cadre. The 7th respondent was also selected for the year 2011. Based on the select list approved by the UPSC, the 2nd respondent issued notification dated 13.10.2015 (Annexure-A14) in which 8 State Forest Service officers were appointed to IFS cadre. The appointment/promotion order dated 26.11.2015 (Annexure-A15) includes the appointment of Respondent No. 7 to the IFS cadre. In the eligibility list Shri D. Yatishkumar and 3 other persons were also included due to which the right of the applicants have been deprived. Hence they approached the Tribunal in the present OA seeking the aforesaid reliefs.

4. The State Government, i.e, Respondent No. 4-6 filed reply statement in which they submits that in pursuance of determination of vacancies for the select year 2008A-2012 they forwarded all documents related to candidates falling within the zone of consideration to Respondent No. 2 for convening the

meeting of Selection Committee for preparation of select list of SFS officers to IFS. On the contention of the applicants that Respondent No. 7 and Shri D. Yatishkumar against whom departmental proceedings were pending could not have been included in the list, they submit that there is not bar in the IFS promotion guidelines to include the names of officers in the zone of consideration who are facing departmental or criminal cases. In such cases the State Government is at liberty to withhold the integrity in respect of these officers which renders them unsuitable for promotion to the IFS. It is further submitted that, in respect of the respondent a penalty of withholding of three increments was questioned by him before the Hon'ble KAT which subsequently quashed the order of punishment dated 24.05.2010 vide order dated 02.08.2013. The State Government has implemented the Hon'ble KAT order as such the 7th respondent was not facing any departmental enquiry nor facing penalty at the time of recommending his case to the UPSC. As regards Shri D. Yatish Kumar at the time of recommending his case to the UPSC, in a DE case imposition of penalty was under consideration of the 5th respondent. Therefore the contention of the applicant that both were not eligible to be included in the zone of consideration in so far as this respondent is concerned can hardly hold ground.

5. On the contention of the applicants regarding discrepancies pointed out by UPSC, they submit that it is true that UPSC pointed out some discrepancies of missing ACRs but this discrepancy were attended to and final documents sent to UPSC which were accepted. This has nothing to do with the overall

selection process. The final selection was undertaken by the Selection Committee and the State Government has no role to play in the same.

6. The Respondent No. 2, i.e., the Ministry of Environment and Forests filed their reply statement saying that the Selection Committee meeting for the select list years 2008A to 2012 was held on 25.11.2014. D. Yatish Kumar was included in the select list 2008A, 2009, 2010, 2011 and 2012 provisionally subject to the clearance in the disciplinary proceedings pending against him and grant of integrity certificate by the State Government. Shri H.C. Sabakath Hussain was included in the select list 2011 by Selection Committee. The select list was notified vide this Ministry's order No. 17013/20/2013-IFS.II dated 13th October, 2015. The State Government did not furnish the integrity certificate in respect of Shri D. Yatish, therefore, he was not inducted into IFS. All the necessary formalities were fulfilled by the State Government of Karnataka while forwarding the proposals for appointment of SFS to the IFS of Karnataka Cadre, and Shri Hussain was inducted to IFS vide this Ministry's order No.17013/20/2013-IFS.II dated 26th November, 2015. The Notifications No. 17013/20/2013-IFS-II dated 13.10.2015 and 26.11.2015 are issued by this Ministry after following due procedure and as per the recommendation of Selection Committee Meeting and concurrence of State Government.

7. The Union Public Service Commission, i.e., Respondent No. 3 have furnished a detailed reply statement in which they have made detailed reference to various provision of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 and stated that the ACRs of eligible officers are

the basic inputs on the basis of which eligible officers are categorized as 'Outstanding', 'Very Good', 'Good' and 'Unfit' in accordance with the provisions of Regulation 5(3AA) of the Promotion Regulations. The Selection Committee is not guided merely by the overall grading that may be recorded in the ACRs but in order to ensure justice, equity and fair play, the Committee makes its own assessment on the basis of in-depth examination of service records of eligible officers, deliberating on the quality of the officer on the basis of performance as reflected under various columns recorded by the Reporting/Reviewing Officer/Accepting Authority in the ACRs for different years and then finally arrives at the classification to be assigned to each eligible officer in accordance with provisions of Promotion Regulations. While making an overall assessment, the Selection Committee takes into account the orders regarding appreciation for meritorious work done by the concerned officer. Similarly, the Selection Committee also keeps in view the orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation, have not been completely expunged.

8. The Respondent No. 3 submits that the name of the seventh respondent (Shri Sabakath Hussain H.C.) was in the zone of consideration at Sl. No. 1 for the Select Lists of 2008-A to 2011. The State Government had intimated that in the disciplinary proceedings initiated vide chargesheet dated 24.07.2000 against Shri Sabakath Hussain, he was exonerated, vide order dated 31.01.2013 issued by the State Government. Further, the disciplinary proceedings initiated, vide chargesheet dated 24.05.2003, culminated into the

imposition of penalty dated 24.05.2010 for withholding three increments with cumulative effect, vide order dated 24.05.2010. However, the Penalty Order dated 24.05.2010 was quashed by the Hon'ble Karnataka Administrative Tribunal, vide order dated 02.08.2013 in Application No. 5591/2010 filed by him. The order of the Hon'ble KAT was accepted by the Government of Karnataka, vide order dated 30.12.2013. Therefore, there were neither any disciplinary proceedings pending against him nor any penalty existed at the time of the Selection Committee Meeting held on 25.11.2014. For the Select Lists 2008-A to 2010, he was overall assessed as 'Unfit' on the basis of his service records considered for the period for 2003-04 to 2007-08 for the Select List of 2008-A, for 2004-05 to 2008-09 for the Select List of 2009 and for 2005-06 to 2009-10 for the Select List of 2010. Therefore, the Committee did not recommend for inclusion of his name for any of the Select Lists of 2008-A to 2010. However, for the Select List of 2011, on an overall assessment of his service records for the period for 2006-07 to 2010-11, the Committee assessed him as 'Good'. On the basis of this assessment, his name was recommended for inclusion at Sl. No. 1 in the Select List of 2011.

9. The Respondent No. 3 further submits that the names of Shri D.C. Narayananamurthy and D.N. Aghore (Applicants) were considered for the Select List of 2009 at Sl. Nos. 9 and 11 in the eligibility list of 12 officers against 4 vacancies. On an overall relative assessment of their service records for the period from 2004-05 to 2008-09, the Committee assessed both of them as 'Good'. On the basis of this assessment, their names could not be included in the Select List due to availability of officers senior to them with better grading

and statutory limit on the size of the Select List. The name of Shri D.C. Narayananamurthy was further considered for the Select List of 2011 at Sl. No. 3 in the eligibility list of 3 officers against 1 vacancy. On an overall relative assessment of his service records for the period for 2006-07 to 2010-11 the Committee assessed him as 'Good'.

10. Further, according to the Respondent No. 3 the name of Shri D Yatish Kumar was also considered for the said Select List of 2011 at Sl. No. 1A in addition to normal zone under second proviso to Regulation 5 (4) of the IFS (Appointment by Promotion) Regulations, 1966 which is reproduced below:

"Provided further that while preparing yearwise select lists for more than one year pursuant to the 2nd proviso to sub regulation (1), the officer included provisionally in any of the Select List so prepared shall be considered for inclusion in the Select List of subsequent year in addition to the normal consideration zone and in case he is found fit for inclusion in the suitability list for that year on a provisional basis such inclusion shall be in addition to the normal size of the select list determined by the Central Government for such year.

He was assessed as 'Very Good'. On the basis of this assessment, the name of Shri Yatish Kumar was included in addition at Sl. No. 0A in the Select List of 2011, provisionally subject to clearance in the disciplinary proceedings pending against him and grant of integrity certificate by the State Government. As there was only one vacancy for the Select List of 2011 and the names of Shri Sabakath Hussain H.C. and Shri D. Yatish Kumar, both senior to Shri D.C. Narayananamurthy and having similar or better gradings were available for inclusion in the Select List, their names were included in the Select List accordingly at Sl. No. 1 and Sl. No. 0A (in addition to normal size of the Select List as explained at para 4.3.3 above) respectively. As such, the name of Shri

D.C. Narayananamurthy could not be included in the Select List of 2011 due to availability of officers senior to him with similar or better grading and statutory limit on the size of the Select List. They submit that the entire process has been done as per the provisions of rules and laid down procedure.

11. The applicant has filed a rejoinder in which he practically reiterated the same submissions already highlighted in the OA and emphasized that the Respondent No. 7 and Shri D. Yatishkumar should not have been included in the eligibility list as the departmental proceedings were pending against him.

12. We have heard the learned counsel for the parties who placed argument on the same line as submitted in the OA and the reply statement and which has been already highlighted in the preceding paras.

13. We have carefully considered the facts of the case and submissions made by the parties. The main grievance of the applicant in the present case is against inclusion of Respondent No. 7 and Shri D. Yatishkumar in the eligibility list and selection of the Respondent No. 7 in the select list for 2011. Regarding inclusion of the Respondent No. 7 and Shri D. Yatishkumar in the eligibility list, the position has been amply clarified by the State Government and UPSC saying that there is absolutely no bar in the rules and guidelines to include the name of officers who are in the zone of consideration but are facing departmental proceedings. However at the time of considering promotion their integrity certificate will be withheld. We are inclined to agree with the said submissions. The pending departmental proceedings against an officer should not bar him from consideration as he may be exonerated from

the departmental proceedings as has been the case in the case of Respondent No. 7 and in that case he cannot be deprived from the promotion to which he is entitled. At the time of final appointment if the departmental proceedings is still pending or the penalty is imposed the authorities can withhold the promotion as has been done in the case of Shri D. Yatishkumar. Therefore there is no rationale in the contention made by the applicant that because of the pending departmental proceedings the Respondent No. 7 and Shri D. Yatishkumar ought not to have been included in the eligibility list for consideration for promotion to IFS.

14. As regards selection and appointment of Respondent No. 7, it has been clarified by the State Government and UPSC that in two departmental proceedings issued against Respondent No. 7 he was exonerated in one vide order dated 31.01.2013 by the State Government. In the other departmental proceeding which culminated in imposition of penalty the Respondent No. 7 had approached the Karnataka Administrative Tribunal against the penalty and the Karnataka Administrative Tribunal vide order dated 02.08.2013 quashed the said penalty and it was accepted by the State Government. Therefore when the Selection Committee meeting took place neither the departmental proceeding was pending against him nor any penalty existed. Therefore there is absolutely no bar in the selection of Respondent No. 7 based on the assessment. We also note that based on the available record for different years, the Respondent No. 7 was considered as 'Unfit' for the select year 2008A-2010 but was assessed as 'Good' for the select list 2011 and based on that selection his name was recommended for inclusion at Sl. No. 1 in the

select list for 2011. The two applicants were considered for the select year 2009-11 could not be considered for inclusion in the select list as other officers senior to them with same or better grading were available and included in the select list. Therefore on going through the records we also do not find anything irregular or unjustified in the selection process undertaken for promotion of SFS officers to IFS from Karnataka.

15. On detailed consideration of facts and circumstances of the case, we hold that the contention made by the applicants in the present OA does not merit any consideration and hence the OA being devoid of merit are liable to be dismissed. Accordingly the OAs are dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

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

/ksk/

Annexures referred to by the applicants in OA No. 170/01709-01710/2015

Annexure A1: Copy of the Government of Karnataka Notification No. FEE/86/FFS/2013 dated 19.08.2013

Annexure A2: Copy of Indian Forest Service (Appointment by Promotion) Regulations,1966 as amended on 31-12-1997, 25-07-2000, 31.01.2005 & 13.10.2005

Annexure A3: Copy of DoPT Notification dated 17.03.2015 to be published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-Section (i)]

Annexure A4: Copy of F.No. 4/3/2005-AIS as on 27.02.2012 by UPSC

Annexure A5: Copy of particulars of SFS officers who are eligible for consideration for promotion to the IFS in their order of seniority as on 1st January of the Select List Year (2008)

Annexure A6: Copy of details of disciplinary proceedings pending against eligible officers (2008)

Annexure A7: Copy of particulars of SFS officers who are eligible for consideration for promotion to the IFS in their order of seniority as on 1st January of the Select List Year (2009)

Annexure A8: Copy of particulars of SFS officers who are eligible for consideration for promotion to the IFS in their order of seniority as on 1st January of the Select List Year (2010)

Annexure A9: Copy of details of disciplinary proceedings pending against eligible officers (2010)

Annexure A10: Copy of particulars of SFS officers who are eligible for consideration for promotion to the IFS in their order of seniority as on 1st January of the Select List Year (2011)

Annexure A11: Copy of particulars of SFS officers who are eligible for consideration for promotion to the IFS in their order of seniority as on 1st January of the Select List Year (2012)

Annexure A12: Copy of U.O. Note No: DPAR 62 SFP 2012 dated 01.03.2014

Annexure A13: Copy of Principal Chief Conservator of Forests letter dated 08.10.2013 addressed to the Principal Secretary, Forest, Environment and Ecology Department.

Annexure A14: Copy of Notification No. 17013/20/2013-IFS.II dated 13.10.2015

Annexure A15: Copy of Notification No. 17013/20/2013-IFS.II dated 26.11.2015

Annexures with reply statement:

Nil
