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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00976/2017

Thursday, this the 28th day of March 2019

**Hon'ble Mr.E.K.Bharat Bhushan, Administrative Member
Hon'ble Mr.Ashish Kalia, Judicial Member**

C.Babu, aged 56 years
S/o.P.M.Chandran
Perumvanchikuzhi House
Aranyam, Amalagiri P.O, Kottayam
(Deputy Conservator of Forest (Non-Cadre) (retired)
Deputy Director, Periyar Tiger Reserve
West Division, Peerumedu, Idukki District) **Applicant**

(By Advocate Mr.P.V.Mohanan)

V e r s u s

1. Union of India, represented by
the Secretary
Ministry of Environment, Forest and Climate Change
Indira Paryavaran Bhavan
6th Floor Prithvi Block, Jorbagh Road Aligng
New Delhi – 110 001
2. State of Kerala represented by Chief Secretary
Government of Kerala
Thiruvananthapuram – 695 001
3. Union Public Service Commission
Represented by its Secretary
Shajahan Road, New Delhi – 110 001
4. Selection Committee
For Selection to the Indian Forest Service
Constituted under Regulation 3 of IFS
(Appointment by promotion)
Regulation 1966, represented by its Chairman
Union Public Service Commission
Shajahan Road, New Delhi – 110 001 **Respondents**

**(By Advocate – Mr.Thomas Mathew Nellimoottil for R 3 to 4,
Mr.T.C.Krishna,Sr.PCGC for R1 and Mr.M.Rajeev,G.P for R 2)**

This Original Application having been heard on 25.3.2019, the Tribunal on 28.3.2019 delivered the following:

O R D E R

Per: Mr.E.K.Bharat Bhushan, Administrative Member

The Original Application No.180/00976/2017 is filed by Mr.C.Babu, retired Deputy Conservator of Forest (Non-Cadre) against the decision of the respondents not to consider him for promotion to Indian Forest Service (Kerala) cadre for the year 2015 on the ground of currency of a departmental punishment. He seeks the following reliefs:

“ i. To call for the records leading to Annexure A-6 Select List to Indian Forest Service (Kerala) cadre on promotion quota for the year 2015 and set aside the same in so far as it does not select the applicant to Indian Forest Service cadre for the year 2015.

ii. To direct the respondents to include the name of the applicant in the Select List of 2015 for appointment to Indian Forest Service (Kerala) cadre on promotion quota and to issue order appointing the applicant to IFS (Kerala) Cadre under Rule 9(1) of IFS (Appointment by promotion) Regulation, 1966 forthwith with all consequential benefits.

iii. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice.

iv. To call for the records leading to Annexure A 18 Notification 17.1.2018 and set aside the same in so far as it has not appointed the applicant to Indian Forest Service (Kerala) Cadre on promotion quota. ”

2. The applicant had started his service in the Forest Department as a Ranger on 1.1.1987 and was promoted as Assistant Conservator of Forests on 28.3.2006. He was again promoted as Deputy Conservator of Forests (Non-Cadre) on 1.11.2013. As per final seniority list of Assistant Conservator of Forests as on 1.5.2010, the applicant is arrayed as Rank

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No.48 (Annexure A1). He had an excellent record of service throughout and was the recipient of several Good Service entries and appreciation letters. There are no adverse entries in his confidential reports and no departmental proceedings pending against him when he retired from service on 30.4.2017.

3. On the basis of his record, he was eligible for selection and appointment to IFS (Kerala) cadre under promotion quota for the years 2015, 2016 and 2017 as well. But due to failure on the part of respondent nos.2 and 3 in convening the Selection Committee Meeting, he could not be considered for induction into the Indian Forest Service during the years referred to and he retired from service without getting the benefit of promotion into the All India service. On being approached through Original Application No.180/00250/2017, this Tribunal by order dated 28.3.2017 had directed that the retirement of the applicant from State Forest Service would not stand in the way of him being considered for promotion to Indian Forest Service (Kerala) Cadre, if he was otherwise eligible. A copy of the order is at Annexure A-3.

4. The first respondent, by a proceeding dated 7.9.2017, had determined 9 vacancies to be filled up from State Forest Service to Indian Forest Service for the year 2015. A copy of the notification is at Annexure A-4. This Tribunal, by order dated 22.9.2017, had directed the State Government to forward the full list of officers who formed the zone of consideration to the UPSC and the Commission was instructed to convene the selection committee meeting for the year 2015 within one month of the date of receipt

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of the proposals from the State Government. A copy of the order of this Tribunal in O.A No.180/00612/2017 is at Annexure A-5.

5. In the Selection Committee Meeting held on 30.10.2017 for the year 2015, only 7 State Forest Service Officers were selected and two officers in the select panel were juniors to the applicant in State Forest Service. The applicant was excluded from the select list despite two substantive vacancies remaining unfilled. With respect to his non-inclusion, the applicant goes on to submit the following.

6. In accordance with due procedure, the Head of the Forest Force had forwarded the statements showing particulars of eligible State Forest Service Officers along with their ACRs and other service records including currency of penalties, pendency of disciplinary proceedings etc to the Additional Chief Secretary to the Government of Kerala for furnishing proposals to the Selection Committee for 2015 vacancies. The applicant has come to know that against his name under the details of ‘penalties imposed’, a punishment of “recovery” is seen recorded with the following remarks:

“Disciplinary action for minor penalty was initiated against Sri.C.Babu, Range Officer in connection with the failure of 1998 Reeds Plantation in Kuttampuzha Range of Malayattoor Division. Memo of charges was issued on 24.2.2004 for causing Government loss of Rs.48276/- from him. Show Cause Notice has been served to Sri.C.Babu vide letter No.B4/29997/2000 dated 7.12.2006. The case was finalized with a strict warning that he should be more cautious in his official duties in future and to recover the Government loss of Rs.48276/- from him as per order No.B4-29997/2000 dated 27.12.2006.”

7. It is admitted that there had been a disciplinary proceeding against the applicant when he was a Range Officer during the period from 31.5.1998 to 3.4.1999. The Chief Conservator of Forests, without conducting a formal inquiry and merely by issuing a show-cause notice, had proposed to impose penalty of recovering of Rs.48,276/- as loss to the Government and to bar increment for six months without cumulative effect upon the applicant. A final order of punishment was issued by the Chief Conservator of Forests on 27.12.2006 whereby a penalty of recovery of Rs.48,276/- was imposed along with a warning. A copy of the said order is at Annexure A-11.

8. The applicant had filed an appeal petition and requested that the amount may be recovered on monthly instalments at the rate of Rs.2000/- per month from his salary (Annexure A-12). A further request was made on 5.12.2008. In the meanwhile, the appeal was rejected by proceeding dated 29.8.2009 (Annexure A-15). Consequently, by a proceeding dated 8.9.2009 the Chief Conservator of Forests had directed that the penalty amount may be recovered in 24 equal instalments (Annexure A-16) and the recovery commenced from the month of October 2009 onwards. The contention of the applicant is that if the recovery had started from November 2008 onwards, the currency of penalty would have been completed by December 2010 enabling him to be free from any shadow of punishment during the assessment matrix of 2011-2015 which was considered for inclusion in the 2015 IFS select list. The applicant submits that the recovery should be deemed to have been effected from 27.12.2006 onwards. By delaying the recovery till October 2009, the respondents have severely impaired the

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applicant's career prospects and deprived him of the opportunity for selection to the IFS for the year 2015.

9. The applicant submits that his outstanding career record was of no avail in view of unfair interpretation of currency of punishment made by the State Government. Persons with lesser service records have managed to get selection. It was only because of the delay on the part of the officers in completing the recovery which has led to his exclusion. There is no currency of penalty at the time of convening the Selection Committee Meeting and the applicant ought not to have been declared as unfit. As per guidelines brought out by the UPSC dated 27.2.2012, governing procedures for preparation of select list "the currency of penalty is taken from the date from which it is imposed/effective to the date it ceases to be in force. "

10. Reply statements have been filed by respondent no.2 as well as respondent nos.3 and 4. In the reply statement on behalf of respondent nos.3 and 4, the selection process involving convening and analysis of the service records of the officers forming the zone of consideration are explained in detail. It is maintained that the proposals of the officers comprising the zone of consideration are received from the State Governments along with all particulars relating to disciplinary proceedings, currency of punishment, APARs etc. These are examined in relation to the "Assessment Matrix" which comprises 5 years counting back and including the year for which the promotions are being considered. Thus in this case the Assessment Matrix is 2011-2015. In the case of the applicant, according to the information

available from the details furnished by the State Government, the penalty of recovery of Rs.48,276/- was reported to be in progress and the same was completed only on 4.11.2011. As the recovery extended during the period in the Assessment Matrix, he was declared as unfit. The recommendations of the Selection Committee were approved by the Commission on 15.11.2017 and acted upon by the Government of India vide its notification dated 21.11.2017.

11. The second respondent who is the State Government of Kerala has also filed a reply statement wherein the particulars of the applicant's service are admitted. Going into the contentions that the recovery in respect of the applicant ought to have commenced from the date of imposition of punishment i.e, on 27.12.2006 and by waiting till October 2008, the period of recovery was extended into 2011 thereby nullifying the chances of the applicant, the second respondent states that this is on account of the applicant himself frequently representing to the authorities to grant more time or to stay the recovery. Explaining the sequence of events, the reply statement narrates that while the punishment was issued by order dated 27-12-2006 and an appeal petition was filed by the applicant on 15-11-2007. On 30-05-2008, the applicant submitted a request to the authorities not to start the recovery till his appeal is decided. Again as per letter dated 27-06-2008, the applicant submitted another representation to the Principal Chief Conservator of Forests to stop recovery till he has been personally heard. The authorities were left with no option but to delay the recovery so that the appeal was decided first. After the appeal was rejected and duly considering

the applicant's request to allow him to remit the amount in monthly instalments of Rs.2000/-, orders were issued. Hence the currency of punishment was over only on 04-11-2011 and for this, the applicant himself is responsible. He could have easily avoided such a situation if he had remitted the amount in a lumpsum.

12. We have heard Shri. PV Mohanan on behalf of the applicant, Shri. M Rajeev, GP on behalf of respondent No. 02 and Shri. Thomas Mathew Nellimootil, on behalf of respondent No.3 & 4. Perused the records.

13. Shri.P.V.Mohanan cited Kerala Civil Services (Classification, Controll and Appeal) Rules under which the punishment had been imposed upon the applicant. He submitted that it is unjust and illegal to exclude the applicant from the selection to Indian Forest Service on the ground of currency of punishment being 'alive' in 2011 for a punishment which had been imposed in 2006. It was due to procedures that significant delay had occurred in dealing with his appeal petition as well as in considering his request for further reliefs in the form of instalments. Thus, he had already been punished with the recovery and to punish him further by extending the recovery period so that it falls in the Assessment Matrix, amounts to double jeopardy. The learned counsel for respondent no.2, the Government of Kerala, citing various dates through which the action against the applicant had progressed, pointed out that it is the repeated representations made by the applicant which resulted in procedure being prolonged. The department had taken a lenient view on humanitarian ground and had allowed the

applicant to pay back the amount in easy instalments. Thus, the currency of penalty could end only on 4.11.2011, making him ineligible for the select list of 2015. It is the applicant himself who is responsible for his predicament.

14. Shri.Thomas Mathew Nellimoottil on behalf of respondent nos.3&4 submitted that the UPSC works under a clearly delineated set of procedures. Recruitment Rules have been framed for IAS/IPS/IFS and in pursuance of these Rules, IFS (Appointment by Promotion) Regulations, 1966 have been framed. The Commission solicits details relating to eligible candidates to be considered for promotion to the vacancies which are fixed every year by respondent no.1. Among the various eligibility components, the State Government is also expected to verify whether there is any shadow of punishment over a candidate during 5 years preceding the year for which selection is being made (including that year). In the case of the applicant it was reported that recovery initiated against the officer was in progress in the year 2011. This made him ineligible for consideration for 2015 vacancies. The fact that there were two more vacancies for which there were no eligible hands does not bestow any special rights on the particular applicant.

15. The applicant produced a copy of our order in O.A 180/126/2018 relating to the select list for the IFS for 2015 in respect of another candidate. But it is seen that the set of circumstances therein were entirely different from what is present in this case. It is not denied that recovery of monthly instalments commenced on Oct 2009 and went on to be completed only on

4.11.2011. Clearly, the applicant is hit by the guidelines of the UPSC which stipulates that a candidate should be free from the shadow of punishment for the Assessment Matrix which, in this case is 2011-2015. In so far as his contention that it was due to the lethargy of the authorities that the recovery was delayed, we do not view this argument as valid. The second respondent has pointed out that on more than one occasion the applicant had successfully managed to delay the recovery through requests to higher authorities. Thus, in a manner of speaking, the applicant has been hoist with his own petard. We see no scope for interference from our side in the Original Application. Accordingly, the Original Application fails and is dismissed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

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(E.K BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

List of Annexures

Annexure A1 - True extract copy of the final seniority list of Assistant Conservator of Forests as on 01-05-2010 issued by Forest and Wildlife F Department.

Annexure A2 - True copy of the G.O.(Rt) No.2890/2015/RD dated 04-06-2015 issued by 2nd respondent.

Annexure A2A - True copy of the Order No.Pro(4) 3605/2005 dated 18-02-2012 issued by Principal Chief Conservator of Forests Chief Wildlife Warden, Kerala.

Annexure A2B - True copy of the Order No. G(3) 4382/86 dated 21.06 .94 issued by Forest Conservator.

Annexure A2C - True copy of the Certificate issued by Government of Kerala.

Annexure A2D - True copy of the letter of Appreciation No. DM2-20299/16 dated 01.02.2017.

Annexure A3 - True copy of the order in OA No.180/00250/2017 Dated 28-03-2017.

Annexure A4 - True copy of the notification File No.17013/25/2016 IFS-II dated 07-09-2017 issued by the first respondent.

Annexure A5 - True copy of the order in MA No.180/00883/17 & MA No.180/00943/17 in O.A. No. 180/00612/2017 Dated 22.9.2017.

Annexure A6 - True copy of the Select List No. 17013/25/2016- IFS Dated 21-11-2017 issued by the first respondent.

Annexure A7 - True copies of the details obtained under Right to Information Act dated 15-02-2017 issued by State Public Information Officer & Deputy Conservator Of Forests (Administration)

Annexure A8 - True copy of the fresh proposals forwarded to Selection Committee by State of Kerala.

Annexure A9 - True copy of the report No.A1-2063/06 dated 07-04-2006 issued by the Divisional Forest Officer.

Annexure A10 - True copy of the Explanation dated 11.12.2006.

Annexure A11 - True copy of the Order No.84-29997/00 dated 27-12-2006 issued by the Chief Forest Conservator (Administration) & Disciplinary Authority.

Annexure A12 - True copy of the Appeal Petition dated 15-11-2007.

Annexure A13 - True copy of the letter No.SFE-667/07 dated 15-10-2008.

Annexure A14 - True copy of the representation dated 05-12-2008.

Annexure A15 - True copy of the order B4-29997/2000 dated 29-08-2009 issued by Principal Chief Conservator of Forests.

Annexure A16 - True copy of the proceeding No.B4-29997/2000 dated 08-09-2009 issued by Chief Conservator of Forests (Administration)

Annexure A17 - True copy of the Circular F.No.4/3/2005-AIS as on 27-02-2012 issued by 3rd respondent.

Annexure A 18 - True copy of the Notification No.17013/25/2016 IFS-II dated 17-01-2018.

Annexure R2(A) - Annexure 4.2 (details of penalties imposed on eligible Officers during the last ten years) submitted along with the proposal for SCM held on 30-10-2017.

Annexure R2(B) - Order of the Hon'ble High Court dated 31-07-2017 in Crl. M.A No.3629/2017 in Crl.M.C.No.1897/2016 filed by Shri. K Raju Thomas.

Annexure R2(C) - Order of the Hon'ble High Court dated 11.12.2017 in Crl. M.C.No.1897/2016 filed by Shri. K Raju Thomas.

Annexure R2(D) - No.323/2017/Forest dated 23.08.2017.

Annexure R2(E) - Copy of the judgement of the Hon'ble High Court dated 24-05-2017 in MACA No.79/2011.

Annexure A19 - True copy of the minutes of the meeting of the Selection Committee.

Annexure R2(F) - G.O.(Rt) No.967/2018/GAD dated 14-02-2018.

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