



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

No. O.A. 350/00079/2017
(MA. 350/00026/2017).

Date of order: 26/11/2018

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

Alankar Kumar Jha,
Son of Late Chandra Shekhar Jha,
Aged about 58 years,
Working as Addl. Principal Chief Conservator
Of Forests in the Office of PCCF and HoFF,
Govt. of West Bengal at present
Residing at 2A, Rishi Apartment,
Garia Main Road,
Kolkata – 700 084.

.. Applicant

- V E R S U S -

1. Union of India,
Through the Secretary to the
Govt. of India,
Ministry of Environment, Forest and Climate
Change, Indira Paryavaran Bhavan,
Jorbagh Road,
New Delhi – 110 003, India.
2. State of West Bengal through the
Chief Secretary to Govt. of West Bengal,
Nabanna 13th Floor, 325 Sarat Chatterjee Road,
Shibpur,
Howrah – 711 102.
3. The Principal Secretary to
Govt. of West Bengal,
Department of Forest,
2nd Floor, Aranya Bhawan,
Block LA-10A, Sector – III,
Salt Lake, Kolkata,
West Bengal,
Pin – 700 098.
4. The Principal Chief Conservator of Forest
And Head of Forest Force,
Govt. of West Bengal,
Directorate of Forest,

[Signature]

4th Floor, Aranya Bhawan,
LA-10A, Sector – III,
Salt Lake, Kolkata,
West Bengal – 700 098.

.. Respondents

5. Sri Narendra Kumar Pandey,
IFS, Principal Chief Conservator of Forest,
Govt. of West Bengal,
Department of Forest,
3rd Floor, Aranya Bhawan,
Block LA-10A,
Sector – III, Salt Lake, Kolkata,
West Bengal – 700 098.
6. Sri Subrat Dhaundyal IFS,
Managing Director,
West Bengal Forest Development Corporation
Ltd., KB 19, Sec III, Salt Lake,
Kolkata – 700 098.
7. Sri Rajit Ram Pandey, IFS,
8H Awadh Apartment,
Sahakari Awas Samity Ltd.,
4/23 Gomtiñagar Extension,
Sec 4, Lucknow – 226 010.
8. Sri Pradeep Vyas IFS,
Principal Chief Conservator of Forest and
Child Wildlife Warden,
Govt. of West Bengal,
North Block – 3rd Floor,
Bikash Bhawan,
Salt Lake City,
Kolkata – 700 091.
9. Dr. Brij Raj Sharma,
IFS, Flat 551 Skylark Apartment,
Plot 35, Sec VI, Dwarka,
New Delhi – 110 075.
10. Sri Raj Kumar Mahatolia IFS,
Principal Chief Conservator of Forest
Research,
Monitoring and Development,
3rd Floor, New KIT Building,
Poddar Court,
Kolkata – 700 073.

hah

.. Respondents

For the Applicant : **Mr. C. Sinha, Counsel**

For the Respondents : **Ms. A Kunda, Counsel**

ORDER**Per Dr. Nandita Chatterjee, Administrative Member:**

The instant Original Application has been filed by the applicant who is aggrieved by not being promoted to HAG⁺ scale w.e.f. 1.10.2014 and has approached the Tribunal seeking the following relief in particular:-

(a) *To direct the respondents to consider the case of the applicant for promotion to the post of Principal Chief Conservator of Forest, HAG⁺ scale w.e.f. 1.10.2014 with all consequential benefits.*

(b) *Any other order or orders as the Hon'ble Tribunal deems fit and proper."*

2. Heard Ld. Counsel for both sides examined pleadings and documents on record.

Ld. Counsel for the applicant has cited decisions in *Union Of India & ors. vs. K.V. Jankiraman* 1991 AIR SC 2010 and *Union of India & ors. v. Dr. (Smt.) Sudha Salhan* (1998) 3 SCC 394.

3. The applicant's case, in brief, as submitted by his Ld. Counsel, is that the applicant, who was serving as Additional Principal Chief Conservator of Forests, West Bengal had been declared fit for promotion to the post of Principal Chief Conservator of Forest, HAG⁺ scale by the Departmental Promotion Committee held on 29.8.2014 but that the said promotion was not granted to him. The recommendations of the Departmental Promotion Committee was given effect to by promoting one Sri Pradip Shukla to the post of PCCF w.e.f. 1.10.2014 and although a clear second vacancy had existed on 1.10.2014, the applicant was denied his promotion. On the contrary, however, one Shri Narendra Kumar Pandey IFS, junior to the applicant was granted promotion to the post of PCCF w.e.f. 4.3.2015. The applicant had submitted several representations ventilating

[Signature]

his grievances but the representations were not considered by the concerned respondent authorities and, hence, being aggrieved the applicant has approached this Tribunal with the instant Original Application.

The applicant, in his support, has cited, *inter alia*, the following grounds in support of his claim:

- (a) That, the principle of natural and procedural justice were flagrantly violated by the respondent authorities in his case;
- (b) The applicant had a right to be promoted as PCCF being declared fit in the DPC for promotion to the said post and that, as there was no departmental/criminal proceedings or adverse vigilance report against him as on 1.10.2014, there was nothing to debar him from being promoted w.e.f 1.10.2014;
- (c) Although there were two clear vacancies arising out of retirement of two IFS Officers in the PCCF grade, HAG+ scale and though one such vacancy was filled up by granting promotion to Shri Pradip Shukla, the applicant, who was next in reckoning in the panel, was not considered for the said promotion.
- (d) That, his junior Shri Narendra Kumar Pandey, IFS, was promoted to the post of PCCF w.e.f. 4.3.2015 ignoring the genuine claim of the applicant.

4. On the contrary, the respondents have argued that the senior-most officer was promoted to the post of PCCF as per recommendations of the Departmental Promotion Committee as per vacancy which had occurred on 1.10.2014 on account of retirement of Shri Deepak Kumar Ghosh IFS on 30.9.2014 and that although one Shri N.C. Bahuguna IFS had retired on the same date, namely, 30.9.2014, no vacancy occurred as Shri Bahuguna was not appointed in a substantive capacity but was only assigned temporarily to discharge functions of PCCF and Head of Forest Force.

h.s.b.

That, the applicant was the third candidate in the panel recommended by the Departmental Promotion Committee and his candidature would have been processed when the next vacancy occurred w.e.f. 1.2.2015 upon the superannuation of the next incumbent on 30.1.2015.

That, in the meanwhile, the Director, Padmaja Naidu Himalayan Zoological Park had taken over charges from the applicant on 16.1.2015 and, on 28.1.2015, had submitted a report stating that there was a crises of funds to continue the operations of the said Zoological Park, calling for a preliminary enquiry into the functioning of the said Padmaja Naidu Himalayan Zoological Park for the previous three years. On 29.1.2015, in view of the seriousness of the issues involving public money and implementation thereof, an enquiry was ordered and that the preliminary enquiry report was submitted on 6.2.2015 citing various financial irregularities and, that, being *prima facie* satisfied on 17.2.2015, the authorities suspended the applicant for a period of 90 days which was extended in due course and that the immediate next officer in the seniority list was promoted in the PCCF grade on 4.3.2015.

5. The point of determination in this instant O.A. is whether the applicant is entitled for HAG+ scale w.e.f. 1.10.2014 based on the recommendations of the Departmental Promotion Committee.

6. At the outset, the Minutes of the meeting of the Departmental Promotion Committee held on 29.8.2014 in connection with preparation of fit list of IFS officers for promotion to the grade of Principal Chief Conservator of Forest, HAG+ scale is examined and the minutes of the same are reproduced below:-

"Members Present:

Xxxxxxxxxxxxxxxxxxxxx

The Chief Secretary, Govt. of West Bengal presided over the meeting.

The Departmental Promotion Committee consider the ACRs, reports on vigilance clearance and report on submission of Asset statement of 6 (six) officers upto 1982 batch of IFS, West Bengal Cadre who have completed the required 30 (thirty) years of service for filling up vacancies arising out of retirement of 2 (two) IFS officers in the PCCF grade, HAG+ Scale.

Ushw

To place due emphasis on merit and seniority as per relevant guidelines of Ministry of Environment & Forests, Govt. of India, the Committee decided that for promotion to PCCF grade the officers should have 3 (three) 'Outstanding' and 2 (two) "Very Good" grading over a period of 5 (five) years of available ACRs under consideration.

After detailed perusal and careful consideration of ACRs, the committee recommends promotion of IFS officers in the following order for filling up the vacancies in PCCF grade-

1. Sri Pradip Shukla	-	Fit for promotion
2. Shri Debabrata Biswas	-	Sealed Cover
3. Sri Alankar Kumar Jha	-	Fit for promotion

XXXXXXXXXXXXXXXXXXXX

Sd/-	Sd/-	Sd/-	Sd/-
Shri Chandan Sinha	Shri Anil Oberoi	Shri N.C. Bahuguna	Shri Sanjay Mitra
Principal Secretary	Principal Chief	Principal Chief	Chief Secretary
Dept. Of Forests	Conservator of	Conservator of	West Bengal
	Forest & HoFF	Forest & HoFF	
	West Bengal	West Bengal	

It is obvious from the above noted minutes that

- (a) Departmental Promotion Committee had recommended filling up of vacancies against retirement of two IFS Officers in Principal Chief Conservator of Forests, HAG+ Scale;
- (b) That, a total of six officers were considered on the basis of their ACRs, reports on Vigilance Clearance and reports on submission of Asset statement;
- (c) That, for promotion to Principal Chief Conservator of Forests, the officer have to have three 'Outstanding' and 2 "Very Good" gradings over a period of 5 (five) years of available ACRs under consideration;
- (d) The Departmental Promotion Committee recommended, inter alia, the following panel for promotion of IFS Officers.

1. Sri Pradip Shukla	-	Fit for promotion
2. Shri Debabrata Biswas	-	Sealed Cover
3. Sri Alankar Kumar Jha-	-	Fit for promotion

XXXXXXXXXXXXXXXXXXXX

[Signature]

As on 29.8.2014, therefore, the applicant was found fit for promotion and such fitness was recommended on the fact that he had suitable gradings in his ACRs, was clear from vigilance angle and had submitted his asset statements as required under the rules.

The respondents have disputed that although two officers were noted to have been superannuating on 30.9.2014, there was only one substantive vacancy namely, that created by the superannuation of one Shri Deepak Kumar Ghosh IFS and that the second vacancy was not a clear vacancy in view of the fact that Shri N.C. Bahuguna, IFS, who was one of the superannuating officers was not posted substantively as Principal Chief Conservator of Forest and Head of Forest Force and that the next vacancy occurred w.e.f. 1.2.2015 when one Shri Ujjwal Kr. Bhattacharya IFS, superannuated on 3.1.2015.

The respondents have admitted that the applicant was placed under suspension w.e.f. 17.2.2015 and also that his case was not placed in sealed cover during the date on which the Departmental Promotion Committee had met to consider the case of promotion to Principal Chief Conservator of Forest (PCCF) grade. Hence, as on 1.2.2015, when there was a clear vacancy and if there was no criminal proceedings/departmental proceedings as well as vigilance complaints against the applicant, being 3rd in the order of merit the applicant had deserved to be promoted in the grade of Principal Chief Conservator of Forest. The said promotion was, however, not granted to him as certain enquiries were initiated against him from 29.1.2015.

In *Union Of India & ors. vs. K.V. Jankiraman (supra)* and *Union of India & ors. v. Dr. (Smt.) Sudha Salhan (supra)* it has been held that, if on the date on which the name of the person is considered by the DPC for promotion to the higher post, if such person is neither under suspension nor have disciplinary proceedings initiated against him, if found meritorious and suitable, he has to be brought on the select list.

[Signature]

Accordingly, on 1.2.2015, when admittedly there was a clear vacancy, when there was no suspension or departmental proceedings initiated against the applicant and admittedly he was found meritorious and suitable by the Departmental Promotion Committee, his promotion should have merited consideration. The respondents have argued, however, that the applicant was thereafter placed on suspension w.e.f. 17.2.2015, an FIR was lodged against him before the Anti Corruption Branch on 2.8.2015 vide Anti Corruption Branch Case No. 2.8.2016 and another FIR was lodged against him on 24.9.2016 under Prevention of Corruption Act, 1988 and Section 120B of IPC and that the applicant was subsequently arrested and was in custody. The applicant has admitted the same.

Guided by the ratio of *K.V. Jankiraman (supra)* and *Dr. (Smt.) Sudha Salhan (supra)* as well as the extant rules guiding the scope of promotion of officials found suitable and free from any charges on the date of the DPC, we hereby remit this matter to respondent No. 3, who is the Principal Secretary, Department of Forest, Govt. of West Bengal to examine the representations of the applicant at Annexure "A-9" colly. to the O.A and obtain the directions of Respondent No. 1, the Chief Secretary to Government of West Bengal, thereon. While disposing of the same, it has to be reckoned that there was a clear vacancy upon superannuation of Shri Ujjwal Kr. Bhattacharya, IFS on 31.1.2015 and that the applicant was not implicated with any established charges on 31.1.2015/1.2.2015. Respondent No. 2 will decide on the representations and convey the same to the applicant in a reasoned and speaking order and in accordance with law within 2 weeks from the date of receipt of this order particularly on account of the imminent superannuation of the applicant on 30.11.2018.

[Signature]

7. With these directions the O.A. is disposed of. M.A. 350/00026/2017 arising out of this OA stands disposed of accordingly. There will be no orders as to costs.


(Dr. Nandita Chatterjee)
Administrative Member
SP


(Bidisha Banerjee)
Judicial Member