

**Central Administrative Tribunal
Circuit Bench : Ranchi**

OA No. 051/00172/2017

Order reserved on: 12.09.2018
Order pronounced on : 19.12.2018

Hon'ble Mr. A.K.Patnaik, Member (J)
Hon'ble Mr. Pradeep Kumar, Member (A)

Sh. Rajiv Ranjan,
Aged about 56 years,
Son of Late Sh. N.N.Sinha,
R/o DFO Residence, Lake Road, Noora,
P.O. & P.S. Hazaribagh,
District Hazaribagh.

... Applicant

(By Advocate: Sh. Rajendra Krishna)

Versus

1. Secretary,
Union of India,
Ministry of Environment and Forest,
New Delhi-1.
2. Principal Secretary,
Department of Forest, Environment and Climate Change,
Govt. of Jharkhand having its office at
Project Building, P.O. & P.S. Dhurwa,
District Ranchi.

... Respondents

(By Advocate: Sh. H.K.Mehta for respondents-UOI and
Sh. R.A.Gupta for respondents-State of Jharkhand)

ORDER

By Hon'ble Mr. Pradeep Kumar, Member (A)

Heard Sh. Rajendra Krishna, learned counsel for applicant
and Sh. R.A.Gupta and Sh. H.K.Gupta, learned counsel for
respondents.

2. The applicant was appointed as Assistant Conservator of Forest as per the recommendations made by Bihar Public Service Commission in the year 1987. In due course he was promoted to Indian Forest Service in the year 2006 against the vacancies of 1998 and notification for the same was issued on 21.07.2006 fixing his seniority just below Sh. Kumar Manish Arvind and just above Sh. Kamlesh Pandey.

3. The rules for promotion of Indian Forest Service Officers were notified on 22.12.2000 and were circulated to all the States vide Ministry of Forest and Environment, Government of India vide letter dated 18.11.2002. The DPC for 16 vacant posts of Conservator of Forest was held on 18.11.2016 by Government of Jharkhand. The assessment was that 15 vacancies existed as of 31.12.2016 and one vacancy will occur on account of retirement on 31.01.2017 and thus there will be 16 vacancies upto 31.03.2017 for which this DPC was conducted.

A total of 22 officers were considered by the DPC and names of Sh. Kumar Manish Arvind, who was immediately above, Sh. Rajiv Ranjan (applicant herein) and Sh. Kamlesh Pandey, who was immediately below, were recommended at Sl. No.7, 8 & 9 of this recommendation which was finalised on 18.11.2016. These recommendations of the DPC were approved by Hon'ble Chief Minister of Jharkhand on 29.11.2016. Thereafter for deciding the

actual place of posting the meeting of Civil Services Board was held on 20.01.2017. The three above stated officers, including the applicant, were to be promoted and posted on the individual post already held by them, by upgrading the same to that of Conservator of Forest. These recommendations were approved by the Hon'ble Chief Minister of Jharkhand on 27.01.2017.

4. The applicant pleads that thereafter only formal promotion orders were to be published and the same were issued also on 28.01.2017 in respect of officers including the one immediately above and below him as per the recommendations dated 20.01.2017. However, the applicant was not promoted. Instead he was issued a chargesheet on 28.01.2017 itself which was received by him on 16.02.2017 only.

The applicant also pleaded that in the past as per normal practice, the promotion orders were issued from the date the Hon'ble Chief Minister had initially approved the recommendations of the DPC which in this case took place on 29.11.2016. However, in the instant case, a different practice was adopted and instead of promotion he was issued a chargesheet.

Feeling aggrieved, he has approached the Tribunal in the instant OA.

5. The applicant brought out that as per the Apex Court judgment in **Union of India and others vs. K.V.Jankiraman and**

others, (1991) 4 SCC 109 the date of issue of chargesheet is crucial. In this case, the Hon'ble Apex Court has observed as under:

“16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a chargesheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The acceptance of this contention would result in injustice to the employees in many-cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/chargesheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy.....”

The applicant pleads that his promotion was already approved by the Hon'ble Chief Minister on 29.11.2016 in respect of DPC recommendations and on 27.01.2017 in respect of the recommendations by Civil Services Board. On this date, there was no chargesheet issued to him and as such he ought to be promoted as was ruled by Apex Court. Further, since the chargesheet was

issued the very next day on 28.01.2017, instead of issuing promotion order, it cannot be said to be an unblemished exercise of power and as such it cannot be allowed.

6. The applicant further brought out that the chargesheet pertains to certain alleged actions during the period 2013. As per the report prepared by the then Conservator of Forest, Bokaro, on 03.09.2013, the responsibility for those action was fixed upon Sh. Kumar Manish Arvind, the officer immediately above him (para 2 & 3 supra). However, this report was subsequently modified by the same very officer on 27.12.2013, when in addition to Sh. Kumar Manish Arvind; Sh. Rajiv Ranjan, the applicant herein, was also held responsible.

However, subsequently as brought out above, Sh. Kumar Manish Arvind, who was also considered for promotion to the post of Conservator of Forest, along with the applicant by the same very DPC and by the same very Civil Services Board, was promoted while the applicant was left out, despite his name being approved by the DPC, Civil Services Board and Hon'ble Chief Minister. On this count also, the process of denying promotion to the applicant cannot be said to be unblemished on the part of respondents.

7. The applicant gave a representation also dated 25.03.2017 pleading for his promotion which has since been rejected. The applicant has also submitted his defence in respect of chargesheet

and thereafter the Presenting Officer nominated by the department, was to give his comments to the enquiry officer. For this purpose, three dates have also been given, however, the comments were not being submitted by the presenting officer leading to delays. Now the enquiry officer has also been transferred and thus further undue delays are apprehended in finalisation of chargesheet.

8. The respondents brought out that the proposal to initiate departmental proceedings was received on 28.10.2016. The period for which chargesheet was eventually issued, pertains to the activities during 09.11.2008 to 12.11.2011 and it was alleged that a loss of Rs.22,41,161/- was caused by the applicant. It is also seen from file notings that the basic note to invoke deemed sealed cover procedure was prepared by one Shri Navin on 28.01.2017 and the Hon'ble Chief Minister would have approved the issuance of chargesheet only subsequently and the charge memo was finally issued on 28.01.2017.

In this connection, the respondents drew attention to a policy directive dated 14.09.1992 issued by DOPT. Specific attention was drawn to para 7 of these instructions which are as under:

“7. A Government servant, who is recommended for promotion by the Departmental Promotion Committee but in whose case any of the circumstances mentioned in para 2 above arise after the recommendations of the DPC are received but before he is actually promoted, will be considered as if his case had been placed in a sealed cover by the DPC. He shall not be promoted until he is completely exonerated of the charges against him and the provisions contained in this O.M. will be applicable in his case also.”

The respondents, pleaded that since the factum of issuance of charge sheet, has come to their notice subsequent to approval of DPC by Hon'ble Chief Minister but before actual promotion orders were issued, the procedure of deemed sealed cover has come into being as per above instructions and the applicant could not be promoted till the said chargesheet is finalised and applicant is exonerated.

9. Matter has been heard at length. Facts of the case are not disputed. It is seen that the juniors to the applicant were promoted and orders were issued on 28.01.2017. Since applicant was to be promoted by upgrading the same post which he was already holding, it is clear that the vacancy existed for promotion of the applicant also and it would have taken effect immediately, had his orders of promotion also issued alongwith his junior. Since the promotion was recommended by upgrading the same post, held by applicant, the promotion would have taken immediate effect, with issuance of orders and the officer assuming charge of the higher responsibility. In the instant case, the said promotion was admittedly already recommended by the DPC, by the Civil Services Board and by Hon'ble Chief Minister before the chargesheet was issued.

It is also seen that the officer, who was initially held responsible for the alleged loss was also considered by the DPC

along with the applicant and has already been promoted. The applicant's name to the list of those held responsible, was only added subsequently and a chargesheet was also issued on the very day promotion orders were to be issued, based upon the promotion process which was completed and approved by the competent authority already, when there was no chargesheet in place.

Accordingly, the denial of promotion to the applicant cannot be taken to be an exercise above board. It cannot be said to be unblemished. It also cannot be said that the ever present departmental rivalries have not come to the fore on the very eve of promotion. Therefore, the Tribunal is of the view that the applicant needs to be promoted, as Conservator of Forest with effect from the date his immediate junior was promoted, i.e. w.e.f. 28.01.2017 and the said chargesheet which is already issued on 28.01.2017, should be taken to its logical end only thereafter and finalised as per merit. Respondents are ordered accordingly to comply with these orders within four weeks of receipt of these orders. This OA is disposed off with these directions. No order as to costs.

Sd/-

(Pradeep Kumar)
Member (A)

Sd/-

(A.K. Patnaik)
Member (J)

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