

CENTRAL ADMINISTRATIVE TRIBUNAL**BANGALORE BENCH: BANGALORE****ORIGINAL APPLICATION NO.170/00696/2019****DATED THIS THE 27th DAY OF NOVEMBER, 2019****HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER****HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER**

Sri. M.C.Tambakad
S/o.Sri.Chandrashekharappa
Aged 58 years
Chief Conservator of Forests (Research)
Doresanipalya Forest Campus
1st Cross, Arakere Mico Layout
Bannerghatta Road, Bangalore-560076.Applicants

(By Advocate Shri Ashwini Obulesh)
Vs.

1. The Union of India
By its Secretary to Government
Department of Personnel & Training
Ministry of Personnel Public Grievance and Pension
North Block
New Delhi-110001.
2. The Chief Secretary
State of Karnataka
Department of Personnel & Administrative Reforms (DPAR)
Vidhana Soudha, Bangalore-560001.
3. The Additional Chief Secretary
Forest Ecology and Environment
M.S.Building, Bangalore-560001.
4. The Principal Chief Conservator of Forests
And Head of Forest Force
Aranya Bhavan, Malleswaram
Bangalore-560003.Respondents

(By Advocates Sri H.R.Sreedhara for R1 & Sri R.B.Sathyanarayana Singh for R2 to R4)

O R D E R

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

This is a second round of litigation. Earlier the applicant has filed OA.No.474/2007 before this Tribunal seeking an order to give effect to his promotion to the Indian Forest Service(IFS) retrospectively i.e. from the date of his becoming qualified and eligible. The case of the applicant is that he was provisionally selected by the UPSC for the Karnataka State Forest Service through the 1996-1997 list and for promotion to the IFS of the Karnataka Cadre by the Selection Committee on 4.11.1999. In the Provisional Select List of 1996-1997, the applicant's name was included at Sl.No.4 subject to the clearance of disciplinary proceedings pending against him and issuance of the Integrity Certificate by the 2nd respondent. The 2nd respondent vide order dtd.3.12.2005 exonerated the applicant from the charges framed against him in the disciplinary proceedings. Subsequent to the exoneration, he filed the aforesaid OA before this Tribunal and the Tribunal vide order dtd.25.8.2011 directed the respondents to reconsider the applicant's case with nexus to the earliest points of time at which he would have been selected to IFS within two months(Annexure-A3). Aggrieved by the non-compliance of the said order by the respondents, the applicant filed CP.No.4/2012. In the meanwhile, the 2nd respondent vide letter dtd.1.8.2012, recommended for declaring the name of the applicant as 'unconditional' in the select list of 1996-1997 for promotion to IFS of Karnataka cadre and also certified the integrity of the applicant. Being satisfied with the said letter, the CP was dropped vide order dtd.27.9.2012(Annexure-A4). Consequently, the applicant was appointed/promoted to the IFS with effect from the date of appointment of his immediate junior vide notification dtd.16.10.2012(Annexure-A5) issued by the Min. of Environment and published

in the official gazette on 23.11.2012. The applicant submits that his appointment was after a delay of more than a year i.e. from 25.8.2011, the date of disposal of OA.No.474/2007 to 23.11.2012. The applicant was then finally posted as the Chief Conservator of Forests/Managing Director, Karnataka Handloom Development Corporation vide notification dtd.14.12.2012(Annexure-A6). He submits that the 2nd respondent sent a letter dtd.19.1.2013(Annexure-A7) to the Min. of Environment regarding fixation of the applicant's seniority in terms of the year of allotment being 1993 and for placing him below one Sri B.M.Palameshwara and above Sri G.Jayaramaiah and Sri.Markandiah in the 1996-97 selection list. The Min. of Environment & Forests issued the order dtd.8.3.2013 for fixation of seniority of the applicant. Subsequently, vide notification dtd.6.3.2014, the applicant was promoted to officiate in the Junior Administrative Grade(JAG) of the IFS with retrospective effect from 1.1.2005(Annexure-A8). But his juniors Sri G.Jayaramaiah and Sri K.B.Markandiah were promoted to the JAG of the IFS w.e.f. 1.1.2002 and the applicant was placed junior to Sri G.Jayaramaiah. The Principal Auditor General on receiving the notification at Annexure-A5, has questioned the positioning of Sri G.Jayaramaiah above the applicant. All the juniors of the applicant have been drawing their salaries of the JAG scale from 1.1.2002 while the applicant has done so only from 1.1.2005. Then the Sr.Accounts Officer from the Indian Audit & Accounts Department, Office of the Principal Accountant General (A&E) Karnataka wrote a letter dtd.19.3.2014(Annexure-A9) to the 2nd respondent stating that the applicant has been accorded promotion w.e.f. 1.1.2005 vide order dtd.6.3.2014 and seeking clarification whether the intention of the respondents was to extend the benefit of appointment to IFS cadre with retrospective effect.

The letter also notes that in order to avoid hardship to the applicant, pay will be fixed in the JAG grade w.e.f. 1.1.2005. The applicant has repeatedly written to the 2nd respondent to set right the anomaly and requested them to comply with the order of this Tribunal dtd.25.8.2011.

2. The applicant submits that vide notification dtd.15.6.2017(Annexure-A10), he has been promoted to officiate in the selection grade of IFS w.e.f. 1.1.2008 with reference to his immediate junior Sri.K.B.Markandaiah, IFS. And vide another notification dtd.15.6.2017(Annexure-A11), the applicant has been promoted to officiate in the Conservator of Forests Grade in the Super Time Scale of IFS w.e.f.13.11.2009 with reference to his immediate junior Sri K.B.Markandaiah. Then the applicant vide letter dtd.20.7.2018(Annexure-A12) requested the 2nd respondent to promote him with retrospective effect as per his immediate junior Sri K.B.Markandaiah, IFS and to be issued the necessary notification to draw his salary with retrospective effect pursuant to the order of the Tribunal. The applicant made further representation dtd.3.9.2018(Annexure-A13) requesting the 2nd respondent for his name to be cleared for the post of Chief Conservator of Forests by convening the DPC which has not been done so far. Subsequently, the 2nd respondent published the impugned OM dtd.16.11.2018(Annexure-A1) ordering the promotion, transfer and posting of IFS officers to the post of Additional Principal Chief Conservator of Forests. The APAR of the applicant since the year 2013 i.e. since his induction into the Forest Services, up till the date of DPC are 'good' and 'very good'. However, the DPC has cleared all the names for promotion to the post of Addl.Principal Chief Conservator of Forests with respect to the 1993 batch, except that of the applicant, since the DPC for the promotion of the applicant to the post of Chief Conservator of Forests is still

pending on arbitrary and illegal grounds. Further the 2nd respondent issued another order dtd.5.2.2019(Annexure-A2) further reducing the rank of the applicant to 'Conservator of Forests' from 'Chief Conservator of Forests' on arbitrary and unsustainable grounds. Aggrieved by the same, the applicant has filed the present OA seeking the following relief:

- a. Issue an order declaring that the order passed by the Respondent No.2 in Order No.A1.IFS.CR-3/2017-18 dated 16.11.2018(Annexure-1) as void and unenforceable, in so far as it excludes the applicant's name for being promoted to the post of Additional Principal Chief Conservator of Forests, and directing the respondent No.2 to consider the applicant for the said post, in the interest of justice and equity.*
- b. Issue an order quashing the Government Order CASuE 104 SFP 2018 dtd.5.2.2019(Annexure-2) issued by the respondent No.2 reducing the rank of the applicant from 'Chief Conservator of Forests' to 'Conservator of Forests' on unsustainable, arbitrary and illegal grounds as void and unenforceable, in the interest of justice and equity.*
- c. Issue an order directing the respondent No.2 to convene the Departmental Promotion Committee to notify the promotions of the Chief Conservator of Forests grade from 30.4.2012, in the interests of justice and equity.*
- d. Issue an order directing the respondents to fix the pay of the applicant in the JAG Grade w.e.f. 1.1.2002 instead of 1.1.2005, in the interest of justice and equity.*
- e. Issue an order directing the respondents to pay the applicant's salary along with arrears with interest and consequential benefits starting from 1.1.2002, till date, as per the order of this Hon'ble Tribunal dated 25.8.2011 passed in OA.No.474/2007 by this Hon'ble Tribunal as per Annexure-3, in the interests of justice and equity and*
- f. Pass any order as this Hon'ble Tribunal deems fit in the facts and circumstances of the case, including an order as to costs, in the interest of justice and equity.*

3. The applicant further submits that the impugned order at Annexure-A2 issued by the 2nd respondent is ultra vires as per Rule 11 of the CCS(CCA) Rules 1965. The 2nd respondent has not acted judicially or fairly in passing the impugned

order and the applicant has not been served a copy of the impugned order as mandated by Article 311 of the Constitution. Article 311 necessitates that no person who is a member of a civil service of a State shall be reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. There has been no enquiry held where the applicant could be informed of the charges and be given a reasonable opportunity of being heard. This omission on the part of the respondents is a gross violation of the principles of natural justice. The 2nd respondent has systematically deprived the applicant of a just and fair procedure of enquiry/representation and has violated due process of law. The actions of the respondent No.2 are ultra vires as per Rule 7 of the IFS (Appointment by Promotion) Regulations, 1966 which lay down the procedures of promotion in the IFS. The proviso to Rule 7(4) states that where an 'unconditional' proposal has been granted, the Commission shall decide the matter within 45 days or before the next Selection Committee meets, whichever is earlier. It is important to note that the applicant is fully eligible and qualified to be promoted. In view of his entitlement to be promoted and his seniority fixed in terms of the year of allotment 1993, he is under a legitimate expectation that he would be considered for promotion and his seniority fixed, with expediency, owing to the earlier orders of this Tribunal. He was also deprived from being communicated the details of his APAR reports with adverse remarks and therefore deprived him of the opportunity of giving explanation to the adverse remarks. The applicant has now reached the fag end of his career, with only a few promotional avenues left in his career. In spite of several representations, the 2nd respondent has neither replied nor initiated any action to aid the promotion of

the applicant despite the passing of several years since passing of the order by this Tribunal in OA.474/2007. Denial of consideration of representations and consequential promotion is a clear negation of rights guaranteed to the applicant under Article 14 & 16(1) of the Constitution of India.

4. Per contra, the respondents have submitted in their reply statement that after getting into IFS, the applicant was posted to MD, KHDC vide transfer order dtd.14.12.2012(Annexure-A6). While declaring equivalence instead of 'Deputy Conservator of Forests' it was wrongly mentioned as 'Chief Conservator of Forests' and the same was corrected vide Govt. Order dtd.5.2.2019. The order dtd.14.12.2012 issued posting the applicant as MD, KHDC was just a posting order and not a promotion order. Hence, reducing of rank of the applicant from Chief Conservator of Forests level to Conservator of Forests level does not arise. The order dtd.16.11.2018(Annexure-A1) has not been issued by the 2nd respondent but by the Administrative department i.e. Principal Chief Conservator of Forests, Bengaluru(4th respondent) and moreover it is just a movement order issued by the 4th respondent and not a promotion order as the applicant pleads and the 4th respondent is not the competent authority to give promotion.
5. The respondents submit that after getting into the Indian Forest Service, the applicant was promoted to Junior Administrative Grade with retrospective effect from 1.1.2005 vide notification dtd.6.3.2014(Annexure-R1). Thereafter, he was promoted to Selection Grade with retrospective effect from 1.1.2008 vide notification dtd.15.6.2017(Annexure-R2) and was promoted to Super Time Scale (Conservator of Forests) w.e.f. 13.11.2009 vide notification dtd.15.6.2017(Annexure-R3). The applicant was considered for promotion to the cadre of Chief Conservator of Forests in the DPC meeting held on 7.3.2018 and

10.8.2018 wherein the Committee discussed on two important aspects. One is about adverse remarks recorded in ACRs of the applicant and another one is a serious allegation of financial misappropriation against the applicant while he was working as Managing Director, Karnataka Handlooms Development Co-operation. Taking into consideration these two issues, the DPC resolved to defer the meeting for further date. Hence, he was not promoted to the grade of Chief Conservator of Forests. He is working in the cadre of Conservator of Forests. According to promotion guidelines, IFS(Pay) Rules, the officer who will be appointed as Senior time scale grade has to be promoted to (a) Junior Administrative Grade (b) Selection Grade (c) Super time scale level-13. Then only an officer can be promoted to Chief Conservator of Forests Grade in Super time scale level-14. As per the CAT order dtd.25.8.2011 and as per the DPC's decision, the applicant has been promoted to JAG level, Selection Grade and Super Time Scale Level-13 retrospectively after his selection to IFS from SFS(State Forest Service). He can be promoted to Addl.Principal Chief Conservator of Forests(APCCF) level only after getting promotion to the grade of Chief Conservator of Forests. Moreover, the pay in respect of retrospective promotions will be fixed notionally. Hence, the applicant's prayer for arrears from 1.1.2002 with 18% interest to till date is not maintainable. Therefore, the OA is liable to be dismissed.

6. We have heard the Learned Counsels for the parties and perused the materials placed on record in detail. The applicant has filed written arguments note and a memo enclosing therewith additional documents. The applicant was promoted to officiate in the Junior Administrative Grade(JAG) of IFS with retrospective effect from 01.01.2005 vide the respondents' order at Annexure-R1. Vide Annexure-R2,

the applicant was promoted to officiate in the Selection Grade of IFS w.e.f. 01.01.2008. Vide Annexure-R3, he was promoted to officiate in the Conservator of Forests Grade in the Super Time Scale of IFS w.e.f. 13.11.2009. All these orders have been passed with reference to the dates of promotion of his immediate junior Sri.K.B.Markandaiah as noted in the said notifications. The above three notifications have been necessitated by the orders of this Tribunal in OA.No.474/2007 dtd.25.8.2011 and subsequently the Contempt Petition No.4/2012 has also been disposed of on 27.9.2012 considering the submission of the Learned Counsel for UPSC that the orders of this Tribunal have been complied with. It is noted that the applicant is also satisfied with that order and hence the CP was dropped. The Govt. of India vide notification at Annexure-A5 have also confirmed the appointment of the applicant to the Indian Forest Service on the basis of the select list of 1996-97 from the date of appointment of his immediate junior. This being the factual position, the respondents vide Annexure-A1 dtd.16.11.2018 have ordered for the promotion of certain officers as Additional Principal Chief Conservator of Forests wherein the name of the applicant is not found. Vide Annexure-A2(translated copy), they have also modified the applicant's appointment order dtd.14.12.2012 as MD, KHDC from being Chief Conservator of Forests to Conservator of Forests. Vide Annexure-A2, it is also ordered that the applicant is officiating as Conservator of Forests only. The respondents would also state that a DPC meeting was held on 7.3.2018 and further on 10.8.2018 regarding the promotion of the applicant to the post of Chief Conservator of Forests retrospectively. What was left at the time of the writing of the letter dtd.3.9.2018 at Annexure-A13 was for a notification clearing the applicant's name to the post of Chief Conservator of Forests through DPC. The

respondents state that while considering his promotion to the post of Chief Conservator of Forests retrospectively, the DPC found that the applicant's APARs have adverse remarks and that a complaint has been pending with the Department of Commerce and Industries against the applicant for misappropriation of funds when he was officiating as MD of KHDC and because of the above reasons, his promotion was deferred. The applicant has separately furnished the details of the APARs forwarded to him for the years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18. The reports are uniformly good and all the officers have rated him a very good officer and numerical grading has also been above 8 for a few years and 7.25 for one year and he was given grading 10 for the year 2017-18. His integrity has been stated to be uniformly 'beyond doubt'. Therefore, we are unable to appreciate the contention of the respondents that there were certain adverse remarks in his APAR. Further as has been already held in a catena of decisions up to the Hon'ble Apex Court, if there are any adverse remarks, the same have to be communicated to the officer concerned with an opportunity given to him for giving his own explanation as to why the respondents should expunge the adverse remarks. It is apparent that no such process has been undertaken. Secondly, the respondents have stated that the complaints have been pending before the Department of Commerce and Industries against the applicant for misappropriation of funds when he was officiating as MD of KHDC. This will certainly not lie since the DPC can defer a case only if a definite charge memo has been issued and the disciplinary proceedings are pending. They cannot merely act on a complaint and say that the case of the applicant is being deferred. The order of the respondents vide Annexure-A2 is completely devoid of any sense of justice or law. The

respondents have blatantly stated that all the benefits awarded by this Tribunal are to be considered as null and void since the Government notifications issued in this regard have been done without undergoing IFS pay rules and departmental promotion rules. This contention, to say the least, is ridiculous and can itself be a cause of action for initiating the suo-motu contempt against the respondents for the frivolous manner in which they have stated so. When they have committed to implement the order of this Tribunal and have also given the applicant certain promotions with retrospective effect etc, and issued notifications to confirm the same, to state now that these have been done without undergoing IFS pay rules and departmental promotion rules is prima-facie contemptuous of the orders of this Tribunal. It shows the competence of the respondents in poor light. We, therefore, quash Annexure-A2 order with the cost of Rs.10,000/- to be paid to the applicant. We are unable to consider any action with regard to Annexure-A1 since the parties concerned have not been arrayed in this application. The respondents are directed to issue necessary notification with regard to the claim made by the applicant vide Annexure-A12 and A13 with all the consequential benefits.

7. The OA is therefore allowed with the above orders.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00696/2019

Annexure-A1: Copy of the Official Memorandum No.A1.IFS.CR-3/2017-18
dtd.16.11.2018 issued by the respondent

Annexure-A2: Copy of the Government order G.O.No.:DPAR 104 SFP 2018 dtd.5.2.2019

Annexure-A3: Copy of the order of this Hon'ble Tribunal passed on 25.8.2011 in OA.No.474/2007

Annexure-A4: Certified copy of the order of this Hon'ble Tribunal dtd.27.9.2012 in Contempt Application (Civil) No.04/2012

Annexure-A5: Copy of the notification No.22012/06/2008-IFS.II dtd.16.10.2012

Annexure-A6: Copy of the notification No.DPAR 123 SFP 2012 dtd.14.12.2012

Annexure-A7: Copy of the notification No.DPAR 10SFP 2008 dtd.19.1.2013

Annexure-A8: Copy of the notification No.DPAR 235 SFP 2013 dtd.6.3.2014

Annexure-A9: Copy of the letter dtd.19.3.2014 regarding the applicant's promotion w.e.f.1.1.2005

Annexure-A10: Copy of the notification No.DPAR 235 SFP 2013 dtd.15.6.2017

Annexure-A11: Copy of the notification No.DPAR 235 SFP 2013 dtd.15.6.2017 published in gazette

Annexure-A12: Copy of the letter bearing No.A3(A5)/CCF(R)/PF/CR-05/2013-14 dtd.20.7.2018

Annexure-A13: Copy of the letter dtd.3.9.2018 by the applicant

Annexures with reply statement:

Annexure-R1: Copy of the Notification dtd.6.3.2014

Annexure-R2: Copy of the Notification dtd.15.6.2017

Annexure-R3: Copy of the Notification dtd.15.6.2017

Annexures with Memo dtd.16.10.2019 filed by the applicant:

Annexure-1: Copy of APAR of the applicant dtd.18.2.2019

Annexure-2: Copy of APAR of the applicant dtd.13.9.2017

Annexure-3: Copy of APAR of the applicant dtd.17.8.2017

Annexure-4: Copy of APAR of the applicant for the period 2013-2014

Annexures with written arguments note filed by the applicant:

-NIL-
