

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O.A.No.260/329/2018
O.A.No.260/330/2018
O.A.No.260/331/2018
O.A.No.260/332/2018

Date of Reserve:06.11.2019
Date of Order: 04.12.2019

CORAM:

HON'BLE MR.GOKUL CHANDRA PATI, MEMBER(A)
HON'BLE MR.SWARUP KUMAR MISHRA, MEMBER(J)

In O.A.No.260/329/2018

Sri Haramohan Maharatha, aged about 61 years, S/o. Late UdayanathMaharatha – presently residing at Maharatha Enclave, Laxmi Sagar Chhak, Cuttack Road, Bhubaneswar-06, Dist-Khurda, Odisha and retired from Government service as Dy.Conservator of Forests.

In O.A.No.260/330/2018

Sri Rajkishore Sahoo, aged about 63 years, S/o. Late Maguni Charan Sahoo, presently residing at Plot No.12/6837, Star Residency Apartment, Flat No.104, Sailashree Vihar, Bhubaneswar-21, Dist-Khurda and retired from Government service as Dy. Conservator of Forests.

In O.A.No.260/331/2018

Sri Anil Kumar Dash, aged about 62 years, S/o. Late Baishnab Charan Dash, presently residing at Plot No.955(P), Prakruti Vihar, Delta Square, Baramunda, Bhubaneswar-751 003, Dist-Khurda, Odisha and retired from Government service as Dy.Conservator of Forests.

In O.A.No.260/332/2018

Sri Rohit Kumar Singh, aged about 61 years, S/o. Sri Hadibandhu Singh, presently residing at G.A.Plot No.56, Niladri Vihar, Chandrasekharpur, Bhubaneswar-21, Dist-Khurda, Odisha and retired from Government service as Dy. Conservator of Forests.

...Applicants

By the Advocate(s)-M/s.S.K.Ojha

S.K.Nayak

-VERSUS-

Union of India represented through:

1. The Secretary to the Government of India, Ministry of Environment, Forests and Climate Change, Indira Paryavaran Bhawan, 6th Floor, Prithvi Block, Jor Bagh Road, Aliganj, New Delhi-110 003.
2. Secretary to Government of India, Ministry of Personnel, Public Grievance & Pensions, Department of Personnel & Training, North Block, New Delhi-110 001.
3. Principal Secretary to the Government of Odisha, Forest and Environment Department, Odisha Secretariat Building, Bhubaneswar, Dist-Khurda.
4. Principal Secretary to the Government of Odisha, General Administration Department, Odisha Secretariat Building, Bhubaneswar, Dist-Khurda.

5. Union Public Service Commission represented through its Secretary, Dholpur Hosue, Sahajahan Road, New Delhi-110 069.

...Respondents

By the Advocate(s)-Mr.L.Jena
Mr.S.Behera
Mr.J.Pal

ORDER

PER SWARUP KUMAR MISHRA, MEMBER(J):

Since identical questions of law and facts are involved this case, all the above mentioned four Original Applications are being disposed of through this common order. For the sake of reference, the facts as set out in O.A.No.260/229/2018 are being referred to and discussed hereunder.

2. Applicant in O.A.No.260/329/2018 is a Orissa Forest Service Officer, who has retired from service on attaining the age of superannuation with effect from 28.02.2018, as Deputy Conservator of Forests. His grievance is directed against the Notification dated 17.05.2018 (A/12) issued by the Government of India, Ministry of Environment, Forests & Climate Change, whereby and whereunder, his name does not find place for promotion to the Indian Forest Service notwithstanding the fact that the UPSC had recommended his name for such promotion and in this respect, on being called upon, he had tendered his willingness on 10.04.2018. Hence, aggrieved with the above, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the A.T.Act, 1985, seeking for the following reliefs:

- i) To admit the Original Application.
- ii) To modify the Notification dated 17.05.2018 (Annexure-A/12) & Notification dated 24.05.2018 (Annexure-A/13) issued by the Respondent No.1 & Respondent No.4 respectively.
- iii) To direct the Respondent No.1 & 4 to issue necessary re-notification incorporating the name of the applicant placing him in the promotion list for the year 2008-A, i.e. basing on the select list prepared by Respondent No.1 on dated 06.04.2018.
- iv) To direct the Respondents to extend all the consequential and financial benefits retrospectively as has been extended to other similarly situated persons.

- v) To direct the Respondents to calculate the arrear and pay the same with 12% interest till it is actually paid.
- vi) To pass any other order/orders as deemed fit and proper for ends of justice.

3. Succinctly stated, the facts of the matter are that the applicant is an Orissa Forest Service Officer having been promoted to different grades in the hierarchy, the last promotion being in the grade of Deputy Conservator of Forests. His contention is that although he was eligible for promotion to IFS in Orissa cadre, for his name being placed in the Select List Year 2008-A, but for the reasons best known, the DPC could not meet from 2009 to 2017. However, before the date of retirement of the applicant, DPC was held at the level of Union Public Service Commission for considering State Forest Service Officers to IFS on 05.02.2018, in which the name of the applicant including some eligible SFS Officers was recommended as against the Select List for the year 2008-A to 2014 by Respondent No.3 to Respondent No.1 under intimation to Respondent No.5. After receiving the necessary recommendations from the State Government, Respondent No.1 vide letter dated 14.03.2018 (A/7) forwarded the list for concurrence by the UPSC. Consequent upon approval of the Select List for promotion from State Forest Service of Odisha Cadre to the Indian Forest Service for the Select List year 2008-A to 2014, the Government of India, Ministry of Environment, Forest & Climate Change issued an order dated 6.3.2018 (A/8) containing the names of the candidates including the applicant for filling up the vacancies under promotion quota in Odisha Cadre of the Indian Forest Service. In the above backdrop, the Government of Odisha in the Forest & Environment Department sent a communication dated 10.04.2018 (A/9) to the PCCF, Odisha, the relevant part of which reads as follows:

"I am directed to invite a reference on the captioned subject and send herewith copy of Order No.17013/10/2015-II dtd. 6th April, 2018 of Govt. Of India MoEF & CC along with a declaration form and request you to kindly communicate the above order to the concerned Officers with a declaration form through their email address and send the form duly filled by them, to this Department early for onward transmission of the same to MoEF & CC".

In this connection, the PCCF, Odisha issued a letter dated 10.04.2018 (A/10) to the applicant requiring him to sign and submit the declaration immediately for onward submission to the Government for promotion of State Forest Service Officers to IFS Cadre in Odisha. In response, the applicant submitted the declaration on the very same day, i.e. 10.04.2018".

4. Grievance of the applicant is that while he was hopeful to be promoted to IFS in Odisha Cadre, the Government of India, Ministry of Environment, Forests and Climate Change vide Notification dated 17.05.2018 (A/12) notified the names of 13 persons who were on active service by promoting them to IFS thereby, leaving aside his name. In pursuance of the above said Notification, the Government of Odisha issued a further Notification dated 17.05.2018 (A/13) promoting those 13 officers of State Forest Service of Odisha to the Indian Forest Service on the basis of the Select List for the year 2008-A to 2014. Aggrieved with this, the applicant has approached this Tribunal praying for the reliefs as already mentioned above.

5. The ground on which the applicant has based his claim is that the action of the Respondents is discriminatory and in contravention of Articles 14 & 16 of the Constitution of India.

6. Opposing the prayer of the applicant, Respondent No.1 and Respondent Nos. 3 & 4 have filed counters separately. In the counter filed by Respondent No.1, i.e., the Government of India, Ministry of Environment, Forests and Climate Change, it has been submitted that the present O.A. is not maintainable inasmuch as, persons who are likely to be affected in case Notification dated 17.05.2018 (A/12) and Notification dated 24.05.2018 (A/13) are modified, have not been arraigned as Party-Respondents in the O.A. Secondly, Respondent No.1 has pointed out that promotions from State Forest Services to Indian Forest Services are governed by the provisions of IFS (Appointment by Promotion) Regulations, 1966, which involves determination of vacancies for a particular Select Year, preparation and forwarding of proposal by State Government to UPSC, holding of Selection Committee Meeting, concurrence of Minutes, Notification of Select List and formal proposal

from State Government for appointment to IFS and issue of appointment order. Besides, the above, there is a procedure for induction of SFS officers to IFS and in the circumstances, the appointment is subject to certain information which is to be furnished by the State Government in respect of officers recommended by the Selection Committee, as outlined in Paragraph-7 of the counter-reply. In Paragraphs-8 and 9, Respondent No.1 has submitted as follows:

"8. That as per clause-9 (i) of IFS (Appointment by Promotion) Regulations, 1966, appointment of a member of the State Forest Service, who has expressed his willingness to be appointed to the Service, shall be made by the Central Government in the order in which the names of members of the State Civil Service appear in the Select List for the time being in force during the period when the select list remains in force. From reading of this clause, it implies that appointment will be done only in respect of a member of the State Forest Service.

9. That the name of the applicant was included in the Select List for year 2008-A for the promotion to IFS in terms of the Minutes of the Meeting approved by Union Public Service Commission (UPSC) vide UPSC letter No.10/14/2017-AIS dated 19.03.2018. However, the applicant's name was not included in the final notification issued vide this Ministry letter No.17013/10/2015-IFS-II dated 17.05.2018, as at the time of issue of notification, the applicant had retired from service and was no longer a member of the State Forest Service".

7. In the counter filed by the Respondent Nos. 3 & 4, i.e., State of Odisha, it has been submitted that due to litigations pending before the OAT, CAT and the Hon'le High Court on gradation of SFS officers, holding of DPC/Selection Committee Meeting from 2008-A to 2017 got delayed. However, after obtaining the leave from the Hon'ble High Court in WP(C) No.19852/2012, steps were taken for furnishing the papers to the UPSC for holding SCM. It has been pointed out that Respondent No.3 has acted on the instruction of Respondent No.1 vide order dated 06.04.2018 in the matter of calling for willingness/declaration of the applicant. However, the sum and substance of the counter-reply filed by Respondent Nos. 3 & 4 is that they have not acted in contravention of rules or regulations on the subject.

8. Applicant has filed rejoinder to the counter-reply in which it has been pointed out that whereas the SCM was held at a time when the applicant was in service, but the Select List was published on 06.04.2018 recommending the name of the selected candidates including the applicant notwithstanding the fact that by that time he had already retired from service. On being called upon, the applicant submitted his willingness/declaration in order to complete the formality before induction IFS, but the fact remains that no order was ever communicated by the Respondents. Regarding non-joinder of necessary party, the applicant has pointed out that he has not prayed for quashing the Select List – rather, he has sought for inclusion of his name as against the Recruitment Year 2008-A. Therefore, in case relief is granted to the applicant, no one will be affected. It has been pointed out that the action of Respondent No.1 in eliminating the name of the applicant from the purview of Notification is without any basis. It is the case of the applicant that instances are not rare where the names of the retired officers have not been recommended and the Respondent No.1 has not granted the benefits as due and admissible on account of promotion.

9. We have heard the learned counsels for the respective parties and perused the records.

10. Admittedly, in the Screening Meeting held on 05.02.2018, the UPSC had recommended the name of the applicant for promotion to IFS of Odisha Cadre, as a result of which his name was found place in the Select List for the year 2008-A to 2014. The Government of India, Ministry of Environment, Forest & Climate Change (Respondent No.1), on receipt of the required recommendations from the State Government of Odisha, vide letter dated 14.03.2018 (A/7) forwarded the list for concurrence by the UPSC and the Select List for year 2008-A to 2014 having been approved by the UPSC, the Government of India, Ministry of Environment, Forest & Climate Change issued an order dated 6.3.2018 (A/8) containing the names of the SFS officers including the applicant for filling up the vacancies under promotion quota in Odisha Cadre of the Indian Forest Service. Following to this, the declaration was obtained from the applicant by the State of Orissa, which was

also forwarded to the Government of India. While the matter stood thus, the Government of India issued notification dated 17.5.2018 (A/12) conveying the approval of the President of India for appointment of SFS Officers to IFS in respect of the Select List for the year 2008-A to 2014 in exception of the name of the applicant. The reason of the exclusion of the name of the applicant from the purview of Notification dated 17.05.2018, as has been assigned by Respondent No.1 is that by then the applicant had already retired from service on superannuation and was no longer a Member of the State Forest Service. This plea of the respondents, in our considered view, is unilateral which does not stand to judicial scrutiny. It is not the case of the respondents, particularly, Respondent No.1 that by the time the Screening Committee Meeting was held on 05.02.2018, applicant's retirement from service on 28.2.2018 was not foreseeable. Despite this, his name was recommended by the UPSC for promotion to IFS. Secondly, on the recommendations made by the State Government of Odisha to the Government of India, the proposed Selection List for the year 2008-A to 2014 was approved by the UPSC in consequence of which, the Government of India issued order dated 6.4.2018 (A/8) wherein the name of the applicant finds place at Sl.No.7. Thereafter, at the instance of the Government of India, declaration of the applicant was obtained by the State Government and the same was forwarded to the Government of India and as already mentioned above, the Government of India, while issuing Notification dated 17.5.2018 excluded the name of the applicant from promoting him to I.F.S. There is nothing on record to show as to whether the approval of the President of India in respect of promotion of the applicant to I.F.S. had been accorded and if so, whether the Government of India in not promoting the applicant to I.F.S. had acted within its powers, authority and jurisdiction. This apart, the Respondents have not brought out anything on record to establish that their action in excluding the name of the applicant from the purview of Notification dated 17.5.2018 is in conformity with the Indian Forest Service (Appointment by Promotion) Regulation, 1966. In view of this, the action of the respondents excluding the name of the applicant for promotion to IFS from the purview of Notification dated 17.5.2018 is held unjust

and improper. In view of the above, the ends of justice would be met, if this Tribunal makes the following orders to be examined by the Secretary to the Government of India, Ministry of Environment, Forest and Climate Change, (Respondent No.1):

- i) Whether the Presidential Approval had been accorded in respect of the Select List 2008-A to 2014 for promotion to I.F.S. in so far as applicant is concerned and if it turns to be affirmative, whether Respondent No.1 had acted within his authority to eliminate the name of the applicant from the purview of Notification dated 17.5.2018.
- ii) Whether promotion of the applicant to IFS stands repugnance to any of the provisions of Indian Forest Service (Appointment by Promotion) Regulation, 1966, on the ground that by the time the Notification dated 17.05.2018 came to be issued, he was no longer a Member of SFS having already retired from service and if the outcome stands to the contrary, whether Respondent No.1 has acted within the frame work of rules in not promoting the applicant to IFS .
- iii) If the consideration of the above two directives brings forth that the applicant ought to have been promoted to IFS in pursuance of Notification dated 17.05.2018, immediate steps shall be taken to give effect to the promotion of the applicant to IFS from the date his immediate junior was so promoted and in such eventuality, the applicant's pay shall only be fixed notionally in the cadre of IFS and he shall only be granted the pensionary benefits, as due and admissible, with effect from the date he would have retired from IFS had he been promoted in pursuance of Notification dated 17.05.2018.
- iv) The above consideration shall also be made in respect of applicants in O.A.Nos.260/330/18, 260/331/18 & 260/332/18, being similarly situated persons.

11. The above exercise shall be completed by the Respondent No.1 within a period of 120 (One hundred twenty days) from the date of receipt of this order. In the result, all the four Original Applications are allowed as above, with no order as to costs.

(SWARUPKUMAR MISHRA)
MEMBER(J)

(GOKUL CHANDRA PATI)
MEMBER(A)