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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 180/00240 of 2018

Thursday, this the 7th day of November, 2019

CORAM

Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member

Hon'ble Mr.Ashish Kalia, Judicial Member

K.Raju Thomas,
Aged 55 years,
S/o A.G.Koshy,
Deputy Conservator of Forests (non cadre)
and Forest Working Plan Officer,
Punalur, Kollam district,
(residing at Angadiyil, Kampamkodu,
Vayakkal P.O., Valakam,
Kottarakara, Kollam – 691 532. ... Applicant

(By Advocate Dr.K.P.Satheesan, Sr.)

Versus

1. The Union of India,
represented by the Secretary
to Government of India,
Ministry of Environment, Forests & Climate Change,
Indira Paryavaran Bhavan, 6th Floor,
Prithvi Block, Jor Bagh road,
Ali Ganj, New Delhi – 110 003.
2. The Union Public Service Commission,
Represented by the Secretary,
Shajahan Road,
New Delhi – 110 069.
3. The Selection Committee for Selection to the
Indian Forest Service Constituted under

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Regulation 3 of the IFS (appointment by promotion),
Regulation 1966, represented by its Chairman,
Union Public Service Commission,
New Delhi – 110 069.

4. The State of Kerala represented by
The Chief Secretary ,
Government Secretariat
Thiruvananthapuram – 695 001.
5. The Additional Chief Secretary to Government,
Forest and Wild Life Department,
Government Secretariat,
Thiruvananthapuram – 695 001.
6. The Principal Chief Conservator of Forests &
Head of Forest Force, Forest Headquarters,
Vazhuthakkad,
Thiruvananthapuram – 695 023.

..... Respondents

(By Advocates, Mr.N.Anilkumar, Sr.CGSC for Respondent-1, Mr.Thomas Mathew Nellimoottil, Sr.CGSC for Respondents-2&3, Mr.M.Rajeev (GP) for Respondent-4, 5 and 6)

This application having been heard on 1st November, 2019, the
Tribunal on 7th November, 2019 delivered the following :

ORDER

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

OA No.240/2018 is filed by Shri K.Raju Thomas, Deputy Conservator of Forests (non cadre), Government of Kerala against the inaction on the part of Respondents-2&3 to declare his selection to the IFS by promotion from SFS as 'unconditional'. The reliefs sought in the OA are as follows:

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i) to issue an order or direction to the first respondent to include the name of the applicant also in Annexure A10 notification No.17013/25/2016-IFS-ii dated 17.01.2018 at the appropriate place.

OR

in the alternative to issue a fresh notification appointing the applicant in the Kerala cadre of Indian Forest Service within a time limit that may be fixed by this Hon'ble Tribunal.

ii) to issue an order or direction to respondents 2 and 3 to forward unconditional proposal to the first respondent in respect of the applicant in view of Annexure A2 and A3 orders of the Hon'ble High Court of Kerala and Annexure A9 dated 9.1.2018 as expeditiously as possible and at any rate within a time limit that may be fixed by this Hon'ble Tribunal.

iii) to declare that the applicant is entitled to be appointed in the Kerala cadre of Indian Forest Service since the applicant is already included in the zone of consideration and the stigma of criminal case is already expunged by the Hon'ble High Court of Kerala.

iv) to issue such other order or direction as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.

2. The applicant, a member of the State Forest Service, had filed the OA while working as Forest Working Plan Officer at Punalur, Kollam District. He entered the department in 1985 as a Range Officer and was currently holding the post of Deputy Conservator of Forest. He has retired from service in July, 2019 on attaining the age of superannuation. He was declared eligible to be listed in the zone of consideration for selection of State Forest Officers of Kerala into Indian Forest Service (IFS) for 2015 promotion vacancies. As per the intimation sent by the 1st Respondent to Government of Kerala on 07.09.2017 there were nine vacancies for promotion to IFS, Kerala cadre for the year 2015 (Annexure A1).

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3. The applicant discloses in the OA that he was allegedly falsely implicated as 7th accused in Crime No.110/CR/2000 by CBCID, Kollam. Judicial First Class Magistrate's Court-II at Punalur took cognizance of the case and numbered it as C.C.No.961/2013. Due to the pendency of this case, the applicant submits that he was not included in the earlier select list despite being qualified and eligible. Aggrieved, he challenged the proceedings in the criminal case before the Hon'ble High Court of Kerala and Hon'ble High Court observed that the allegations against the applicant were "somewhat vague". The Hon'ble High Court went on to further observe that the pendency of the criminal case shall not stand in the way of conferring him with Indian Forest Service (Annexure A2 and A3 – after the original order was corrected deleting clerical mistakes).

4. In the meanwhile, pursuant to Annexure A1 communication the State Government had forwarded the list of eligible officers for promotion to Kerala cadre of IFS and the select list for promotion was approved by the UPSC. The applicant was included as Sl.No.2 with a condition that his inclusion is provisional and subject to clearance in criminal proceedings pending against him (Annexure A4). It was in pursuance to this development that the applicant moved the Hon'ble High Court and obtained Annexure A2 order.

5. The applicant took up his case with the 2nd Respondent through a

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representation, copy of which is at Annexure A5. All parties to the dispute were informed of the orders of the Hon'ble High Court which had ordered that the pendency of the case shall not be a hindrance to confer IFS upon the applicant, clearly removing the stigma referred to in Annexure A4. The Forest Department forwarded the representation of the applicant to Respondent-4 with details in requisite proforma on 28.12.2017 (Annexure A7) and the 4th Respondent, in turn, submitted the same to the 1st Respondent by letter dated 09.01.2018 (Annexure A8). The 4th Respondent also forwarded a copy of the proposal to the 2nd Respondent as at Annexure A9. However, the 1st Respondent disregarding the correspondence, issued the notification excluding the applicant from the list of candidates promoted to IFS Kerala cadre (Annexure A10).

6. As grounds, the applicant submits that he had been included in the select list subject to the only condition that he be cleared from the criminal proceedings pending against him. As per the orders of the Hon'ble High Court at Annexure A2 and A3, the Hon'ble High Court had settled the matter in his favour ruling that the pending case will not stand in the way of conferring IFS upon him. However, Respondents-2&3, despite being seized of all the facts, continue to disregard the directions of the Hon'ble High Court to include him in the final select list.

7. Separate reply statements have been filed on behalf of the 1st

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Respondent (Union of India), 2nd and 3rd Respondent (UPSC) and 4th Respondent, the State of Kerala. The Union of India in their reply statement have explained that the authority to declare the name of a State Forest Officer, selected as "provisional" to the IFS as "unconditional", is a power which lies in the domain of UPSC and the State Government. As such, the 1st Respondent has no role other than bringing out the notification including the names of the selected candidates.

8. The 4th Respondent namely the State Government have admitted the facts of the case, submitting that all necessary steps to be taken from their side have been duly taken. It is maintained that it was due to the pendency of the criminal case that the Integrity Certificate to be issued by the State Government had been withheld at the first instance. However, in view of the orders of the Hon'ble High Court of Kerala at Annexure R4(A), Integrity Certificate was issued. Even then the SCM which met on 30.10.2017 had included the applicant only provisionally, with his inclusion being subject to the clearance in the criminal proceedings. It is further averred that as per Regulation-7(4) of IFS (Appointment by Promotion) Regulations, 1966, the select list shall remain in force till 31st day of December of the year in which the meeting of the Selection Committee was held or up to 60 days from the date of approval of the select list by the Commission under sub-regulation (1) or as the case may be finally approved under sub-regulation (2) whichever is earlier. It is further stated that once the State Government

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forwards a proposal to declare the provisionally included officer in the select list as 'unconditional', and if the Commission declares the inclusion as unconditional and final, his appointment shall be considered by the Central Government under Regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the select list ceased to be in force. The State Government adopts no further stance in the matter other than pointing out that they have already forwarded the proposal for declaring the selection of the candidate as unconditional (Annexure A8).

9. In the reply statement filed on behalf of the Respondents-2&3, UPSC, the procedures involved in the selection of candidates for promotion to IFS is detailed at some length. In so far as this case is concerned the facts brought out in the OA are admitted to the extent of their accuracy. It is maintained that as per Explanation-I, below Regulation-5(4) of the IFS (Appointment by Promotion) Regulations, 1966, in case a charge sheet has been filed in the court in a criminal case against an officer and the case is pending, the name of such officer is included in the select list only provisionally and subject to clearance in the pending case. It is averred that on account of this Ruling, an SFS officer included in the select list provisionally due to pending criminal case cannot be appointed to IFS, unless the State Government certifies that the condition leading to provisional inclusion of such officer in the select list, no longer exists. In this case, the criminal proceedings are still pending. It is further submitted

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that neither UPSC nor Government of India were parties in the Criminal M.C. No.1897/2016, also mentioning that the relevant provisions of Statutory Promotions Regulations prohibited conferring of IFS to the officer (declaring his provisional inclusion as unconditional). The State Government has informed that Criminal MA has been filed on 13.08.2018 in Crl.M.C.No.1897/2016 seeking recall of the order dated 11.12.2017 and stay of operation of the said order. It is reiterated that the criminal proceedings, to the best of knowledge of the respondents, are still pending and declaring the applicant's selection as 'unconditional' at this juncture would not be in consonance with the provisions of Promotion Regulations which are statutory in nature.

10. Heard Dr.K.P.Satheesan, Sr. Advocate on behalf of the applicant, Shri N.Anilkumar, learned SCGSC on behalf of Respondent-1, Shri Thomas Mathew Nellimoottil, Nodal Counsel for Respondents-2&3 and Shri M.Rajeev (GP) on behalf of Respondent-4. All pleadings and documents were examined. The facts of the case are not in dispute and as it stands the applicant who is eligible for inclusion in the 2015 select list of SFS officers for promotion to IFS Kerala cadre is excluded for the reason that he is an accused in a criminal proceedings before the Judicial first Class Magistrate Court, Punalur. Initially his name was included as provisional subject to being cleared in the criminal proceedings. However, in the final list brought out as notification dated 17.01.2018 (Annexure A10) his name was

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excluded. The prayer of the applicant which he successfully took up before the Hon'ble High Court in two criminal appeals was to declare him fit unconditionally, whereby he would stand promoted as he was otherwise ranked at Sl.No.2 in the provisional list. The State Government on their part in response to the representation made by the applicant issued Integrity Certificate which was forwarded to Respondents-1, 2 and 3. The applicant also directly petitioned the UPSC and the Selection Committee for declaring his selection.

11. The Rule position brought out in detail by Respondents-2&3 state that provisions of the Statutory Promotion Regulations do not provide for declaring a provisional inclusion of a candidate as unconditional, if a criminal proceeding is pending against him and a charge sheet has been issued or filed in a court. Thus, on one hand we have the unequivocal order of the Hon'ble High Court stating that the criminal proceeding pending against the officer should not stand in the way of his selection to IFS and on the other hand, we have the Union Public Service Commission taking shelter under the Regulations to deny him the benefit granted by the court.

12. Examining the relevant parts of Indian Forest Service (Appointment by Promotion) Regulations, 1966 (Annexure MA1), two clauses are found relevant to the case at hand. Under Regulation 7(4) it is stated:

“..... that where the State Government has forwarded the

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proposal to declare a provisionally included officer in the Select List as 'Unconditional' to the Commission during the period when the Select List was in force, the Commission shall decide the matter within a period of **forty five** days or before the date of meeting of the next Selection Committee, whichever is earlier and if the Commission declares the inclusion of the provisionally included officer in the Select List as unconditional and final, the appointment of the concerned officer shall be considered by the Central Government under regulation 9 and such appointment shall not be invalid merely for the reason that it was made after the Select List ceased to be in force."

Thus the above provision would allow the applicant to successfully overcome the contention, if raised, that the life of the select list has expired. The second relevant provision is Regulation 9(1), which states:

..... that the appointment of an officer, whose name has been included or deemed to be included in the Select List provisionally under proviso to sub-regulation (5) of regulation 5 or under the proviso to sub-regulation (3) of regulation 7 as the case may be shall be made within sixty days after the name is made unconditional by the Commission in terms of the first proviso to sub-regulation (4) of regulation 7.

13. However, this proviso is dependent on the Commission declaring selection as 'unconditional'. The UPSC and SCM, Respondents-2&3 are left with two alternatives in view of the direction of the Hon'ble High Court. They are required to either seek orders overturning the orders of the Hon'ble High Court or themselves declare the applicant's selection as unconditional, whereby Respondent-1 will issue necessary notification to that effect. As brought out on pre-page the relevant portion of the Regulations clearly prescribes firm time lines within which UPSC is required to act on getting the proposal from State Government referred to at

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Annexure A8. Instead UPSC appears to have chosen to remain inactive. Hence Tribunal is left with the task of only directing them to act in accordance with judicial orders.

14. OA succeeds. The Respondents-2&3 are directed to issue a fresh select list including the name of the applicant as unconditional for selection to the Kerala cadre of IFS for 2015 vacancies. Thereupon Respondent-1 will expedite issue of necessary notification. This process shall be completed within 60 days from the date of receipt of a copy of this order, as the officer has already superannuated from the State Forest Service. Parties shall bear their own cost.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures in O.A. No.180/00240/2018

1. Annexure A1 - True copy of the letter written by the first respondent to the Principal Secretary, Government of Kerala dated 7-9-2017.
 2. Annexure A2 - True copy of the order dated 11.12.2017 in Crl.M.C.No.1897/2016 of the Hon'ble High Court of Kerala.
 3. Annexure A3 - True copy of the order dated 21.12.2017 in Crl.M.A.No.13748/2017 in Crl.M.C.No.1897/2016.
 4. Annexure A4 - True copy of the order No.17013/25/2016-IFS-II dated 21.11.2017 issued by the first respondent.
 5. Annexure A5 - True copy of the letter written by the applicant to the 2nd respondent dated 15.12.2017.
 6. Annexure A6 - True copy of the covering letter forwarding Annexure A3 to the 2nd respondent dated 26.12.2017.
 7. Annexure A7 - True copy of the proposal dated 28.12.2017 forwarded by the Head of the Department to the Chief Secretary with the requisite proforma dated 15.12.2017.
 8. Annexure A8 - True copy of the proposal forwarded by the 4th respondent to the first respondent as letter No.3589/Spl.C1/2016/GAD dated 09.01.2018
 9. Annexure A9 - True copy of the proposal forwarded to the 2nd respondent dated 09.01.2018.
 10. Annexure A10 - True copy of the notification No.17013/25/2016-IFS-II dated 17.01.2018.
 11. Annexure R4(A) - Copy of the order of Hon'ble High Court in Crl.M.A.No.3629/2017 in Crl.M.C.No.1897 of 2016 dated 31.07.2017.
 12. Annexure R4(B) - Copy of G.O.(Rt.) No.967/2018/GAD dated 14.02.2018.
 13. Annexure MA1 - True copy of the Indian Forest Service (Appointment by Promotion) Regulations 1966 as amended upto 13.10.2005.
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