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Court : Central Administrative Tribunal CAT Ernakulam

Decided On : Aug-27-2009

Judge : Honourable Mr. George Paracken, Judicial Member & Honourable Mr. K George Joseph, Administrative Member

Appeal No. : ORIGINAL APPLICATION No. 619 of 2008

Appellant : R. Rajendran

Respondent : Union of India, Represented by the Secretary to the Government of India, Ministry of Forest and Envi

Advocate for Pet/Ap. : For the Applicant: Mr. Mohan Kumar for Mr. TCG Swamy, Advocate. For the Respondents: Ms. Jisha a for TPMI Khan, SCGSC for R/1, and Mr. R Premsankar, G.P. for R/2-3, Advocate, and Mr. Thomas Mathew Nel

Judgement :

(Hon'ble Mr. K. George Joseph, AM)

The applicant Sri R. Rajendran, has been approaching this Tribunal time and again for redressal of his grievances about his selection to the Indian Forest Service (IFS). This time he has sought the following reliefs:

"a) Declare that the non feasibility on the part of the respondents to include the name of the applicant for appointment by promotion to the Indian Forest Service for the vacancies for the year 2006 is arbitrary, discriminatory, contrary to law and hence, unconstitutional;

b) Direct the respondents 2 and 3 to forward the candidature of the applicant to the 1st and 4th respondents respectively and further direct the respondents 1 and 4 to consider the applicant for appointment by promotion to the Indian Forest Service against the vacancies notified for the year 2006 and to include him at the appropriate place in the select list to be prepared for the year 2006;

c) Direct the respondents to grant the applicant all consequential benefits arising there from;

d) Award cost of and incidental thereto;

(e) Pass such other orders or directions as deemed just and fit by this Hon'ble Tribunal."

2] The applicant joined the Kerala Government Service as Assistant Conservator of Forests on 01.01.84. He retired on 30.4.06 on attaining the age of superannuation of 55 years. The applicant's name was included in the select list for IFS from 1994 onwards but he was not promoted to the IFS cadre on account of pending criminal cases. Out of 9 criminal cases in 8 cases he was either acquitted or the cases were dropped. Only one case is pending as of now.

3] The counsel for the applicant contends that the applicant is entitled to be considered for promotion to the IFS for the year 2006 in the light of the first proviso to Regulation 5(3) of the Indian Forest Service (Appointment by Promotions) Regulations, 1966. The proviso reads,

"5(3) The committee shall not consider the cases of the members of the State Forest Service who have attained the age of 54 years on the first day of January of the year for which the Select List is prepared: Provided that a member of the State Forest Service whose name appears in the Select List prepared for the earlier year before the date of the meeting of the Committee and who has not been appointed

to the service only because he was included provisionally in that select list shall be considered for inclusion in the fresh list to be prepared by the committee, even if he has in the meanwhile, attained the age of fifty four years."

4] The applicant's case is that he has attained the age of 54 years on first day of January 2006. Under the aforesaid proviso he is eligible to be considered for inclusion in the fresh list to be prepared by the Committee because he was included provisionally in the select list for the previous year. The counsel for the applicant also pointed out that the Government of Kerala had included his name in the list of 9 names sent to the UPSC for consideration for promotion to the IFS and his name stood first in the list.

5] The counsel for 4th respondent acknowledges that the State Government had included his name in the zone of consideration for the year 2006 for promotion to the IFS of Kerala Cadre. However, his name was removed from the zone of consideration as Government of India did not agree to the inclusion of his name. This was done in the light of the clarification issued by Government of India, DoPandT's letter No. 14015/20/97-AIS (I) dated 23.2.2000 in the matter regarding consideration for promotion to All Indian Services in a case pertaining to promotion to the IAS of Bihar Cadre. In order to be considered for promotion the officer should be eligible as on the crucial date of consideration for the year for which the select list is to be prepared and should also be available in service on the last day of the year for which the select list is being prepared. The clarification by Government of India is as under.

" In regard to the issue raised in the reference it appears that save as expressly directed otherwise by the Hon ble High Court, in the matter of preparation of year wise Select Lists for promotion to the IAS of Bihar cadre for the years 1994-95 to 1996-97, every State Civil Service Officer who was eligible and available for consideration and would have been considered on the due dates for these years, viz. 31.3.1995, 31.3.1996 and 31.3.1997, had the selection Committee met well in time on such dates would be entitled to be considered by the Committee on 24 and 25.2.2000, irrespective of his present status for the reason that the right of consideration for promotion cannot be forfeited in retrospect, due to turn of events

occurring subsequently in the case of such officers."

6] In keeping with the spirit of the above cited clarification the applicant should be eligible as on first day of January 2006 and available in service on the last notional day for the Selection Committee Meeting i.e. on 31.12.2006. In the instant case, the applicant had retired from the State Forest Service on 30.4.2006 and was, therefore, not available on the due date of 31.12.2006. Accordingly, he was not eligible for consideration. If such restriction is not applied, all provisionally included officers may have to be considered year after year with the same service records as no fresh ACRs will be added after their retirement from service.

7] We have heard the learned counsel for the parties and perused the documents.

8] The provisions of promotion and regulation are to be read along with the clarifications issued by the Government of India, who are the framers of the Regulation. These regulations and clarifications are to be applied uniformly to the officers in the cases pertaining to all the States services. The right of consideration for promotion is guaranteed under Articles 14 and 16 of the Constitution of India for officers who are otherwise eligible for consideration. But in the instant case, the applicant had retired on superannuation on 30.4.2006. He was not available in service on the due date i.e. 31.12.2006. So the applicant was not otherwise eligible for consideration. Therefore, it cannot be said that non inclusion of the applicant in zone of consideration for vacancies for the year 2006 is arbitrary, discriminatory or illegal.

9] From the above, it is clear that the applicant is not falling within the ambit of the first proviso to Regulation 5(3) of the Indian Forest Service (Appointment by Promotions) Regulations, 1966. Hence the application fails being devoid of merit.

10] However, it is a matter of deep concern that the applicant, who was topping the select list for promotion to the IFS from 1994 onwards, was not promoted because he could not be given integrity certificate in view of the pending criminal cases. Out of 9 criminal cases only one is pending now and he other eight cases are disposed of without any adverse consequence to the applicant. Notwithstanding the fact that on account of the pending criminal case selection of

the applicant might not be confirmed, he was not included in the zone of consideration only because he retired at the age of 55 years. If the age of retirement were 60 years in Kerala State Service as it is in All India Services and other State Services the applicant's name would have been included in the zone of consideration and if he figured in the provisional list and integrity certificate could be given in time, he could still have made it to the Indian Forest Service. It is unfortunate that the lower age of superannuation also went against the applicant.

11] The OA is dismissed. No order as to costs.

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