

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13106 of 2017

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The Union of India through the Secretary, Ministry of Environment, Forest and Climate Change, Indira Prayavaran Bhawan, Jor Bagh Road, Aliganj, New Delhi - 110003.

.... Petitioner/s

Versus

1. Ravi Shankar Kumar Son of Late Dr. B.N. Prasad Resident of Flat No. WT - 603, Twin Tower, Hathwa, Sough Gandhi Maidan, P.S. - Gandhi Maidan, District - Patna, at present posted as Conservator of Forest, Purnea Circle, Purnea.
2. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Forest and Environment, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.D. Sanjay, Addl. S.G.
Mr. Rajesh Kumar Verma, C.G.C
For the Respondent/s : Mr. M.P. Dixit, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 25-10-2018

Heard Mr. S.D. Sanjay, learned Additional Solicitor General assisted by Mr. Rajesh Kumar Verma learned Central Government Counsel appearing for the petitioner and Mr. M.P. Dixit, learned counsel appearing for the respondent.

This writ petition under Article 226 is filed on behalf of the Union of India in its Ministry of Environment, Forest and Climate



Change, to question the judgment and order passed by the Central Administrative Tribunal, Patna Bench, Patna in O.A. No. 882 of 2015 (Ravi Shankar Kumar Vs. The Union of India and Ors.) whereby the application filed by the respondent no. 1 has been allowed and the corrigendum issued by the Government of India in its Ministry of Environment, Forest and Climate Change dated 09.04.2015 whereby the seniority of the petitioner was modified to place him below Sri Raj Bansh Singh was quashed, restoring the year of the allotment of the petitioner to 1995 and fixed his seniority above Raj Bansh Singh and below Sri S.N. Pandey.

Facts of the case as noted from the pleadings on record would confirm that the respondent no. 1 joined the Bihar Forest Service in the year 1984 and on attaining eligibility for promotion to the Indian Forest Service Cadre, he was being considered by the Selection Committee so constituted under the Indian Forest Service (Appointment by Promotion) Regulations, 1966 (hereinafter referred to as 'the Regulation'), for the years 1998 to 2000. The minutes of the Selection Committee which held its meeting on 24.11.2003 can be found at Annexure-1 to the Original Application filed in the Tribunal, a copy of which is also a part of the writ proceedings.

The name of the respondent no. 1 was considered for the select list of the year 2000 and the Selection Committee on



examination of records and assessment of the eligibility, selected five officers for promotion to the Indian Forest Service including the petitioner, whose name was placed below Sri S.N. Pandey and above Sri Raj Bansh Singh with the stipulation that it is provisional and that the inclusion is subject to clearance in the disciplinary proceeding. It is a matter of record that the applicant-respondent no. 1 was exonerated in the departmental proceeding on 28.09.2005 and consequentially the State Government issued the integrity certificate on 25.05.2006. It is also a matter of record that though the cut-off-date for consideration of the officers in the select list of 2000 was 01.01.2000 and even when a disciplinary proceeding was initiated against the respondent no. 1 much after the cut-off-date on 12.12.2002 yet his name was included in the select list of year 2000 provisionally and subject to clearance of the disciplinary proceeding. An order of promotion was issued on 06.03.2007 in favour of the respondent no. 1 but no year of allotment was given. Although in view of the stipulation present in the minutes of the Select Committee meeting dated 24.11.2003 enclosed at Annexure-1 to the Original Application, the respondents who are petitioners before this Court, should have given effect to the decision taken in the Selection Committee meeting held on 24.11.2003, in tune with the recommendations so present therein but for the reasons unexplained, the case of the respondent no.



1 was considered for the select list of the years 2001 to 2006 and by order dated 06.03.2007 order of promotion was issued which did not mention the year of allotment.

The Government of Bihar in its department of Environment and Forest took up the case of the respondent no. 1 to inform the Director, Ministry of Environment and Forest, Government of India that the respondent no. 1 was already selected albeit provisionally in the select list of 1998, 1999 and 2000 and was placed above Sri Raj Bansh Singh and accordingly, his seniority be restored. This recommendation of the Government of Bihar is present at Annexure-4 to the original application. The Government of India in its Ministry of Environment, Forest accepting the recommendation, restored the seniority of the respondent no. 1 by placing him below Sri S.N. Pandey assigning 1995 as his year of allotment vide order dated 02.09.2009 at Annexure-5 of the original application. The decision, however, was made subject to a similar matter pending in the Supreme Court in the case of M.A. Waheed bearing S.L.P. No. 2965 of 2008. It is six years after the order of allotment was issued on 02.09.2009 at Annexure-5 to the original application that by a corrigendum dated 09.04.2015, the respondent no. 1 was directed to be placed below Sri Raj Bansh Singh who was selected against the select list of 2000 and an order to such effect was issued on



08.10.2015 allotting 1999 as the year of allotment to the respondent no. 1. It is feeling aggrieved by these orders dated 09.04.2015 at Annexure-6 and dated 08.10.2015 at Annexure-7 that the respondent no. 1 moved the Central Administrative Tribunal, Patna praying for quashing of these decisions and for restoration of his seniority and placement above Sri Raj Bansh Singh and below Sri S.N. Pandey. The Central Administrative Tribunal, Patna Bench, Patna by the judgment and order impugned dated 21.12.2016 has upheld the claim advanced by the respondent no. 1 to allow the application in terms of the relief prayed thereunder and it is feeling aggrieved by the judgment and order of the Patna Bench of the Central Administrative Tribunal, Patna Bench that the Union of India in its Ministry of Environment, Forest and Climate Change, is before this Court.

We have heard Mr. S.D. Sanjay, learned Additional Solicitor General on behalf of the writ petitioner assisted by Mr. Rajesh Kumar Verma, Central Government counsel, Mr. M.P. Dixit appearing on behalf of the respondent no. 1, who was the applicant before the Tribunal and learned counsel for the State. We have also perused the records.

The argument that is advanced by Mr. Sanjay, learned Additional Solicitor General to contest the judgment and order of Tribunal is that the Tribunal failed to appreciate the import of the



stipulations present in the Indian Forest Service (Regulation of Seniority) Rules, 1997 (hereinafter referred to as 'the Rules') and the Indian Forest Service (Appointment by Promotion) Regulations, 1966 (hereinafter referred to as 'the Regulations'). According to Mr. Sanjay, undisputedly a disciplinary proceeding had been initiated against the respondent no. 1 on 12.12.2002 and thus a disciplinary proceeding was pending when the case of the respondent no. 1 was taken up for consideration by the Selection Committee on 24.11.2003.

The main thrust of the argument of Mr. Sanjay, learned ASG is that in view of the provisions underlying Rule 7 (3) read along side Rule 7 (4) of 'the Regulations' and the proviso attached thereto, even if any an officer, who is facing a disciplinary proceeding, is included in a select list provisionally, unless a proposal is forwarded by the State Government to declare such inclusion in the list as unconditional during the period the select list was in force, he cannot claim appointment against the said select list. According to learned counsel since the respondent no. 1 undisputedly was facing a disciplinary proceeding on the date of consideration, it is following such statutory stipulation that his case was considered against the select list of 2005 which was approved by the U.P.S.C. and notified accordingly and whereafter neither the year of the select list can be altered nor the year of allotment can be disturbed. According to Mr.



Sanjay, since the candidature of the respondent no. 1 remained provisional and the recommendation of the State Government was not received as unconditional, he was considered in the select list of the subsequent year 2005 and promoted accordingly but an error was committed by the department in issuing the promotional order on 02.09.2009 which error was corrected by the corrigendum dated 09.04.2015 at Annexure-6 followed by the order dated 08.10.2015 at Annexure-7 to the original application which orders did not suffer any infirmity for intervention as they were in tune with the statutory prescription.

Mr. M.P. Dixit, learned counsel appearing on behalf of the respondent no. 1 has reiterated the position as noted by the Tribunal to canvass the case of the respondent no. 1-applicant to submit that the orders impugned were not sustainable and were rightly set aside by the Tribunal because it is not on account of ineligibility of the respondent that the promotion got delayed rather it is because of delayed action of the writ petitioners that an unwarranted doubt was created by initiation of disciplinary proceeding which had no adversarial effect on the promotional claim of the petitioners to the Indian Forest Service because while the respondent was being considered for promotion in the select list prepared for the year 2000, the disciplinary proceeding in which the respondent ultimately got



exonerated, got initiated much later in the year 2002.

Learned counsel further submits that an identical issue arose in the case of M.A. Waheed and the Central Administrative Tribunal, Hyderabad Bench upheld the claim of the appellant for promotion which judgment and order of the Tribunal was affirmed by the High Court and in his case, the Government of India did not choose to move ahead rather it is U.P.S.C. which questioned the judgment before the Supreme Court but chose to withdraw their appeal. He submits that it is in this view of the matter that the order of promotion dated 02.03.2009 simply conditions the promotion to the outcome of the appeal pending before the Supreme Court in the case of M.A. Waheed which appeal was withdrawn by the U.P.S.C.

We have considered the rival submissions advanced by the contesting parties and we have perused the records and we are certainly not impressed by the issues raised by the Government of India in its Ministry of Environment, Forest & Climate Change to question the judgment and order of the Patna Bench of the Central Administrative Tribunal which simply lays down the correct legal position to uphold the claim of the respondent no. 1.

It is not in dispute that no disciplinary proceeding was pending against the respondent no. 1 as on 01.01.2000 which is the cut-off-date fixed for consideration of the claim of the eligible officers



for promotion to the Indian Forest Service under the Regulations in question against the select list of 2000. It is simply because the Select Committee held its meeting belatedly to consider the claim of the officials for their promotion to the Indian Forest Service for the years 1998, 1999 and 2000 that an unnecessary cloud came to be raised because in between the years of consideration and the holding of the meeting of the Select Committee on 24.11.2003 a disciplinary proceeding was initiated against the respondent no. 1 on 12.12.2002. The Committee conscious of the fact included the name of the respondent at the appropriate place below Sri S.N. Pandey and above Sri Raj Bansh Singh as manifest from paragraph 6.3 of the minutes which also makes the inclusion provisional and subject to clearance in the disciplinary proceeding as well as grant of integrity certificate. It is again not in dispute that the respondent no. 1 got exonerated in the disciplinary proceeding on 28.09.2005 and his integrity certificate was issued on 25.05.2006. Rule 7(4) of 'the Regulations' while acknowledging the right of an officer facing disciplinary proceeding requires State Government concerned to forward the proposal for declaring the included officer as unconditional which essential steps according to the writ petitioners was not followed by the State Government thus causing prejudice to the claim of the petitioner for being dropped from the select list of 2000 and being included in the



subsequent list of 2005. We completely fail to appreciate as to how the failure on the part of the State Government to forward proposal of unconditional inclusion can act prejudice to the claim of the petitioner more particularly where there was no disciplinary proceeding pending against him as on the crucial date of eligibility i.e. 01.01.2000.

This issue has been very appropriately dealt by the Tribunal at paragraph 14 of the judgment where they have proceeded to hold that since no departmental proceeding was pending or initiated as on 01.01.2000 against the respondent no. 1, there was no occasion for the Select Committee to include the name of the respondent no. 1 on a provisional basis rather it should have been unconditional. The legal position in this regard stands too well settled and reference in this regard is made to the judgment of the Supreme Court rendered in the case of Union of India Vs. K.V. Janki Raman, reported in AIR 1991 SC 2010.

The Union of India perhaps well aware of the legal position so well settled by the Supreme Court issued a promotional order allotting the seniority to the petitioner in tune with the recommendations of the Select Committee present at paragraph 6.3 of the minutes dated 24.11.2003 at Annexure-1 vide order dated 02.09.2009 at Annexure-5 to the original application which places the petitioner below Sri S.N. Pandey. That the order of promotion was



passed with full consciousness is evident from paragraph 3 of the order which makes the promotional order subject to the decision of the Supreme Court in the case of M.A. Waheed arising from S.L.P. No. 2965 of 2008 wherein a similar issue came up for consideration before the Hyderabad Bench of the Central Administrative Tribunal and the contest was drawn in favour of the applicant. As in the present case, in the case of M.A. Waheed as well, his name was included in the select list of 2003 provisionally even though he was not under any departmental proceeding as on 01.01.2003. In an identical manner, since the meeting of the Select Committee took place two years later on 23.03.2004 and in the meanwhile a charge-sheet was issued that the name of M.A. Waheed was included provisionally and not unconditionally. On challenge posed by M.A. Waheed before the Central Administrative Tribunal, Hyderabad Bench, the decision went in his favour because no proceeding was pending on 01.01.2003 when his name was placed in the select list. The respondent department challenged the judgment of the Tribunal before the High Court of Andhra Pradesh which upheld the judgment of the Tribunal. Paragraph-18 of the judgment of the Tribunal in the present case would confirm that even though U.P.S.C. chose to question the judgment and order of the Andhra Pradesh High Court before the Supreme Court, the Government of India did not choose to move



ahead rather accepted the position. It is noteworthy that while the Government of India in its department of Environment, Forest & Climate Change chose to abide by the legal position settled in the case of M.A. Waheed they have unnecessarily protracted the present litigation which is fully covered by the position settled by the Andhra Pradesh High Court in the case of M.A. Waheed.

Another aspect of the matter is that even when the position stood settled on 02.09.2009 with none complaining an unnecessary litigation was generated after six years of the issuance of the promotional order dated 02.09.2009 by issuing of a corrigendum which was unwarranted and unsupported either by the statutory provisions or by the legal position settled under the judgment of the court on the issue under consideration.

In the nature of the discussion that we have held above, we are satisfied to hold that the Select Committee had no reason to include the name of the petitioner in the Select list of 2000 provisionally by misreading the statutory prescription and even if they did so, the error was rectified by the Ministry in issuing the order of promotion dated 02.09.2009 restoring the status of the respondent no. 1. Apart therefrom, is that there is a direct judgment on the issue rendered in the case of M.A. Waheed which squarely applies to the case of the respondent no. 1 and has been relied upon by the Tribunal



to express its opinion bearing note of the essential aspect that the judgment and order rendered by the Andhra Pradesh High Court in the case of M.A. Waheed was not questioned by the Department of Environment, Forest & Climate Change, Government of India before the Supreme Court and has attained finality. In such undisputed favourable conditions operating in favour of the respondent no. 1, we are satisfied to note that it was wholly unwarranted for the Government of India to modify the promotional order dated 02.09.2009 by issuing a corrigendum dated 09.04.2015 impugned at Annexure-6 before the Tribunal and perpetuate the illegality by issuing a formal order to such effect dated 08.10.2015 vide Annexure-7 both of which have been rightly quashed by the Tribunal to allow the application of the respondent no. 1 which judgment and order of the Tribunal neither suffers infirmity on merits nor the issues canvassed by Mr. Sanjay persuades us to interference therewith.

The writ petition is, accordingly, dismissed.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Devendra/Priyanka

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.12.2018
Transmission Date	NA

