

(2004) 02 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 36867 of 1997

C. Jayaram, IFS

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-02-2004

Acts Referred:

Indian Forest Service (Regulation Of Seniority) Rules, 1968 — Rule 3(1)(c)
Indian Administrative Service (Recruitment) Rules, 1954 — Rule 9
Indian Forest Service Regulation, 1966 — Regulation 5, 5(1), 5(2), 8, 9

Citation : (2004) ILR (Kar) 2804 : (2004) 7 KarLJ 71 : (2004) 3 KCCR 1548

Hon'ble Judges : S. Abdul Nazeer, J; P. Vishwanatha Shetty, J

Bench : Division Bench

Advocate : Madhusudan R. Naik, for the Appellant; P.S. Dinesh Kumar, Sr. CGSC, for R1 and R2 and M.B. Prabhakar, AGA for R3 and R4, for the Respondent

Final Decision : Allowed

Judgement

P. Vishwanatha Shetty, J.—The petitioner in this petition was the applicant in original Application No. 1934 of 1995 before the Central Administrative Tribunal, Bangalore Bench, Bangalore [hereinafter referred to as "the tribunal"]. In this petition, he has called in question the correctness of the order dated 5th November 1997 made in Application No. 1934 of 1995 by the Tribunal, a copy of which has been produced as Annexure-N to this petition, in so far as the Tribunal has rejected his prayer for quashing of the order dated 16th June 1995, a copy of which has been produced as Annexure-G to this petition, Wherein the year of allotment of the petitioner was fixed as 1986. He has also prayed for a further direction to the respondents to re-fix his year of allotment considering his appointment to Indian Forest Service [hereinafter referred to as "the IPS"] as one with effect from 3rd February 1989 or in the alternative as one from 1st January 1990 and for other incidental reliefs.

2. Facts in brief:

The petitioner, after successful completion of training, was appointed as Assistant

Conservator of Forests in the State Forests Service on 3rd February 1983. Subsequently he was promoted to the senior cadre of post of Deputy Conservator of Forests on 24th November 1988. He was holding the said post which had been declared as equivalent in status and responsibility to the post of Deputy Conservator of Forests included in Schedule 3(2) to the IFS (pay) Rules till his appointment to IFS cadre. The petitioner had completed eight years of service on 3rd February 1989 and thus became eligible for consideration to be placed in the select-list for IFS on 1st January 1990 in terms of Regulation 5(2) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 [hereinafter referred to as "the Regulations"]. The Committee constituted for making selection met on 18th December 1990 and selected the petitioner who was placed first in the select-list. The said list was sent to the 2nd respondent-Union Public Service Commission [hereinafter referred to as "the UPSC"], which approved the list submitted by the Committee on 16th April 1991. Subsequently, by means of Notification dated 11th June 1991, a copy of which was produced as Annexure-D to this petition (i.e. Annexure A4 before the tribunal), the petitioner was appointed to IPS. On the basis of the date of appointment, the 1st respondent-Union of India had fixed the year of allotment as 1986 in terms of Rule 3(1)(c) of Indian Forest Service (Regulation of Seniority) Rules, 1968 [hereinafter referred to as "the seniority Rules"]. As noticed by us earlier, aggrieved by the year of allotment given to the petitioner for IFS as 1986 on the basis of his appointment to IFS by means of Notification dated 11th June 1991, he had approached the Tribunal and the Tribunal in the impugned order has rejected his claim.

3. Sri Madhusudan R. Naik, learned Counsel appearing for the petitioner challenging the correctness of the order passed by the tribunal, made two submissions. Firstly, relying upon Regulation 5(1) of the Regulation, he submitted that since it was incumbent on the Committee to meet at an interval not exceeding a period of one year and prepare the list of such members of State Forest Service as are held by them to be suitable for promotion to the IFS cadre, and since the same has not been done by the selection committee, the tribunal ought to have held that the delay in issue of Notification Annexure-D should not affect the claim of the petitioner while determining the year of allotment prior to 1986 in terms of the norms prescribed in the Seniority Rules. Elaborating this submission, the learned Counsel pointed out that since the petitioner was appointed to IFS by means of Notification dated 11th June 1991, the 1st respondent-Union of India fixed the year of allotment in terms of seniority rules only as 1986; and this, the learned Counsel points out, has seriously affected the seniority of the petitioner. In support of his submission that Regulation 5(1) of the Regulation is mandatory, he relied upon the decision of the Supreme Court in the case of Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others, and referred to us paragraph 8 of the judgment. It is his submission that in the said decision, the Supreme Court while interpreting the Rule which came up for consideration, has interpreted the

word "may" used in the said Rule as mandatory; and that being the position, it is his submission that the language employed in the Regulation being "shall" as against "may" employed in IFS Regulation, the committee was under a statutory obligation to meet at an interval of not exceeding one year and prepare the list of such members of the State forest service officers who may be suitable for promotion to the IFS cadre. Therefore, he submits that the conclusion reached by the tribunal that if proper explanation is offered by the authorities for the delay on the part of the committee to make a selection of the suitable candidates, the delay caused can be condoned and therefore, the petitioner is not entitled for determining the fixation of year of allotment prior to year 1986 in terms of seniority Rules, is erroneous in law. Secondly, he submitted that the conclusion reached by the tribunal that the authorities have given satisfactory explanation for the default of the Committee in not meeting at an interval of one year from the first meeting, is equally erroneous in law. According to the learned Counsel, the Confidential Reports of the petitioner and some other officers were not available, cannot be considered as a satisfactory explanation offered for the default on the part of the Committee to meet within the time prescribed. In this connection, he referred to us the statement made in paragraph 4 of the statement of objections and also the observation made by the tribunal at paragraph 11 of the Judgment. It is his submission that since admittedly the Committee had met in the month of March 1989 for the purpose of selection to be made for the earlier period, the Committee, in terms of Regulation 5(1) of the Regulations, was required to meet and take a decision not later than by March 1990. He pointed out that since admittedly the petitioner was eligible to be considered for appointment to the cadre of IFS, the breach of Regulation committed by the Committee cannot be put against the petitioner so as to affect his service conditions. The learned Counsel submitted that any dereliction or indifference on the part of the authorities, which are required to update the records and place it before the Committee, is not a ground to take the view that there was sufficient ground for the Committee not to meet at an interval of one year. He also pointed out that since the petitioner was eligible for appointment to IFS cadre from 1st January 1990; the confidential Reports of the petitioner and other officers were required to be considered prior to 1st January 1990; and since the said materials were available with the state Government, the State Government was required to take steps to get the meeting of the Committee held within the period prescribed under the regulations and for the default of the State Government in getting the Committee meeting held within the time prescribed, the seniority of the petitioner cannot be allowed to be affected. In support of his submission, he relied upon the decision of the Supreme Court in the case of Ashok V. David Vs. Union of India and others, and drew our attention to paragraphs 4 to 6 of the judgment and also in the case of Devendra Narayan Singh and others Vs. State of Bihar and others, and referred to us paragraph 6 of the judgment.

4. However, Sri P.S Dinesh Kumar, learned Senior Central Government Standing

Counsel appearing for respondents 1 and 2, while strongly supporting the order passed by the Tribunal, made two submissions. Firstly he submitted that the one-year interval referred to in Regulation 5(1) of the Regulation must be understood as one from 1st January to 31st December of the year. This, he points out, in view of the third proviso given to Regulation 5(2) of Regulation wherein it is provided that the Committee shall not consider the case of a member of the State Forest Service unless, on the first day of January of the year in which it meets, he is substantive in the State Forest Service. According to him, since 1st day of January of the year is fixed for counting the substantive service; and since admittedly the Committee had met on 18th December 1990, the grievance of the petitioner that the Committee had not met at an interval of one year, is totally unfounded. Secondly he submitted that so far as the Committee is concerned, it cannot be found fault with for not meeting at an interval of one year. In this connection, he submitted that the revised proposal, setting out the strength and composition of IFS cadre was received by the 1st respondent-Union of India only on 16th December 1989; the process had commenced on 9th February 1990; and thereafter the Union of India called for proposals to fill up two vacancies against the promotion quota and the proposal including the name of the petitioner was received by the Forest Department only on 12th March 1990. It is his further submission that the proposals could not be completed due to missing of Confidential Reports; and after obtaining the documents, revised proposal was sent to UPSC only on 31st October 1990. He further, pointed out that since UPSC received a wireless message on 4th December 1990 informing it that one more vacancy had arisen on account of death of one Sri G.C. Hullur, Conservator of Forests, the Committee could meet only on 18th December 1990 and make a selection of the candidates; and thereafter, the select list was sent to UPSC by the State Government only on 14th March 1991 and the select list so sent was approved by the UPSC on 19th April 1991 and a Notification appointing the petitioner as per Annexure-D was issued on 11th June 1991. Therefore, he submits that so far as the Union of India and the UPSC are concerned, there has not been any delay; and the delay if any, has been properly explained and it cannot be treated as break of Regulation on the part of respondents 1 and 2. In support of his submission, he relied upon the decision of the Supreme Court in the case of Ramchandra Dayaram Gawande Vs. Union of India (UOI) and Others, and referred to us paragraphs 4 and 10 of the judgment, and in the case of Union of India (UOI) and Others Vs. Vipinchandra Hiralal Shah, and referred to us paragraphs 2 and 11 of the judgment.

5. Sri M.B. Prabhakar, learned Additional Government Advocate while supporting the arguments of Sri Dinesh Kumar, strongly submitted that since the vacancy had arisen on 15th December 1989 and the Committee had met on 18th December 1990, it cannot be said that there was a delay on the part of the Committee in meeting for the purpose of considering the candidates for selection to the post of appointment to IFS. According to the learned Additional Government Advocate, one year period must be understood from the date of

accrual of vacancy. He also pointed out that with reference to the records, though initiation was made with effect from 1st February 1990 and it is only on account of non-availability of Confidential Reports of the petitioner and other officers, steps could not be taken for convening the meeting of the Committee and selection of the candidates. He submitted that the Tribunal, on consideration of the materials on record, having taken the view that the year of allotment fixed to the petitioner does not require any change, there is absolutely no justification for this Court to interfere with the view taken by the Tribunal. The learned Additional Government advocate, in addition to the decision relied upon by Sri Dinesh Kumar referred to above, also relied upon the decision of the Supreme Court in case of State of Assam and Another, etc. Vs. Basanta Kumar Das, etc. etc., and referred to us paragraph 14 of the judgment and the decision in the case of Kailash Chandra Vs. Union of India (UOI), and referred to us paragraph 8 and submitted that the word "ordinarily" must be understood as one meaning "in the large majority of cases but not invariably". Therefore, he submits that when some acceptable explanation has been offered by the Committee for not meeting within one year from March 1989 and the said explanation having been accepted by the Tribunal, this Court should not interfere with the discretion exercised by the Tribunal.

6. In the light of the rival contentions advanced by the learned Counsel appearing for the parties, the two questions that would fall for our consideration are:

1. Whether the provisions contained in Regulation 5(2) of Regulations is mandatory in Nature; and

2. Whether the explanation offered by the respondents for the Committee not meeting within an interval of one year from the earlier meeting can be said to be justified, as found by the Tribunal?

7. Before we proceed to consider the 1st question, it is useful to refer to Regulation 5(1) and 5(2) of the Regulation. The same read as follow:

"5. Preparation of a list of suitable officers:

(1) Each committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State forest service as are held by them to be suitable for promotion to the service. The number of members of the state forest service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the Date of Preparation of the List, in the posts available for them under Rule 9 of the Recruitment Rules, or 5 per cent of the senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is greater.

(2) The committee shall consider, for inclusion in the said list, the cases of members of the State Forest Service in the order of seniority in that service of a

number which is equal to three times the number referred to in sub-regulation (1)

Provided xxxxxx Provided xxxxxx

Provided also that the committee shall not consider the case of a member of the State Forest Service unless, on the first day of January of the year in which it meets, he is substantive in the State forest service and has completed not less than eight years of continuous service (whether officiating or substantive) in post(s) included in the State Forest Service.

8. The regulation have been framed for the purpose of providing procedures for selection for appointment to the cadre of IFS. Regulation 5 of the Regulations referred to above provides for selection from the officers of the State Forest Service. It is not in dispute that the selection "to the post of IFS is by two sources. One, by way of direct recruitment as IFS officers; and another, by way of promotion from the State Forest Service. 331/3 per cent quota of the total cadre strength is fixed for appointment by way of promotion from the State Forest Service to the IFS cadre. Therefore, while interpreting Regulation 5(1) of the Regulations, one has to keep in mind that any delay on the part of the authorities, who are entrusted with the responsibility in making appointment by way of promotion from State forest service, would affect the respective ranking to be assigned to the officers on their selection to the IFS cadre. Regulation 5(1) of the regulations provides that each Committee "shall" ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Forest Service who are suitable to be promoted to the IFS cadre. The language employed in the said Regulation, if it is properly understood, to our mind appears that the said Regulation is mandatory in nature. This is clear from the words "shall ordinarily meet at intervals not exceeding one year" As noticed by us earlier, any delay on the part of the Committee to meet to consider the case of the suitable candidate for the purpose of preparing the list of eligible candidates for promotion to the IFS cadre, would seriously affect the service condition; especially when the quota is prescribed for appointment to the IFS cadre both by way of direct recruitment and by way of promotion. Under similar circumstances, while interpreting the word "may" was used in the case of appointment to the IFS cadre under Regulation 5 of the IFS (Appointment by promotion) Regulations, 1955, the Supreme Court, in the case of SYED KHALID RIZVI (supra) has taken the view that the word "may" has to be understood as "shall" and Regulation 5(1) of the said Regulation is mandatory in nature. It is useful to refer to the observation made at paragraphs 9 and 34 of the judgment, which reads thus:

9. It would thus, be clear that the selection committee shall consider the eligibility and suitability of the members of the State Police Service on the basis of merit, ability and suitability. Seniority will be considered only where merit, ability and suitability are approximately equal and it should prepare the select-list of such suitable officers in the order of merit in each category such as "outstanding", etc and send the select-list in order of seniority to the State

Government who with its comments would forward the same to the UPSC for approval. The UPSC again would review the list, if necessary, with prior notice to the State Government and revise the order of names (seniority) in the list which should be final and operative for a period of 12 months. The list should consist of such number plus 20 percent or two officers whichever is more and of three times the anticipated substantive vacancies in the cadre posts. The appointment to the cadre posts should be made by the Central Government in the order in the list on the recommendation of the State Government. The word "may" in Regulation 5 indicates that the Committee ordinarily meets at intervals not exceeding one year. Though the word "may" indicates that it is not mandatory to meet at regular intervals, since preparation of the select-list is the foundation for promotion and its omission impinges upon the legitimate expectation of promotee officers for consideration of their claim for promotion as IFS officers, the preparation of the select-list must be construed to be mandatory. The Committee should, therefore meet every year and prepare the select-list and be reviewed and revised from time to time as exigencies demand. No officer whose name has been entered in the list has a vested right to remain in the list till date of appointment. The list would be liable to shuffle and the name may be excluded from the list on the comparative assessment of merit, ability and suitability based on the anticipated or expected availability of the vacancies within quota etc. the junior may supersede the senior and may be ranked top.

34. It is next contended that by non-preparation of the select-list, the promotees had lost their chances of promotion to get into super time-scales of pay and so on. Preparation of the annual seniority list is, therefore, mandatory and that by its non-preparation the rules have been collapsed. The argument *ex facie* is alluring but lost validity on close scrutiny. The contention bears two facets; firstly preparation of the seniority list and secondly the consequences flowing from the omission to prepare the seniority list. It is already held that the Committee shall prepare the seniority list every year and it shall be reviewed and revised from time to time taking into account the expected or anticipated vacancies during the year plus 20 percent or two vacancies whichever is more. It is already held that a wide distinction exists between appointment by direct recruitment and one under Regulation 9 of Promotion Regulations and Rule 9 of Recruitment Rules on the one hand and under Regulation 8 thereof read with Rule 9 of Cadre Rules on the other hand. Their consequences are also distinct and operate in different areas. Prior approval of the Union Public Service Commission and prior concurrence of the Central Government are mandatory for continuance of temporary appointment under Regulation 8 beyond six months and three months respectively together with prompt report sent by the State Government supported by reasons therefor. In their absence, it is not a valid appointment in the eye of law. Unless an officer is brought on the select-list and appointed to a senior cadre post and continuously officiated thereon he does not acquire right to assignment of the year of allotment. Eligibility age for consideration was only up to 52 years and presently 54 years. If the list was not prepared, though for the

succeeding year the age-barred officers may be considered but were made to compete with junior officers who may eliminate the senior officer from the zone of consideration. Suppose in 1980 the senior officer was not qualified though the list was made, but in 1981 he could improve and become eligible. Non-preparation of the select-list for 1980 disables the officer to improve the chances. In Sehgal case, the Court held that chances of promotion and the aspiration to reach higher echelons of service would enthuse a member of the service to dedicate himself assiduously to the service with diligence, exhibiting expertise, straightforwardness with missionary zeal, self-confidence, honesty and integrity. The absence of chances of promotion would generate frustration and an officer would tend to become corrupt, slow on and mediocre. Equal opportunity is a fertile resource to augment efficiency of the service. Equal chances of promotion to the direct recruits and the promotees would produce harmony with accountability to proper implementation of the Government policies. Unless the select-list is made annually and reviewed and revised from time to time, the promotee officers would stand to lose their chances of consideration for promotion which would be a legitimate expectation. This Court in Mohan Lal Capoor case held that the Committee shall prepare every year the select-list and the list must be submitted to the UPSC by the State Government for approval and thereafter appointment shall be made in accordance with the rules. We have, therefore, no hesitation to hold that preparation of the select-list every year is mandatory. It would sub serve the object of the Act and the rules and afford an equal opportunity to the promotee officers to reach higher echelons of the service. The dereliction of the statutory duty must satisfactorily be accounted for by the State Government concerned and this Court takes serious note of wanton infraction."

9. In our view, what has been said by the Supreme Court in the case of SYED KHALID RIZVI (*supra*) while considering Regulation 5 of the IFS Regulations, would hold good in all force to the language employed in Regulation 5(1) of the Regulations. Therefore, we have no hesitation to hold that Regulation 5(1) of the Regulations is mandatory in nature and it is incumbent on the Committee to meet at an interval of one year. We are unable to accept the submission of Sri Dinesh Kumar that the interval of one year should be understood as period falling from 1st January to 31st December of the year. The third proviso given to Regulation 5(2) of the Regulations is in the nature of fixing eligibility of a candidate to be considered for appointment to IFS cadre. The said provision cannot be understood as to interpret Regulation 5(1) of the Regulations as meaning that the period of interval provided in Regulation 5(1) should be understood as from 1st January till end of 31st December of the year. As noticed by us earlier, the Regulation specifically provides that the Committee should ordinarily meet at an interval not exceeding one year. Admittedly, in this case the Committee had met in the month of March 1989. Therefore, in terms of Regulation 5(1) of the Regulations, the Committee was required to meet before one year from March 1989. As noticed by us earlier, it is not in dispute that

admittedly when the Committee met, it found the petitioner was eligible and selected him for the appointment to the post of IFS cadre. If the Committee were to meet in the month of March 1990, the petitioner was eligible on that day and would have been selected by the Committee. Under these circumstances, we are of the view that the delay in convening the meeting of the Committee has seriously prejudiced the interest of the petitioner. When the Regulation is understood as mandatory in nature, the delay on the part of the Committee to meet at an interval of one year, should not adversely affect the interest of the petitioner or such other candidates who were eligible to be considered within an interval of one year from the preceding meeting of the Committee. Therefore, the only way in which the injustice that has been caused to the petitioner can be remedied or rectified is, to direct the authorities to issue Notification, notionally in terms of Regulation 5(1) of the Regulations and give the petitioner all consequential benefits flowing therefrom. In the light of the conclusion reached above, we are unable to accept the conclusion reached by the Tribunal that if a proper explanation is given for the delay on the part of the Committee to meet, the petitioner would not be entitled for the benefit of the strict mandate of Regulation 5(1) of the Regulations.

10. Though the conclusion reached by us on the first question referred to above would be sufficient to dispose of this petition, since the Tribunal has recorded a finding that the explanation offered by the respondents for the delay on the part of the Committee to meet at an interval of one year, was sufficient to deny the relief to the petitioner, we find it necessary to consider the second question also. As noticed by us earlier, the only explanation offered for the Committee for not meeting at an interval of one year was that the Confidential Reports of the petitioner and others were not available. We are unable to appreciate the stand taken by the respondents on this. The officers in the State Forest Service are fairly high-ranking officers and comparatively they are few in numbers. It is not the case of the State Government that the Confidential Reports of the petitioner and others were not written on time. It is the duty of the authorities, who are incharge of getting the Committee constituted, to secure the records without any delay on their part. The authorities are expected to know the mandate of the Regulations. As noticed by us earlier, the Supreme Court in the case of SYED KHALID RIZVI (supra) while considering similar Regulation in so far as IFS cadre is concerned, had taken the view that the provisions of the Regulations are mandatory in nature. The Regulation 5(1) of the Regulations referred to above, on a plain reading, also makes it clear that the Regulations are mandatory in nature. Under these circumstances when the Committee had met in the month of March 1989, the authorities in-charge of discharging statutory duties under Regulation 5(1) of the Regulations were expected to act with utmost care, caution and promptness. Any inaction on the part of the authorities for securing the Confidential Reports and other records cannot be allowed to adversely affect the interest of the petitioner. The decision of the Supreme Court relied upon by Sri Dinesh Kumar in the case of RAMACHANDRA DAYARAM GAWANDE, in our

view, is of no assistance to him. That was a case where there was a strike by the Government employees and under those circumstances, it was almost impossible to perform the duty. It is not the case of delay by few days. The delay is more than for a period of nine months. Therefore, we are of the view that the Tribunal was not justified in taking the view that the authorities had offered sufficient explanation for delay in not convening the meeting within an interval of one year. If the explanation of the nature, offered by the respondents is accepted as satisfactory explanation, we would be giving handle to the authorities to frustrate the legitimate rights of the candidate for being considered for the appointment to IFS at sweet whim and fancies of the authorities. The object of the Regulation, which requires the Committee to meet at an interval of one year, cannot be allowed to be defeated by liberally accepting any explanation of the type, one offered in the instant case, by the authorities.

11. In the light of the discussion made above, we make the following:

ORDER

1. Order dated 5th November 1997 made in Original Application No. 1934 of 1995 by the Central Administrative Tribunal, Bangalore Bench is hereby set aside.
 2. Order Annexure-D dated 11th June 1991, to the extent it appoints the petitioner with effect from the year 1986, is hereby quashed and the respondents 1 and 2 are directed to consider the case of the petitioner strictly in accordance with Regulation 5(1) of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 and re-fix the year of allotment notionally considering the meeting of the Committee within an interval of one year from the date of previous meeting, i.e., in March 1989 and draw up the select list; and on that basis determine the year of allotment in terms of Indian Forest Service (Regulation of Seniority) Rules, 1968.
 3. The respondents are given three months" time to comply with the direction given above, from the date of receipt of a copy of this order.
12. In terms stated above, this Petition is allowed and disposed of. However, no order is made as to costs.