
(1991) 07 CAL CK 0035
In the Calcutta High Court
Case No : C.O. No. 13014 (W) of 1988

Manick Lal Pathak

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-07-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (1991) 2 CALLT 360

Hon'ble Judges : Samir Kumar Mookherjee, J

Bench : Single Bench

Advocate : Samaresh Banerjee and Seema Sengupta, for the Appellant; Smritikana Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

Samir Kumar Mookherjee, J.—The writ petitioner in the present writ application joined as a Forest Ranger in the year 1965. The next higher promotional post is that of extra Assistant Conservator of forest. The petitioner was confirmed in the said post of Forest Ranger in the year 1967. The writ petition had been initiated in the year 1988 with the grievance that for no just ground he had been kept deprived of promotion as also of the Selection Grade and had been superseded by the private respondents since the year 1976 by which time he has acquired eligibility for promotion as also for being granted the Selection Grade along with others. During the pendency of the writ application, however, the petitioner had been given promotion with effect from 12th of August, 1988. The relief, therefore, which the petitioner now claims is that his promotion to the West Bengal Forest Service, which had been constituted in the meantime, should be ante-dated so that he gets all the benefits attached to such promotion including seniority since 1975—the year of completion of his eligibility period, by treating him to have been nationally promoted to the post of extra Assistant Conservator of Forest in the West Bengal Junior Forest Service and granted Selection Grade since the said year when his juniors, who have been impleaded as private

respondents to the present writ application, had been given the said benefits.

2. In spite of opportunities having been granted, no affidavit-in-opposition has been filed on behalf of the state respondents. On behalf of the said respondents relevant records, however, have been relied upon. Both the contesting parties have supplemented their oral submission by written arguments and on behalf of petitioner as also appearing state respondents xerox copies of the aforesaid relevant records have been produced and made parts of the records of the instant proceeding.

3. From the written submissions, as filed on behalf of the state respondents, it appears that the state respondents have sought to justify the non-conferment of the benefits claimed by the petitioner on the ground that the petitioner was not considered fit by the Public Service Commission for being promoted to the post of extra Assistant Conservator of Forest though his case had been sent up with necessary and relevant details along with other eligible prospective promoted to the Public Commission for its consideration. The state respondents have further stated that the petitioner's case regarding the Selection Grade is under consideration on the basis of recommendation of the concerned department.

4. From the copy of the letter of the Deputy Secretary, Forest Department, Government of West Bengal dated 1st of February, 1978, which has been produced on behalf of the state respondents, it appears that when there were 10 available vacancies in the West Bengal Junior Forest Service, 21 names of eligible Forest Rangers along with relevant particulars were purported to have been sent for consideration of the Public Service Commission for filling up such vacancies. The List indicated that the writ petitioner, according to his seniority, occupied 11th Position. The records disclosed by the state respondents, while embodying the remarks column with regard to the incumbents up to serial No. 9, omitted the said column as far as incumbents from the serial No. 10 including the petitioner (serial No. 11) were concerned. The petitioner has also disclosed a xerox copy of the said document which contains the remarks column and it appears that the said remarks column contained the following entry relating to the petitioner :-

"Departmental proceedings against him now under injunction of Calcutta High Court."

It further appears from the records produced by both the contesting parties that the Public Service Commission recommended 8 names omitting the name of the writ petitioner and withholding its recommendations in respect of Amal Ranjan Joardar and Bhairab Chandra Garai, the first one having figured as serial No. 8 in the List. The other name of Bhairab Chandra Garai may be presumed to have been sent subsequently. From the reply given by the Public Service Commission, it also appears that the recommendations were withheld because of pending enquiries against the said two incumbents.

5. At this stage it becomes necessary to mention that against the petitioner as

also many other officers in the Forest Department in the Year 1973 Vigilance enquiries had been initiated. The said enquiry, as far as the petitioner was concerned, was ultimately quashed on 11th of February, 1980 by an order of this Hon"ble Court passed in C.R. No. 15637 (W) of 1975 whereby the charge-sheet, the enquiry proceeding, the report of the enquiry officer, the second show cause notice and the order of suspension were all quashed without any liberty to the respondents to initiate any fresh proceedings on the self same charges and the said order of the learned single Judge had not been appealed against. It is also pertinent in this connection to note that it had been the policy of the government, as communicated by the Memorandum No. 224-PAR (Vig.) dated 12th of June, 1980 that the confirmation/promotion/efficiency bar crossing/ Selection Grade appointment of a government servant or recruitment of in-service candidates to higher posts were not to be held up merely because enquiries were pending in the Vigilance Commission. This could be held up only when Departmental proceedings had been initiated or when the Vigilance Commission had recommended that departmental proceedings were to be initiated. At the relevant time, when the petitioner's case along with others was under consideration of the Public Service Commission/respondents for its recommendation for promotion to the West Bengal Junior Forest Service, or the grant of Selection Grade no such departmental proceeding had been initiated against the petitioner. It appears admitted also that the petitioner was allowed to cross the efficiency bar on 19th of May, 1979.

6. Since admittedly, the petitioner has been promoted to the West Bengal Forest Service with effect from 12th of August, 1988, notwithstanding the fact of pendency of the departmental proceeding against the petitioner and existence of the adverse remarks, relating to the years 1978-79 and 1980-81, which were communicated to the petitioner only in the year 1982, to be specific 28th of December, 1982, no justification can be found for refusal of the Public Service Commission earlier to recommend the petitioner's name for promotion for filling up the vacancies in the West Bengal Junior Forest Service. The only two hurdles in the matter could be the pending vigilance enquiry and the adverse remarks, which remained uncommunicated on the date the names of the first batch of promotees had been recommended, namely, 21st of March, 1979. It is well settled by pronouncements of the highest" judiciary of the country that uncommunicated adverse remarks cannot be taken into consideration for the purpose of refusing promotion. It is also well-settled that once an employee is allowed to cross the efficiency bar, the lapses on his part occurring during the period prior to the date of such crossing should be deemed to have been condoned. For authorities on the above proposition of law reference may be made to the cases of *State of Punjab v. Dewan Chuni Lal* reported in 1970(4) SLJ 375 and *Swami Saran Saksena Vs. State of Uttar Pradesh*, and *Gurdial Singh Fizzi v. State of Punjab and Ors.* 1979(1) SLR 804. The Government circular dated 12.6.1980 makes it clear that vigilance enquiry could not operate as a bar which is corroborated by the submission of State Respondents. In the context of

the said facts, the un-contradicted allegation of the petitioner, therefore, that his case was not considered by Public Service Commission Upon wrong impression of pendency of departmental proceeding, must be accepted to be correct. The extracts of nothings in the Departmental files and admitted position that, because of pendency of Vigilance enquiry, required Integrity Certificate had not been furnished to the Public Service Commission, strengthen the said position. It now stands admitted that the very same Public Service Commission found the petitioner's name worthy of recommendation for promotion although the materials, on which, on earlier occasions, such promotion was claimed to have been refused to him continued to exist and/or his case for promotion had not been considered. The refusal and/or non-consideration, therefore, to grant promotion to, the petitioner from the date when it first fell for consideration of the commission cannot but be arbitrary and unreasonable and violative of Articles 14 and 16 of the Constitution of India. The non-conferment of the Selection Grade to the petitioner on admitted analogous ground suffers from the same vice.

Before parting with the case I feel it is necessary to advert to another aspect of the matter as, otherwise the entire relief, which the petitioner has been found to deserve would become illusory. From the materials produced before me, it appears that on the basis of the allegations, which originated in the year 1978, the Vigilance Commission had recommended drawing up of a departmental proceeding in the year 1988. The recommendation is embodied in a Memo, dated 14th of October, 1988 (vide annexure "A" to application for further injunction dated 21.11.88, i.e. a week after the issuance of the Civil Order by this Court on the writ application of the petitioner. I have already referred to the facts about quashing of the Charge Sheet and other connected matters by the writ Court. The records produced indicate that the respondents are also in confusion and have hesitation about the propriety of pursuing the recommendation of the Vigilance Commission but since the recommendation has been made to initiate steps against the petitioner departmentally on the basis of allegations, which ought not to be treated as alive in the context of the decision of C. K. Banerjee, J. and efflux of 10 years from the date of origin of such allegations, and in the context of my finding that the mere pendency of the allegation against the petitioner before the Vigilance Commission prevented the petitioner's case being considered on merit, the possibility of the recommendation of the Vigilance Commission in question thwarting consideration of the petitioner's case on the lines of directions of this Court, in my view, cannot be ruled out and, accordingly, I direct that the respondents would remain restrained from taking any step in pursuance of the said recommendation of the Vigilance Commission, which I declare to be unenforceable. I may keep it on record, at this stage, that the Vigilance Commission, in spite of having been served with notice of the writ application, did not appear before this Court to justify its approach or recommendation.

7. Accordingly, this writ application is allowed. Let a writ of Mandamus issue

commanding the respondents 1 to 4 to include the petitioner's name in the Panel for being sent up to respondent No. 5 along with all necessary particulars including those, which were placed with regard to the candidates as mentioned in the List of eligible candidates forwarded as enclosure to the letter of the Deputy Secretary to the Government of West Bengal being numbered 646-Forest/18P-1/78 dated 1st February 1978 in particular the integrity Certificate, for consideration of respondent No. 5 in the matter of preparing the panel for promotion to the Indian Forest Service Cadre and for all other purpose under the Indian Forest Service (Appointment by Promotion) Regulation, 1966 and the respondent No. 5 and its officers are directed to consider the petitioner's case along with other empanelled candidates for such promotion after fixing the petitioner's seniority with effect from 1976 and for initial recruitment if necessary by nationally promoting him to the post of extra Assistant Conservator of Forest in the cadre of West Bengal Junior Forest Service. White so fixing, the respondent No. 5 will necessarily take into consideration the effect of the Government Circular referred to above on the absence of any pending vigilance or departmental proceeding against the petitioner and the High Court order of the Charge Sheet having been quashed as also the non-communication of adverse remarks to the petitioner at the relevant point of time. Let a writ of Mandamus issue directing the respondents to forbear from giving effect to or taking any steps in pursuance of the recommendation of the Vigilance Commission as embodied in the Memo. No. 6850-V/ For. 77/86 dated 14.10.1988. Let a writ of Mandamus also issue directing the respondents 1 to 4 and/or their officers and servants to consider and finalise the petitioner's entitlement to the Selection Grade from the appropriate date as expeditiously as possible and preferably within 2 months from the date of communication of this order to the concerned respondents. Till the disposal of the entire matter by the Public Service Commission as far as the petitioner is concerned the interim order issued by this Court would continue.

8. In the facts and circumstances of the case each party will bear his own costs.