

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1009/1997

New Delhi, this the 11th day of January, 2005

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)

1. Shri A.K.Srivastava
S/o Sh. P.N.Srivastava
Resident of 4/5, Trikuta Nagar,
Jammu.
2. Shri Lal Chand
S/o Shri Nathu Ram
R/o Village Khiyarian
Jammu.
3. Shri A.K.Singh
S/o Late Shri Kawal Dhari Singh
R/o B-6, Nidheesh Apartments
Trikuta Nagar
Jammu.
4. Shri Abhal Kumar
S/o Late Shri Murli Dhar Pershad
R/o 97-Q, Poonch House
Talab Tillo, Jammu.
5. Shri Abdul Razak
S/o Shri Bhanwer Khan
R/o Gladini
Jammu.
6. Shri Roshan Jaggi
S/o Shri Anant Ram Jaggi
R/o Shashtri Nagar
Ward No.13, Kathua.
7. Shri Suresh Chugh
S/o Shri B.D.Chugh
R/o C-294
Vivek Vihar
Delhi - 110 095.

Applicants

(By Advocate: Sh. M.N.Krishnamani, Sr. Counsel with Sh. Rajeev Sharma)

Versus

1. Union of India through
The Secretary to the Govt. of India
Ministry of Environment and Forests
Paryavaran Bhawan
CGO Complex
Lodhi Road
New Delhi - 110 003.
2. The Secretary to the Govt. of India

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Ministry of Personnel, Public Grievances
and Pensions, Department of Personnel & Training
North Block
New Delhi.

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3. State of Jammu & Kashmir through
Its Chief Secretary
Govt. of Jammu & Kashmir
Jammu.
4. Shri V.P.Modi
Project Chief IDWP(Hills)
Jammu.
5. Sh. M.A.Kawoosa
6. Sh. B.K.Sharma (Retired)
7. Sh. S.Naqashbandi
8. Shri Y.S.Narsinghia
9. Sh. S.S.Bali
10. Sh. A.R.Wadoo
11. Sh. V.K.Zaddo
12. Sh. Chander Mohan Seth
13. Sh. Shafat Ahmed
14. Sh. S.K.Khajuria
15. Sh. Shamim Mohd. Khan
16. Sh. P.B.Ahmed Qadri
17. Sh. Subhash Chander Sharma
18. Sh. Suraj Parkash Sharma
19. Sh. Harinder Singh
20. Sh. Upinder Pachnanda
21. Sh. Abdul Qayoom Khan
22. Sh. Mohd. Shafiq Khan
23. Sh. Manu Raj Singh
24. Sh. Lalit Kumar Sharma
25. Sh. Manzoor Ahmed
26. Sh. Mukarjeet Sharma
27. Sh. Arun Kumar
28. Sh. Asgar Inayatullah

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29. Sh. A.R.Latoo

30. Sh. M.A.Hakak

31. Sh. Nisar Ahmed Hakeem

Service on Respondents 4 to 31 to be effected
Through the Chief Secretary, State of Jammu & Kashmir
Jammu. Respondents

(By Advocate: Sh T.C.Gupta for Respondents 1 & 2; None for respondent No.3 and Shri P.P.Khurana, Sr. Counsel with Ms. Seema Pandey for Respondents 4 to 31).

O R D E R

By Mr. Justice V.S.Aggarwal:

The applicants were appointed to the Indian Forest Service on various dates on their selection in the Indian Forest Service Examination conducted by the Union Public Service Commission. The appointment is governed by Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967 (for short 'Competitive Examination Regulations') read with Indian Forest Service (Recruitment) Rules, 1966 (for short Recruitment Rules). They are all direct recruits. They were initially appointed in the Junior Time Scale (for short 'JTS') of the IFS and after completion of four years, they were promoted to the Senior Time Scale. The hierarchy of the post in the Indian Forest Service is (1) Deputy Conservator of Forests (2) Conservator of Forests (3) Chief Conservator of Forests and (4) Principal Chief Conservator of Forests in the State.

2. At the time the application was filed, the applicants were working as Deputy Conservator of Forests/Conservator of Forests. Applicants No.5, 6 and 7 were working as Deputy Conservator of Forests. Applicants 2 to 4 were Conservator of Forests while Applicant No.1 was Conservator of Forests in Super Time Scale. The applicants plead that a direct recruit becomes entitled to non-functional Junior Administrative Grade after a total service of 9 years and they are entitled to Super Time

U.S. Aggarwal

Scale after completing 13 years of service and to be designated as Conservator of Forests. (11)

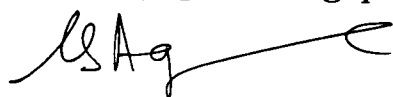
3. The private respondents (Respondents 4 to 31) filed a Writ Petition entitled **Sh. V.P.Modi & Others v. Union of India & Others** in the High Court of Judicature at Jammu & Kashmir in November, 1995. They had pleaded that though they were promoted to Indian Forest Service from J&K State Forest Service under the quota of Indian Forest Service ear- marked for Jammu & Kashmir State Forest Officers but they were entitled to be promoted from back dates whenever the vacancy in the promotion quota became available and that too after carrying out triennial review (which is supposed to be taken after every three years) as per the relevant Rules and Regulations.

4. On 25.11.1995, the Jammu & Kashmir High Court had passed the following order:

"In view of the submissions made, it is provided that in case the Union-respondent and its functionaries are seized of any representation by the petitioners on the subject matter seeking review of their allotment year in IFS, same shall be disposed of in accordance with law and rules as early as practicable and in the meanwhile year of allotment assigned to the petitioners vide Notification dated 30-10-1995 shall not be acted upon for the purposes of giving any promotion/reduction in the Forest Deptt., till the objections to be filed by the other side are considered."

5. Before filing of the said petition, the private respondents had been promoted to Indian Forest Service from J&K State Forest Service vide Notification of 12.9.1995.

6. Applicants plead that under **Rule 8** of the Recruitment Rules, the Central Government on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such Regulations as the Central Government may, after consultation with the State Governments and the Commission, can make recruitment to the service by promoting persons to the State Forest



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Service. **Rule 9** provides that number of persons recruited from the State Service shall not exceed 1/3rd of the total number of posts. In fact, on 5.3.1990, Sub-Rule (3) was added to Rule 9 which provides that in the State of Jammu & Kashmir, the number of persons recruited under Sub-Rule (1) to Rule 9 shall not upto 30.4.1992 exceed at any time 50% of the number of posts as shown against the items No.1 and 2. (H2)

7. In pursuance of the order that had been passed on 12.9.1995 whereby the private respondents were promoted to IFS, they had been allotted 1991 as the year of allotment. But the grievance is that while the Writ Petition was pending in the Jammu & Kashmir High Court, the Ministry of Environment and Forests issued an order of 28.2.1997. In exercise of power under Rule 3 of All India Service (Conditions of Service - Residuary Matter) Rules, 1960, as a one time measure, the deemed date of appointments of the private respondents including B.K.Sharma was changed to earlier years and relevant Paragraphs 2 to 5 of the said order reads:

“2. Representations have been received from the officers concerned that if the Select List had been prepared annually, as envisaged in the IFS (Appointment by Probation) Regulations, 1966, they would have been appointed to IFS earlier and consequently they would have got higher year of allotment than 1991 and higher seniority position than assigned now.

3. The Government of Jammu and Kashmir also recommended the relaxation of Rules/Regulations in order to assign higher year of allotment and seniority to the officers concerned, because the Select List of 1995 from which the above said 28 officers were appointed was prepared after a gap of about 20 years.

4. The matter has been considered carefully. It is felt that undue hardship has been caused to these officers due to delays in the conduct of cadre Reviews and holding of Selection Committee meetings. If the Selection Committee meetings were held annually these officers would have been appointed to IFS much earlier and would have got higher years of allotment and seniority.

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5. In view of the undue hardship caused to the officers concerned, the Central Government, in exercise of the powers conferred by rule 3 of the All India Services (Conditions of Service - Residuary Matters) Rules, 1960, as a one-time measure is pleased to assign deemed dates of appointment to the Service as shown in Column 3 and determination of year of allotment as shown in Column 4 of the table below. Accordingly, the deemed date of appointment of these officers have been worked out on the basis of deemed cadre review, inclusion of their names from the year 1980 onwards which is calculated on the basis of vacancies in promotion quota of the appropriate periods and then applying the provisions of rule 3 of the IFS (Regulation of Seniority) Rules, 1968, on the basis of their deemed dates of appointment to the IFS for assigning year of allotment and inter-se seniority. Statements A and B indicating as to how the vacancies were arrived at and the names of officers who could be accommodated against each vacancy are enclosed for information."

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8. By virtue of the present application, the applicants seek quashing of the order of 28.2.1997 and to declare that the private respondents are not entitled to be given promotion retrospectively from 1980 to 1992 and year of allotment retrospectively from 1976 to 1988 and that the said respondents had rightly been given promotion from 12.9.1995 and allotment year as 1991.

9. The application has been contested. In the counter reply filed by the Union of India, it has been pleaded that the private respondents who belong to the State Forest Service of Jammu & Kashmir, had been promoted to the Indian Forest Service under Sub-Rule (1) of Rule 8 of the Indian Forest Service (Recruitment) Rules, 1996 read with Sub-Regulation (1) of Regulation 9 of the Indian Forest Service (Appointment by Promotions) Regulations, 1966 on 12.9.1995. Subsequently, their seniority in the Indian Forest Service was also determined and they were assigned 1991 as their year of allotment under Rule 3 (2) (c) of the Indian Forest Service (Regulations of Seniority) Rules, 1968.

10. Aggrieved by the said order, the private respondents had filed the Writ Petition No.1308/1995 in the Jammu & Kashmir High Court for

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declaration that the Union of India had failed to discharge their legal duty in not conducting triennial reviews of the State Cadre in terms of Rule 4 of the Cadre Rules. They had prayed for a cadre review of Indian Forest Service. They had even made a representation. The Jammu & Kashmir High Court had passed the order on 25.11.1995, which we have already reproduced above. Union of India claims that after examination of the representation and in consultation with Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training), which is the nodal Ministry and keeping in view the hardships caused to the private respondents, the impugned order was issued under Rule 3 of All India Services (Conditions of Service - Residuary Matter) Rules, 1960. It is claimed that the same is in order. There is no legal infirmity thereto.

11. Some of the private respondents namely, Respondents No.8, 14 and 23 filed one and others, namely Respondents No.11, 12, 14, 17 and 27, have filed separate reply. They contend that the impugned order had been passed after carefully evaluating and considering the grievance of the private respondents. It is a valid order. In fact, the applicants have suppressed the material facts. The applicants had been arrayed as parties in the Writ Petition that was pending in the Jammu & Kashmir High Court. They had filed their objections therein. Thus, according to the private respondents, keeping in view the said fact, they cannot invoke the jurisdiction of this Tribunal. It is also pleaded that the Central Administrative Tribunal does not have a territorial jurisdiction to entertain the application because all the applicants, except Applicant No.7, were posted within the territory of Jammu & Kashmir.

12. On merits of the matter also, the impugned order is being defended which can be considered hereinafter.

13. The State of Jammu & Kashmir too has filed a separate reply raising almost similar pleas as have been raised by private respondents which require no repetition.

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14. We have heard the parties' counsel and have seen the relevant record.

15. Learned counsel for the private respondents had taken up a preliminary objection that the applicants had submitted a representation in the month of March, 1997 and had filed the present OA within six months of the same on 30.4.1997. Thus, according to the learned counsel, the application could not have been filed because the remedy that was available had not been exhausted.

16. We do not dispute the provisions of the Act that ordinarily, this Tribunal will not entertain an application unless the remedies available have been exhausted. But the word '**ordinarily**' only conveys in normal circumstance, unless the facts prompts otherwise. The Supreme Court in the case of UNION OF INDIA v. VIPIN CHANDRA, 1996(6) SCC 721 also explained the meaning to be that "Unless there are good reasons for not doing so".

17. In the present case, the applicants were even seeking stay of the operation of the order which they were impugning. In that view of the matter, the present case would fall within the exception contemplated with and referred to above. Otherwise also, the present petition has been pending in this Tribunal for almost **seven years**. The Union of India had already expressed its view. Therefore, to state that the representation should be decided in the first instance, would be an idle formality. Consequently, this particular contention for purposes of the present application, in the peculiar facts, must fail.

18. Yet another objection taken was that almost all the applicants are posted in the Jammu & Kashmir and therefore, this Tribunal does not have a territorial jurisdiction to entertain the application.

19. Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 reads as under:

"6. Place of filing applications.- (1) An application shall ordinarily be filed by an applicant

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with the Registrar of the Bench within whose jurisdiction-

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen:
- (16)

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reasons of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

Perusal of the same clearly shows that two options have been given to the concerned person to file the application, namely, where he is posted and secondly where cause of action wholly or partly arises. The Full Bench of this Tribunal in the case of **SHRI ALOK KUMAR SINGH & ANOTHER** v. **UNION OF INDIA & ANOTHER**, in O.A.No.458/1990, decided on 8.1.1991 had also taken the same view.

20. Herein, as already mentioned above, the orders have been passed by the M/o Health and Family Welfare, New Delhi and therefore, some part of the cause of action can easily be taken to have arisen at New Delhi. Moreover, the memo of parties indicates that applicants 1 to 6 were posted in the Jammu & Kashmir State while Applicant No.7 is posted at Delhi. The cause of action for Applicant No.7 in any case would arise at Delhi and consequently, they all could file the application, keeping in view the common interest, at Delhi. Keeping in view the aforesaid, this Tribunal has territorial jurisdiction to entertain the present application. Thus, the said plea of territorial jurisdiction must fail.

21. The applicants have further contended that the impugned order impinges their seniority and, therefore, without issuing the notice

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to show cause, the same could not have been issued particularly when it affects their civil rights.

22. In answer to the same, the respondents plea was that the said order had been passed in accordance with directions of the Jammu & Kashmir High Court. The applicants were parties and they never requested that said order should be passed after hearing them and in any case, it was contended that it does not affect the civil rights of the applicants.

23. To keep the record straight, it must be mentioned that the Jammu & Kashmir High Court had simply directed that representations be considered. In the present case, not only the respondents considered the representation but the Central Government, in exercise of the powers under Rule 3 of All India Service (Conditions of Service - Residuary Matters) Rules, 1960, had passed the order.

24. As a result of the same, revised allotment years have been changed. It does affect the seniority of the applicants because of the revised year of allotment. The Jammu & Kashmir High Court had simply directed to consider the representations. Necessarily if any such order had to be passed, it should have been done in accordance with law. This is a necessary implication of any such order. When such an order was being passed which reflected and affected the seniority of the applicants, necessarily they should have been given an opportunity of being heard and to file their objections. Seemingly, it has not been done.

25. All the same when the matter had been argued at length, we proposed to decide the same as it has been pending with this Tribunal for so many years. Moreover, when the views of the parties have been mentioned in their written submissions, we propose to take up the merits of the matter.

26. Another argument on the same lines advanced was that the applicants' years of allotment have not been changed and thus they have no cause of action nor they can make any grievance as a result of it. It

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proceeds on the premise that chances of promotion are not a condition of service and application on that count must fail. In our considered opinion, this particular contention must fail. We do not dispute that the chances of promotion are not a condition of service in normal circumstances but when right for consideration is affected and as a result of any action, it is being denied, it would violate Articles 14 and 16 of the Constitution. By virtue of the change of year of the allotment, the civil rights of the applicants are affected. Result would be in the light of what we have stated above and in that view of the matter, the contentions so much thought of and eloquently put forward, must fail.

27. At this stage, it would be in the fitness of things to refer to the relevant Rules and Regulations pertaining to the Indian Forest Service. The **Indian Forest Service (Recruitment) Rules, 1966** had been drawn in exercise of the powers under Sub-Section(1) of Section 3 of the All India Service Act, 1951. Rule 2(g) defines the State Forest Service to be:

"2 (g) "State Forest Service" means:-

2 (g) (i) any such service in a State, being a service connected with forestry and the members thereof having gazetted status, as the Central government may, in consultation with the State Government, approve for the purpose of these rules: or

2 (g) (ii) any service in such Central Civil Post; Class I or Class II, connected with forestry, as may be approved by the Central Government for the purposes of these rules."

Rule 4 of the said Rules prescribes the method of recruitment to the Service and the Central Government may recruit to the Service any person from amongst the members of the State Forest Service adjudged suitable in accordance with the regulations that may be framed in consultation with the State Government and the Commission (UPSC). In other words, it permits promotion of members of the State Forest Service who are holding particular post in the substantive capacity. Sub Rule (2) to Rule 4 reads:

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“4 (2) After the recruitment under sub-rule (1), subsequent recruitment to the Service, shall be by the following methods, namely:

4(2)(a) by a competitive examination:

4(2)(aa) by selection of persons from amongst the Emergency Commissioned Officer and Short Service Commissioned Officer of the Armed Forces of the Union who were commissioned after the 1st November, 1962, but before the 10th January, 1968 and who are released in the manner specified in sub-rule (1) of rule 7A.

4(2)(b) by promotion of substantive members of the State Forest Service.”

28. Furthermore, under **Rule 8**, the Central Government may on recommendations of the State Government concerned and in consultation with the Union Public Service Commission and as per the Regulations, make, recruit to the Service persons by promotion from the substantive members of the State Forest Service:

“8. Recruitment by promotion.- 8(1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of the State Forest Service.

8(2) Where a vacancy occurs in a State Cadre which is to be filled under the provision of this rule the vacancy shall be filled by promotion of a member of the State Forest Service.

8(3) Where a vacancy occurs in a Joint Cadre which is to be filled under the provision of this rule, the vacancy shall, subject to any agreement in this behalf, be filled by promotion of a member of the State Forest Service of any of the State constituting the group.”

29. Indian Forest Service (Appointment by Promotion)

Regulations, 1966 have also been drawn in pursuance of Sub-Rule (1) of Rule 8 of the Indian Forest Service (Recruitment) Rules, 1966. Rule 3 permits constitution of Committee to make selection. They have to be

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constituted for each of the joint cadre. The Committee consists of the Chairman of the Commission or any other Member representing it, besides other members which have been mentioned therein. **Rule 5** permits preparation of list of suitable officers and relevant portion of the same reads:

"5. Preparation of a list of suitable officers.-

5(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.

5(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 that such restriction shall not apply in respect of a State where the total number of eligible officers is less than three times the maximum permissible size of the select list and in such a case the Committee shall consider all the eligible officers:

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded:

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."

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Rule 6 further states that the list prepared in accordance with the Regulation 5 shall have to be forwarded to the Commission by the State Government in the manner that has been prescribed and it reads:

"6. Consultation with the Commission.-

The list prepared in accordance with regulation 5 shall then be forwarded to the Commission by the State Government along with:-

6. (i) the records of all members of the State Forest Service included in the list;

6(ii) the records of all members of the State Forest Service, who are proposed to be superseded by the recommendations made in the list;

6(iii) [Deleted]

6(iv) the observations of the State Government on the recommendations of the Committee."

It is thereafter that Commission shall consider the list prepared by the Committee along with the documents received and may approve the list, which is described as **Select List**. Sub-Rules (1), (2) and (3) of Rule 7 unfold itself as under:

"7. Select List.- 7(1) The Commission shall consider the list prepared by the committee along with the other documents received from the State Government and unless it consider any change necessary, approve the list.

7(2) If the Commission consider it necessary to make any changes in the list received from the State Government, the Commission shall inform the State Government of the changes proposed and after taking into account the comments, if any, of the State Government, may approve the list finally with such modifications, if any, as may, in its opinion, be just and proper.

7(3) The list as finally approved by the Commission shall form the Select List of the members of the State Forest Service."

Appointment to the cadre posts is made in terms of Rule 8, subject to availability of vacancies and appointments of members of the State Forest Service is made by the Central Government on recommendations

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of the State Government in the order in which names of the members appear in the Select List. Rule 8 and Sub-Rule (1) to Rule 9 are being reproduced below for the sake of facility:

"8. Appointments to cadre posts from the Select List.- 8(1) Appointments of members of the State Forest Service from the Select List to posts borne on the State cadre or the Joint cadre of a group of States, as the case may be, shall be made in accordance with the provisions of rule 9 of the Cadre Rules. In making such appointments, the State Government shall follow the order in which the names of such officers appear in the Select List.

8(2) Notwithstanding anything contained in sub-regulation (1), where administrative exigencies so require, a member of the State Forest Service whose name is not included in the Select List or who is not next in order in that Select List, may, subject to the aforesaid provisions of the Cadre Rules, be appointed to a cadre post, if the State government is satisfied-

- (i) that the vacancy is not likely to last for more than three months;
- (ii) that there is no suitable cadre officer available for filling the vacancy:

Provided that where any such appointment is made in a State, the State Government shall, forthwith report to the Central Government together with the reasons for making the appointment:

Provided further that where administrative exigencies so require, such appointments made be continued in a cadre post beyond a period of three months with the prior concurrence of the Central Government."

30. According to the applicants, the impugned order has been passed ignoring the said Rules and Regulations and that the exercise of power under Rule 3 of All India Service (Conditions of Service- Residuary Matters) Rules, 1960, is arbitrary. We have already reproduced above the operative part of the said order. It clearly shows that:

- (a) As a one-time measure, deemed date of appointment has been given to the private respondents for determination of the year of allotment.

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- (b) The same has been worked out on the basis of deemed cadre review.
- (c) The 'Note' under the impugned order clearly shows that revision has covered only those officers who have been actually appointed to Indian Forest Service of Jammu & Kashmir Cadre on the basis of 1995 Select List.

31. Guwahati Bench of this Tribunal in the case of **SHRI VINOD KUMAR VISHNOI AND OTHERS v. UNION OF INDIA & OTHERS**, O.A.No.184/1989, decided on 28.2.1994 had gone into the similar controversy that had arisen within the jurisdiction of that Bench. A similar order had been issued which was quashed by the Guwahati Bench.

32. Learned counsel for the private respondents made a valiant attempt to state that the decision of the Guwahati Bench referred to above is not applicable because according to him, the cadre in that case was a joint cadre of Assam and Meghalaya while in the present case, it is one cadre of the State of Jammu & Kashmir. The States of Assam and Meghalaya were having different views. Further more, it is pointed that the Union of India had not filed their reply and the stand of the State of Assam that select list was not drawn from time to time was held to be false by the Tribunal. It was further contended that in the present case, the impugned order has been passed in pursuance of the judicial order of the Jammu & Kashmir High Court which was not so in the Guwahati matter and in the Guwahati Bench, promotees were not in the zone of consideration.

33. All these are factual matters. On the merits of the same, the logic and reasoning of Guwahati Bench is the same to which we subscribe.

34. We have already referred to above the brief relevant portion of the Rules and Regulations. It prescribes a procedure and therefore, even

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if there was to be a relaxation of any of the provisions, there could not be deemed cadre review to which we have referred to above without following the procedure particularly avoiding the reference to the UPSC.

35. Furthermore, as would be noticed hereinafter, certain other eligible persons have been ignored who might have found their place, after being included in the select list. The Guwahati Bench further considered the same controversy that the date of appointment/recruitments should not be done retrospectively. In this regard, the Bench observed:

"20. In another case, P. Adinarayan - vs- Union of India, Secy. Personnal, Training, reported in 1990(3) SLJ (CAT) 360 the applicability of Rule 3 for relaxing seniority rule was the point for decision, the incumbent was promoted to AIS in 1982 and allotted 1972 as per statutory Rule 3(2)(c), but claimed relaxation to allot 1966 on the basis of the year of eligibility and it was held that the Government can consider only where undue hardship is involved and denial of 16 years lead is not a hardship. On careful scrutiny of all available factors we have come to the unhesitated conclusion that no case for objective satisfaction existed involving undue hardship warranting relaxation of the Rule 3(2)(c) for awarding higher seniority to respondents No.5-12 above the applicants. Relaxation of statutory rules particularly for awarding higher seniority than to the entitlement under the rule, must invariably applied only where the objective satisfaction as to undue hardship is evident on record and that too in full compliance of the principle of Natural Justice if somebody is likely to be adversely affected. Relaxation of the statutory rules should not be done on hypothetical consideration on ground of compassion however justified it might be. The impugned order relaxing/dispensing with the requirement of Rule 3(2)(c) of the IFS (Regulation of Seniority) Rules, 1968 in determining seniority/year of allotment of the respondents No.5-12 was not justified and liable to be quashed.

21. Recruitment Rules cannot be relaxed according to decision and guidelines contained in the Government of India, Ministry of Home Affairs' letter No.30/1/63- AIS (II) dated 1st January 1966 (M.H.O.F.No.14/2/55-AIS-II), Annexure 9 to the application. But that too was done by indirect process introducing or working out the method of 'deemed promotion' with retrospective effect. The respondents No.5-12

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were appointed to IFS under Rule 8(1) of the IFS (Recruitment) Rules, 1966 read with Regulation 9(1) of the IFS (Appointment by Promotion) Regulations, 1966 with immediate effect from 2.12.1983 vide Notification No.17013/26/82-AIS (IV)/IFS-II dated 2/12/1983 (Annexure 4). The date of appointment/recruitment, 2.12.1983, cannot be altered/changed in order to give retrospective effect of promotion/appointment by working out the method basis of 'deemed promotion' because such 'method/basis' of working out 'deemed promotion' is not contemplated in the Recruitment Rules. But such relaxation to the Recruitment Rules was made in the impugned order dated 30.10.1989 after about six years of appointment/recruitment by awarding 'deemed promotion' to Shir M.K.Sinha with effect from 30.11.1981 and seven (7) others with effect from 27.4.1982 in order to award unjust and undue higher seniority to eight officers by dispensing statutory Seniority Rules. Such 'deemed promotion' to the respondents by the impugned order was illegal and it makes the impugned order void."

We find no reason to take a different view.

36. Otherwise also, in the case of **SHRI AMRIK SINGH AND OTHERS** v. **UNION OF INDIA AND OTHERS**, (1980) 3 SCC 393, the Supreme Court held that under Rule 3 of All India Service (Conditions of Service - Residuary Matters) Rules, 1960, the Government must be objectively satisfied that any Rule or Regulation affecting the conditions of service of a member of the All India Services should not cause *undue hardship*. It also refers to the fact that by-passing the Union Public Service Commission is an impropriety. In Paragraph 10, the Supreme Court held:

"..... .When we consider the year of allotment what looms large is Rule 3(iii) (b). Continuous officiation is the decisive factor. Assuming that what is needed is regular officiation and not physical officiation, it is perfectly open for the Central Government to relax any irregularity by relaxing any particular rule or regulation. We have earlier indicated the scope of this power and reproduced the Rule itself. It is not arbitrary because the Rule contains guide-lines. Government must be satisfied, not subjectively but objectively, that any rule or regulation affecting the conditions of service of a member of the All India Services causes *undue hardship*, then the iniquitous

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consequence thereof may be relieved against by relaxation of the concerned Rule or Regulation. There must be *undue hardship* and, further the relaxation must promote the dealing with the case "*in a just and equitable manner*". These are perfectly sensible guidelines. What is more, there is implicate in the Rule, the compliance with natural justice so that nobody may be adversely affected even by administrative action without a hearing. We are unable to see anything unreasonable, capricious or deprivatory of the rights of anyone in this residuary power vested in the Central Government. Indeed, the present case is an excellent illustration of the proper exercise of the power. We are, therefore, satisfied that the Central Government was right in invoking its power to relax and regularize the spell of officiation, which was impugned as irregular or illegal. The consequence inevitably follows that the officer Ahluwalia was rightly assigned 1961 as the year of allotment."

37. In other words, the principles of natural justice could not have been ignored.

38. Similarly, in the case of **R.R.VERMA AND OTHERS v. UNION OF INDIA AND OTHERS**, (1980) 3 SCC 402, the Supreme Court clearly held that Rule 3 of the Rules referred to above does not permit that the Central Government is free to do whatever they like. The findings read:

"4. It does not mean that the Central Government is free to do what they like, regardless of right or wrong; nor does it mean that the courts are powerless to correct them. The Central Government is bound to exercise the power in the public interest with a view to secure civil servants of efficiency and integrity and when and only when undue hardship is caused by the application of the rules, the power to relax is to be exercised in a just and equitable manner but, again, only to the extent necessary for so dealing with the case. We do not have to add that the exercise of the power of relaxation like all other administrative action affecting rights of parties is subject to judicial review on grounds now well known. Viewed in this light we do not think that Rule 3 is unconstitutional on the ground that it vests an unfettered discretion in the Government."

39. Even in the case of **SYED KHALID RIZVI AND OTHERS v. UNION OF INDIA AND OTHERS**, 1993 Supp (3) SCC 575, while considering Rule 3 of All India Service (Conditions of Service – Residuary

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Matters) Rules, 1960, the Supreme Court again held that there should be an appointment in accordance with the Rules and by operation of the Rule, undue hardship has been caused. The findings read:

"33. Rule 3 of the Residuary Rules provides the power to relax rules and regulations in certain cases - where the Central Government is satisfied that the operation of - (i) any rule made or deemed to have been made under the Act, or (ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service "causes undue hardship in any particular case", it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such an extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a "just and equitable manner". Rule 3 empowers the Central Government to relieve undue hardship caused due to unforeseen or unmerited circumstances. The Central Government must be satisfied that the operation of the rule or regulation brought about undue hardship to an officer. The condition precedent, therefore, is that there should be an appointment to the service in accordance with rules and by operation of the rule, undue hardship has been caused, that too in an individual case. The Central Government on its satisfaction of those conditions, have been empowered to relieve such undue hardship by exercising the power to relax the condition. It is already held that conditions of recruitment and conditions of service are distinct and the latter is preceded by an appointment according to Rules. The former cannot be relaxed. The latter too must be in writing that too with the consultation of UPSC. In *Mohapatra* [(1969) 2 SCC 149] and *Khanna* [(1972) 1 SCC 784] this Court held that approval by the Central Government and UPSC are mandatory. In *A.K. Chowdhury* case [(1975) 4 SCC 7] it was held that requirement of Rule 3(3)(b) of Seniority Rules is mandatory. In *Amrik Singh* case [(1980) 3 SCC 393] an express order in writing under Rule 3 of Residuary Rules is mandatory. In this case neither any representation to relax the rules was made nor any order in writing in this behalf was expressly passed by the Central Government. The fiction of deeming relaxation would emasculate the operation of the Rules and Regulations and be fraught with grave imbalances and chain reaction. It is, therefore, difficult to accept the contention that there would be deemed relaxation of the Rules and Regulations."

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40. In the present case before us, while we do not dispute the power to relax in terms of Rule 3 in an improper case but it had to be done in accordance with law. The order does not mention in fact as to which of the Rules have been relaxed. The sine qua non of Rule 3 is that it should be done in just and equitable manner. Just and equitable manner means justice and equity to all. But it does not permit arbitrary fixation of deemed seniority without even hearing the either party. Necessarily, therefore, on this count, the impugned order cannot be sustained.

41. At this stage, it is worthwhile to mention that even if the hardship was felt, a review could be effected of the entire cadre on year to year basis in accordance with the Rules, and thereafter, it could be visualized as to if rigours of any particular rule could be relaxed.

42. In the present case before us, while passing the impugned order, Union Public Service Commission whose consultation was a must has been totally ignored. It is true that as held in the case of **Shri Amrik Singh and Others (surpa)**, it was not felt necessary to quash the order despite by-passing the UPSC in the facts of that case but here in the present condition, it was necessary to consult the Commission and the Union of India without adhering or paying any attention towards the same, has by-passed the Public Service Commission. That, indeed, was highly improper.

43. In fact, as referred to above, Rules show that Committee has to be constituted headed by the UPSC - Chairman/Member who has to make the selection. When the deemed date is being changed of an officer, necessarily he must be found suitable in accordance with rules to be worth promoting on that date, subject to availability of the vacancies and his seniority. This has not been done and, therefore, the order on that count also cannot be sustained.


44. The Union of India has not carried out the triennial cadre review which might have caused some hardship to the promotee officers who are


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private respondents before us. But in order to give them any such year of allotment, this should be done and year of allotment should be allocated on their turn. In the first instance, some of the officers whose names do not figure should also be considered because their valuable rights cannot be ignored. This observation necessarily has to be made because some of the officers of the State Cadre whose names did not figure were in the select list but their names did not find mention in the impugned order. Not only it might have affected the overall seniority but their valuable rights also. It is proper that all things are done in a systematic manner to avoid the multiple litigations. We hope and trust that due care and caution would be taken.

45. For these reasons, the present application is allowed and the impugned order is quashed.

46. Nothing said herein would restrain the respondents from passing appropriate orders in accordance with law.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

/NSN/