

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

DATED: THIS THE 10 DAY OF SEPTEMBER 1997

Coram : Hon'ble Mr. Justice B.C.Saksena VC
Hon'ble Mr. S. Das Gupta AM

Original application no. 982/96

WITH

Original application no. 972/96

WITH

Original application no.1120/96

O.A. No. 982/96

Indra Singh son of Sri Vishambhar Dayal
presently posted as Divl. Forest Officer,
Forest Division Mahoba, Bundelkhand

C/A Sri A. R. Masudi

Verus

1. Union of India through Secretary, Ministry of Forest and Environment, New Delhi.
2. Union Public Service Commission, through its Secretary, New Delhi.
3. State of Uttar Pradesh through Principal Secretary, Forest Deptt. Civil Secretariate, Lucknow.
4. Principal Chief Conservator of Forest, U.P. 17-Rana Pratap Marg, Lucknow.
5. Sri N.S.Negi, Principal Chief Conservator of Forest, U.P., Lucknow.

6. Sri Rameshwar Tewari C/O Principal
Chief Conservator of Forest, U.P.,
17-Rana Pratap Marg, Lucknow.

7. Sri S. C. Pant
C/O Principal Chief Conservator of Forest, U.P.
17-Rana Pratap Marg, Lucknow.

8. Sri Kamal Kishore, C/O Principal Chief
Conservator of Forest, U.P.,
17-Rana Pratap Marg, Lucknow.

9. Sri R. N. Pandey,
C/O Conservator of Forest,
World Food Programme, U.P.
Lucknow.

10. Sri A.K.Pandey
C/O Principal Chief Conservator of Forest,
U.P., Lucknow.

11. Sri Ramesh Chandra Mulasri.
C/ Principal Chief Conservator of Forest,
Lucknow.

12. Sri S. K. Singh, D.F.O.,
Soil Conservation, Divn. Karan Prayag.

13. Sri Rajiv Asthana, P.A. to
Chief Conservator of Forest,
Social Forestry, U.P. Lucknow.

14. Sri K.S.Samant
C/O Principal Chief Conservator of Forest,
Lucknow.

15. Sri B.C.Tiwari, D.F.O.,
Social Forestry, Division Jaunpur.

16. Sri Mahendra Singh, Director
Zoo, Lucknow.

17. Sri Chatanya Narayan,
C/O Principal Chief Conservator of Forest,
Lucknow.
18. Sri Sashi Kant C/O Principal Chief
Conservator of Forest, Lucknow.
19. Sri Rajendra Singh
C/O Chief Project Director,
Water Shed Management Directorate,
Dehradun.
20. Sri M.K.Tripathi, D.F.O.,
Sidharth Nagar.
21. Sri A. K. Jain, D.F.O.,
Barkhet, Distt: Uttar Kashi.
22. Sri Trilok Singh Bhandari,
C/O Principal Chief Conservator of Forest,
U.P., Lucknow.
23. Sri S. M. Joshi C/O Chief Project Director,
Water Shed Management, Dehradun.
24. Sri N.P.Sachan C/O Principal Chief Conservator
of Forest, U.P. Lucknow.
25. Sri V.P.Singh, C/O Principal Chief Conservator
of Forest, U.P. Lucknow.
26. Sri R.K.Sachan C/O Principal Chief Conservator
of Forest, U.P., Lucknow.
27. Sri Atibal Singh, C/O Principal Chief Conservator
of Forest, U.P. Lucknow.
28. Sri Sudarshan Singh C/O Principal Chief Conservator
of Forest, U.P. Lucknow.
29. Sri N.V. Singh, D. F. O.,
Social Forestry Divn. Etawah.
30. Sri Achamba Lal Yadav, D.F.O.,
Social Forestry, Bhadohi.

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31. Sri Bhawan Chandra,
C/O Chief Project Director,
Water Shed Management,
Dehradun.
32. Sri Santosh Vijai Sharma,
C/O Chief Project Director,
Water Shed Management,
Dehradun.
33. Sri D.N.Semwal,
C/O Principal Chief Conservator of Forest
U.P., Lucknow.
34. Sri J.L.Dixit C/O D.F.O.,
Civil Soyam Divn. Almora- - - - - OPPOSITE PARTIES

C/R Sri A.K.Gaur, Sri S.Chaturvedi, Sri Sudhir Agrawal
Sri Kapil Deo

O. A. No. 972/96

Sri Vinod Kumar s/o Sri Ram Autar
presently posted as Divisional Logging Manager,
U.P.Forest Corporation, Kashipur,
District : Utham Singh Nagar- - - - - Applicant

C/A Sri A.R.Masudi.

Versus

1. The Union of India, through Secretary
Ministry of Forest and Environment,
New Delhi.
2. Union Public Service Commission,
through its Secretary, New Delhi.
3. State of U.P. through Principal Secretary,
Forest Department, Civil Secretariate,
Lucknow.

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4. Principal Chief Conservator of Forest,
U. P. 17-Rana Pratap Marg,
Lucknow.

5. Sri S.N.Negi, Principal Chief Conservator
of Forest, U.P., 17-Rana Pratap Marg,
Lucknow.

6. Sri J.L.Dixit, D. F. O.,
Civil Soyam, Forest Division
Almora- - - - - - - - - - - Opposite Parties

O.A. No. 1120/96

1. Ravindra Juyal presently posted as Dy, Director/Assistant Conservator of Forest, Hill Development Department, Secretariate, Lucknow.
2. Sri Ram Krishna Singh s/o Sri Chandrika Singh, presently posted as Assistant Conservator of Forest/Sub-Divisional Forest Officer, Nichlaul, District Maharajgunj.
3. Dr. Nisar Ahmad s/o Late Mohd. Ali presently posted as Assistant Conservator of Forest, Principal Chief Conservator of Forest Office, Lucknow. - - - - - Applicants

C/A Sri A. R. Masudi

Versus

1. Union of India through Secretary
Ministry of Forest and Environment
New Delhi.

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2. Union Public Service Commission,
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3. State of U.P. through Principal Secretary
Forest Department, Civil Secretariate,
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4. Principal Chief Conservator of Forest,
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5. Sri N.S.Negi, Principal Chief Conservator
of Forest, U.P. Lucknow.
6. Sri Rameshwar Tiwari s/o Principal
Chief Conservator of Forest,
17-Rana Pratap Marg, Lucknow.
7. Sri S.C.Pant c/o Princiapl Chief Conservator
of Forest, 17-Rana Pratap Marg,
Leucknow.
8. Sri Kamal Kishore c/o
Principal Chief Conservator of Forest,
17-Rana Pratap Marg, Lucknow.
9. Sri R.N.Pandey s/o Conservator of Forest,
Worl Food Programme, U.P.Lucknow.
10. Sri A.K.Pandey c/o Princiapl Chief Conservator
of Forest, U.P. Lucknow.
11. Sri Ramesh Chandra Mulasri,
C/O Principal Chief Conservator of Forest
Lucknow.
12. Sri S.K.Singh, D.F.O.,
Soil Conservation Division
Karan Prayag.
13. Sri Rajiv Asthan, P.A. to Chief Conservator
of Forest, Social Forestry,
U.P. Lucknow.

14. Shri K. S. Samant
C/O Principal Chief Conservator of Forest
Lucknow.
15. Sri B. C. Tiwari,
D. F. O., Social Forestry Division,
Jaunpur.
16. Sri Mahendra Singh,
Director Zoo,
Lucknow.
17. Sri Chatanya Narayan
C/O Principal Chief Conservator of Forest
Lucknow.
18. Shri Shashi Kant, C/O
Principal Chief Conservator of Forest,
Lucknow.
19. Sri Rajendra Singh,
C/O Chief Project Director
Water Shed Management Directorate,
Dehradun.
20. Sri M. K. Tripathi,
D. F. O., Sidharth Nagar.
21. Sri A. K. Jain,
D. F. O. Barkhet
District: Uttar Kashi.
22. Shri Trilok Singh Bhandari
C/O Principal Chief Conservator
of Forest, U. P., Lucknow.
23. Shri S. M. Joshi
C/O Chief Project Director,
Water Shed Management,
Dehradun.

ORDER

By Hon'ble Mr. S. Das Gupta AM

All these applications have been filed under section 19 of the Administrative Tribunals Act 1985 by members of U.P. State Forest service, challenging the validity of the select list prepared by the respondents for induction of the State Forest service Officers into the Indian Forest Service. They have sought quashing of the Select list as well as the order dated 7.9.1996 by which some of the officers in the Select list were appointed to the Indian Forest service. They have prayed that the respondents be directed to hold fresh selection on the basis of year-wise eligibility list against year-wise vacancies. They have further prayed that a direction to the Opposite parties 1, 3 and 4 to ensure completion of total service records in respect of the persons falling in the zone of eligibility and to provide to the Selection Committee appropriate guidelines for ascertaining relative merits of eligible candidates.

2. Admitted position in this case is that State Forest service forms feeder cadre for promotion to the Indian Forest service against the promotion quota. In respect of the members of U.P. State Forest service, last selection for promotion to the I.F.S. was held sometime in 1984. Thereafter no selection could be made as there was a long pending controversy as regards the interse seniority amongst the members of the U.P. State Forest service. After this controversy was finally settled by the decision of the Hon'ble Supreme court, the selection was held in 1996. This selection was held for all the vacancies which had accumulated during the years since the last selection was held in 1984. The respondents did not prepare year-wise Select list but ^a combined Select list for all the vacancies including carry-forward

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vacancies was made. As a result of the selection, of 39 although Officers were included in the Select list and ~~missed~~ the present applicants were in the zone of consideration, they did not find place in the said Select list. Hence these applications.

3. The main ground taken by the applicants in challenging the impugned Select list was that it was incumbent upon the respondents to prepare year-wise Select list instead of holding the selection clubbing all the vacancies which arose since the last selection was held in 1984. This according to the applicants is violation of the mandatory provision in the relevant recruitment rules and also of the law laid down by the Hon'ble Supreme court in this regard in a number of cases.

4. The applicants have also taken several other grounds to assail the impugned select list. In the first place, it has been alleged that the Selection Committee was not properly constituted since in accordance with the provisions contained in Indian Forest service (Appointment by promotion) Regulations 1966 (herein after referred to as Regulation), the Selection Committee should interalia include Chief Conservator of Forest whereas the Committee which was constituted for the impugned selection had Principal Chief Conservactor of Forest as its Member. Secondly, the applicants have alleged that Shri R.S.Bhaduria who was the Principal Chief Conservator of Forest, U.P. issued a letter to all the concerned Members of the U.P. Forest service indicating that the entries in the confidential reports of as many as 83 officers were missing. It is further alleged that following this, missing entries in the confidential reports, ~~the committee~~ were reconstituted arbitrarily and there was mass manipulations of Service records with malafide intention to promote persons of one's choice

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The third plea is that although there were vigilance enquiry pending against several Members of the service, and the matter was suppressed by the State government/thereby the provision contained in Regulation 5(4) of ~~XXXXXX~~ (xappointmenxxbyxpromotionx)Regulationx96XXXXX~~XXXXXX~~ the Regulation were contravened.

5. Several counter replies have been filed in this case. In the C.A. filed on behalf of the State government, it has been submitted that 120 State Forest Officers including the applicants were considered by a duly constituted Selection Committee for 33 vacancies in the Indian Forest Service cadre in accordance with the Regulation. The applicants were, however, not found suitable by the Selection Committee for induction in I.F.S. cadre.

6. As regards the alleged irregularity in the constitution of Selection Committee, respondents have stated that though in the Regulation, the designation of the representative of the department in the Selection Committee has been indicated as Chief Conservator of Forest , the post has since been upgraded as Principal Chief Conservator of Forest and, therefore, inclusion of Principal Chief Conservator of Forest in the Selection Committee was quite in order. They have denied the allegation of manipulation of service records and submitted that the intention of writing the letter by the Principal Chief Conservator of Forest was to ensure that all entries in the confidential reports of the concerned State Forest service Officers were complete and also to endorse a certificate in case any entry was not available. It has been stressed that there was no whimsical reconstruction of the confidential reports as alleged by the applicants. The State government has also denied in the counter affidavit that any material facts against any of the officers in the zone of consideration were

suppressed. It has been stated that merely on the basis of complaint, no one could be held guilty.

7. The Issue relating to the preparation/yearwise panel has been specifically dealt with in the counter affidavit filed on behalf of Union Public Service Commission (herein after referred to as Commission). It has been stated in the C.A. that there is no provision in the Regulation for preparation of yearwise Select list. In Regulation 5(i) of the said Regulation the word 'Ordinarily' has been used which signifies that it is not mandatory for the Selection Committee to meet every year. According to them, if due to some unavoidable reasons the State government was not in a position to send proposal for selection for any particular year or years, then in the absence of any enabling provision for preparation of yearwise Select list, the vacancies of all these years have to be clubbed as per rules. They have also sought reliance on the decision of the Hon'ble Supreme court in several cases including/cases of Ksturi Rangan and s Ram Chandra Daya Ram Gawande.

8. Private respondents whose names figure in the impugned order of appointment to the I.F.S. have also filed separate counter affidavit in which they have supported the stand of the applicants that the Official respondents ought to have prepared yearwise Select list and they have gone a step further/that even appointment of Officers should have been made with effect from the date of availability of vacancies in the promotion quota from year to year. They have, however controverted the allegation made by the applicants that the Selection Committee was irregularly constituted. They have stated that as a result of recommendations of fourth Central Pay Commission

the pay scale of Add. Chief Conservator of Forest and Chief Conservator of Forest were merged. The posts of Add. Chief Conservator of Forest were abolished while the posts of Principal Chief Conservator of Forest were created and thus the Principal Chief Conservator of Forest became Head of the Department instead of erstwhile Chief Conservator of Forest.

9. The applicants have filed rejoinders and there are Supp. counter affidavits and Supp. rejoinder affidavits on record. We see no need to refer to the contentions in these pleadings as these are not material to the controversy which has already been set out in the preceding paragraphs.

10. When the case came up for hearing, arguments for all the applicants was advanced by Sri A.R.Masudi. On behalf of the State Govt., arguments were advanced by Shri A.K.Gaur while arguments on behalf of Commission were advanced by Sri Satish Chaturvedi. Mr. Sudhir Agrawal argued on behalf of private respondents.

11. We propose to take up later the main plea taken by the applicants that respondents ought to have prepared yearwise Select list. This is because that the other pleas taken by the applicants can be disposed of without much discussion as we do not find any force in them after hearing arguments of the learned counsel for the parties and also on a careful perusal of the pleadings on record including various documents annexed.

12. The ~~first~~ ^{last} plea that the Selection Committee was not constituted properly is based on the fact that the Principal Chief Conservator of Forest had participated as representative of the Department instead of Chief Conservator of Forest. There is no doubt that the relevant provision in the Regulation does specify that the Chief Conservator of Forest shall be one of the Members. There is also no denial that the Officer who represented the Deptt. in

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the Selection Committee was Principal Chief Conservator of Forest and not the Chief Conservator of Forest. On questioning, we came to know that there are several Chief Conservators of Forest and also more than one Principal Chief Conservator of Forest. There is no gainsaying that going strictly by ~~of~~ the relevant provision in the Regulation, only one of several Chief Conservator of Forest should have participated as the Member of the Selection Committee. Participation of the Principal Chief Conservator of Forest *prima facie* appears to be contravention of the said provision.

13. We have, however, considered the issue in the light of the submissions made by the respondents that on the basis of fourth Pay Commission recommendation, post of Principal Chief Conservators of Forest, which were not there in the Provincial service cadre earlier, were created. We have further examined this issue on ^{the} touchstone of prejudice. Indisputably, at the time selection was held, the highest post in the cadre of the Forest service was the Principal Chief Conservator of Forest and not the Chief Conservator of Forest which was the highest post in that cadre at the time when the Regulations were framed. The applicants have pointed out that there ^{were} certain amendments to the Regulation of 1966 in 1995 and even at that time, the designation of the departmental representative in the Selection Committee was not changed. In our opinion, however, this was merely a ~~case~~ of omission and not a deliberate act on the part of the department. No doubt on creation of the post of Principal Chief Conservator of Forest, designation of the post mentioned in the Regulation as Member of the Selection Committee should have been suitably amended. We do not, however, find

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this infraction as having ~~been~~ caused any material prejudice to the applicants. Had the relevant provision in the Regulations been followed strictly, the Selection Committee would have had one of the several Chief Conservator of Forest as a Member of the Selection Committee. Instead of that the Committee included Principal Chief Conservator of Forest which is undeniably ~~a~~ a higher post than the Chief Conservator of Forest. In fact, as has been stated by the respondents this was the post of the Head of the department. If the assessment of the A.C.R. of the officers in the zone of consideration is done by the highest functionary in the department ~~rather~~ ^{than} by the lower functionary, in our view no prejudice can be stated to have been caused to the persons who were so assessed. In that view of the matter, we do not find any force in the pleadings taken in this regard by the applicants, though no doubt, it would be prudent on the part of the respondents to amend the Regulations suitably so as to avoid ~~the~~ infraction of the statutory rules, however, technical it may be.

12. The second plea of the applicants that issuance of the letter dated 13.12.1995 by Sri R. S. Bhaduria was intended to make room for mass manipulation of C. Rs appears to be specious on ~~perusal~~ ^a of the documents and records. Admittedly no selection has been held ~~for~~ ^{for} nearly for 12 years. When the selection was actually held in 1996, it was found that several entries in the C. Rs of the officers in the zone of consideration were missing. The letter was issued only to complete the records and in the alternative to furnish a certificate in case the missing record could not be traced. There is nothing on record to indicate that the entries in C. Rs were reconstructed so as to give unfair benefit to certain chosen few ~~officers~~ and therefore, the applicants were at disadvantage. We, therefore, reject this plea.

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15 The third plea taken by the applicants that the State government deliberately suppressed certain adverse materials against some of the Officers who were included in the Select list is also without any foundation. The documents which have been brought on record by the applicants to show that certain officers were under cloud only goes to indicate that there were certain complaints against these persons which were under investigation. There is nothing on record to indicate that any charge sheet was issued on the basis of enquiry. In the absence of any charge sheet, the Selection Committee could not have considered the complaint against these officers as adverse material so as to exclude them from the Select list. Regulation 5(4) which is relevant in this regard reads as follows :

The list shall be prepared by including the required number of names first from amongst the Officers finally classified as outstanding, then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names inter-
so within each category shall be in the order of their seniority in the State Forest service.

provided that the name of an officer so included in the list shall be treated as provincial if the State Government withholds the integrity certificate in respect of such an officer or any proceedings, departmental or criminal are pending against him or anything adverse against him which render him unsuitable for appointment to the service has come to the notice of the State Govt.

EXPLANATION-I : The proceedings shall be treated as pending only if a charge sheet has actually been issued to the officer or filed in a court as the case may be.

EXPLANATION-II : The adverse thing which came to the notice of the State Govt. rendering him unsuitable for appointment to the service shall be treated as having come to the notice of the State only if the details of the same have been communicated to the Central Govt. and the Central Govt. is satisfied that the details furnished by the State Govt. have a bearing to the suitability of the officer and investigation thereof is essential ."

16. It would be clear from the aforesaid provision of the Regulation that only if the charge sheets have actually been issued to the officers, it would be considered that proceedings are pending against them and in such a situation, the State government could withhold furnishing of integrity certificate. In the absence of any evidence that the charge sheets were actually issued against the officers named in the application, Regulation 5(4) was not applicable.

17. Having disposed of pleas which we do not find to have any force, we come to/consider of the main plea taken by the applicants that by not preparing year-wise Select list, there has been contravention of the mandatory provision as well as the law laid down by the Hon'ble Supreme court in that regard.

18. Applicants have relied in this regard on the decision of the Hon'ble Supreme court in the following cases :-

(1) Syed Khalid Rizvi and others versus Union of India and others (1994) 26 ATC 192.

(2) Vinod Kumar Sangal versus Union of India and others (1995) 30 ATC 262

(3) Union of India and others versus Vipin Chandra Hira Lal Shah (1996) 6 SCC 321

Applicants also relied on the decision of Chandigarh bench of the Tribunal in case of R.S.Parmar and Ors versus Union of India and others (1996) 33 ATC 669

19. The learned counsel who appeared on behalf of the Commission on the other hand relied on the decision of the Hon'ble Supreme court in the case of H.R.Kasturi Rangan and others versus Union of India

and others in Civil appeal no.3891 to 3894/93, (2)
Ram Chandra Daya Ram Gawande versus Union of India
and others JT 1996(6) SC 361 and (3) Nepal Singh
Tanwar and others versus Union of India and others
in Civil appeal nos. 16769 & 16771/96. Reliance has
also been placed by the Learned counsel for the
Commission on the decision of the Bangalore bench
of the Tribunal in the case of K.S. Gopala Krishnan &
and others versus M.K. Shankerlinge Gowda and others
in O.A. Nos. 211 to 219 of 1990 and 377 & 378 of 1990
and on the decision of the Principal bench in the
case of S.S. Grewal versus Union of India and others
in O.A. No. 487/91 and in the case of Smt. Bimla Jindgar
and others versus Union of India and others in O.A.
no. 727/91..

20. In the case of Syed Khalid Rizvi, one
of the substantive questions which came ^{up} before the
Hon'ble Supreme court for determination was whether
preparation of Select list every year was mandatory
in view of the provision contained in the Indian Police
service (appointment by promotion) Regulation 1955.
The Hon'ble Supreme court held that preparation of
Select list in that case was mandatory and the
dereliction of the statutory duty must/ be satisfactorily
accounted for by the State government concerned. It
may be mentioned in this regard that the provisions of
Regulation (appointment by promotion) 1955 are in
parimateria with the provisions of I.P.S. (appointment
by promotion) Regulation 1955.

21. In the case of Vined Kumar Sengal, no
selection had been held for promotion to the post of
Sr. Technical Assistant in Geological Survey of India
for several years. When it was actually held, vacancies
~~ex~~ all the accumulated vacancies of intervening years

were clubbed and a combined Select list was prepared. The Hon'ble Supreme court held that separate selection for vacancies of each year ought to have been made as per instructions ~~copy~~ ^{tained} in the department of Personnel and Administrative Reforms O.M. dated 24.12.1980. The combined Select list based on clubbing of vacancies was set aside on the ground that this resulted in enlarging the field of choice thereby prejudicially affecting the chances of selection of the applicant.

22. In the case of Vipin Chandra Hira Lal Shah, controversy related to the Select list to be prepared for promotion from the State Civil service to the I.A.S. In that case the selection of the State Civil service officers for promotion to the I. A. S. took place in 1987 after 8 years since July 1979 when the Select list was last prepared. The applicant challenged the Select list prepared in 1987 on the ground that the vacancies of all the intervening years had been clubbed. The Ahmedabad bench of the Tribunal had accepted the plea of the respondents and held such clubbing of vacancies had ~~enlarged~~ zone of consideration thereby prejudicing the case of the respondents (applicant before the Tribunal) and accordingly directed the appellants (respondents before the Tribunal) to prepare the Select list from year to year from 1980 to 1986 without clubbing the vacancies of any particular year. The Hon'ble Supreme court considered the relevant provision contained in Regulation 5 of the I.A.S (appointment by promotion) Regulation 1955 and held that word 'Ordinarily' used in that Regulation would connote that if ~~for~~ the selection is not held in a particular year, the State government must satisfactorily explain the reasons therefor. Considering decisions of the Hon'ble Supreme court in the earlier cases of Mohan Lal Capoor (1974)

SCC L & S 5 and Syed Khalid Rizvi (Supra) it was held, while upholding the judgment of the Tribunal, that the Selection Committee should prepare yearwise Select list on the basis of yearwise vacancies. It is again pertinent to note that the provision contained in I.A.S.(appointment by promotion) is in pari materia with the Regulation.

23. The question whether clubbing of vacancies for holding combined selection when selection had not been held for several years in the case of State Government Forest service is illegal or not, squarely came up before the Chandigarh bench of the Tribunal in case of B.S.Parmar. Relying on several decisions of the Hon'ble Supreme court in the case of Mohan Lal Kapoor, Syed Khalid Rizvi and Vinod Kumar Sangal, Chandigarh bench of the Tribunal held that bunching of vacancies and holding a combined selection caused prejudice to the applicants and accordingly the Select list prepared on the basis of clubbing of vacancies was quashed.

24. From an analysis of the decisions cited above, it would be clear that consistent view taken by the apex court has been that in respect of promotion to All India Services, the selection of officers from the State service should be held once a year and in failure to do so must be satisfactorily explained by the State Government. Where selection could not be held for any year or years due to reasons which have been satisfactorily been explained, the selection when actually held must be on the basis of yearwise vacancies and yearwise Select list should be prepared. Let us now see from the decisions relied upon by the Respondent Commission whether such cases lay down a different proposition of law. The point which was considered specifically by the Hon'ble Supreme court in case of H.R.Kasturi Rangan was the connotation of the word "Ordinarily" used in Regulation 5 of the I. P. S.

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(appointment by promotion) Regulation 1955 and also to see whether in this regard there was any conflict between the decisions in case of Mohan Lal Kapoor and Syed Khalid Rizvi. Three Judges bench of the Apex court, after considering various decisions concluded that there was no conflict between the decisions in the two cases and that the failure to prepare Select list annually alone will not be a ground to invalidate the subsequent Select list, so long as the concerned Govt could explain reasons for failure to prepare annual Select list. It is quite clear from the decision in this case, that the question as to what would be the procedure to be adopted by the Selection Committee when it actually meets after several years of failure to prepare a Select list has not been at all considered in Kastur Rangan and, therefore, respondent Commission cannot draw any support from this case for their contention that it would be proper in such a situation to hold selection by clubbing of vacancies of intervening years.

25. In ^{the} case of Ram Chandra Daya Ram Gawande also the question which was considered by the Hon'ble Supreme court was what would be the consequence of failure to convene a meeting for selection of the candidates and preparation of annual Select list in respect of State Police service for promotion to I.P.S. In this regard, the decision in Syed Khalid Rizvi was relied upon and it was held that the State Govt. has the responsibility to account for the dereliction of statutory duty of holding annual selection satisfactorily to the court. The question as to whether it was permissible in such a situation to hold combined selection clubbing vacancies of the intervening years was neither raised nor considered. Thus the decision in Ram Chandra Daya Ram Gawande also in no way supports the contention of the respondent Commission.

26. In the case of Nepal Singh Tanwar, also the question considered related to the effect of word 'Ordinarily' used in the Regulation for promotion to the All India Service. The Hon'ble Supreme court, after noting the decisions in Syed Khalid Rizvi and Kasturei Rangan held that the word 'Ordinarily' would mean that it is ordinarily the duty of the State Govt. to prepare Select list annually unless there are satisfactory reasons ^{to} account for its failure to do so. If the State government is able to show why it failed to prepare a Select list and such reasons are found to be satisfactory by the court, the failure to prepare the Select list would be excused. In this case again the question whether it would be proper to prepare combined Select list clubbing vacancies of intervening year was neither raised nor considered. This case also cannot come in support of the respondent Commission.

27. In the ^{two} cases decided by the Principal bench of the Tribunal viz S.S.Grewal and Smt. Bimla Jindgal, the question as to whether separate Select list should be prepared when Select list has not been prepared for several years for induction in All India service did specifically arise. In the case of S.S.Grewal this question arose in respect of the promotion of officers belonging to Delhi -Andaman Nicobar Island police service to I.P.S. The bench of the Tribunal hearing the matter held that in ^{the facts and} peculiar circumstances of the case, keeping in view that subsequently joint cadre for Arunachal Pradesh Goa, Mizoram and Union territories was constituted, the adherence to the normal procedure of preparation of year-wise panel was neither feasible nor practicable. A similar view was held in the case of Smt. Bimla Jindgal where the question was regarding promotion from Delhi-Andman Nicobar Island Civil service into I.A.S. In this case also

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it was noted that before a selection could be held, a joint cadre of Arunachal Pradesh, Goa, Mizoram and Union Territory was constituted and, therefore, in the peculiar facts and circumstances of the case, adherence to the normal procedure of preparation of yearwise panel was neither feasible nor practicable. It will thus be clear that in both the cases, the bench of the Tribunal had impliedly held that normal procedure in such a situation would be to prepare a yearwise Select list unless there has been certain peculiar facts and circumstances in any particular case which rendered preparation of such yearwise Select list impracticable. Since in the case before us, intervention of no such peculiar facts and circumstances have been pleaded, there would be no reason not to adhere to the normal procedure of preparing yearwise Select list.

28. We lastly come to the decision of the Bangalore bench of the Tribunal in the case of K.S. Gopala Krishnan Gowda. In this case also, the question was with regard to the failure of the State government in preparing annual Select list for promotion from Karnataka administrative service to the I.A.S. Bangalore bench interalia took a view that in such a situation, it was not necessary to prepare separate yearwise seniority list since Regulation 5(1) did not ~~govern~~ give any scope for interpretation that yearwise Select lists for yearwise vacancies are to be prepared. This decision, therefore, ^{does} support the contention of the respondent commission.

29. We have, however, noted the aforesaid decisions by the Bangalore bench of the Tribunal was rendered in October, 1992. Since thereafter the Hon'ble Supreme court has repeatedly held that in the event of failure to prepare Select list for several years, the Selection Committee when it actually meets should prepare yearwise Select list for yearwise vacancies, we do not consider

the decision of Bangalore bench of the Tribunal having laid down good law. We would particularly refer to the case of Vipin Chandra Hira Lal Shah which specifically related to a similar controversy in respect of promotion from State Government Civil service to the I.A.S. As we have already stated elsewhere, the provision contained in I.A.S. (appointment by promotion) Regulation 1955 are in parimateria with the provision of the Regulation.

20. Inview of the foregoing discussions, we have no manner of doubt that it was incumbent upon the respondents to prepare separate yearwise Select list on the basis of yearwise vacancies restricting zone of consideration in relation to the vacancies of each year. This is, however, not to suggest officers who are included in the yearwise Select list are to be given promotion retrospectively from the year in which they are selected. This was the proposition advanced by the learned counsel for private respondents and we reject the same in absence of any supporting rule or case law.

31. The impugned Select list is accordingly quashed only on the short point that this was a combined Select list of vacancies which arose during a period of nearly 12 years. We direct the respondents to prepare yearwise Select list by holding review D.P.C. in accordance with the law. Officers who have already been promoted on the basis of impugned Select list need not, however, be reverted but their further continuance as Members of I.A.S. cadre would depend on the outcome of the review D.P.C. which shall be held by the respondents within a period not exceeding 2 months from the date of communication of this order.

Parties shall bear their own costs.

W.C.

B.C.