

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

RESERVED

ORIGINAL APPLICATION NUMBER 1072 OF 2004

ALONG WITH

ORIGINAL APPLICATION NUMBER 1255 of 2004

ALONG WITH

ORIGINAL APPLICATION NUMBER 939 OF 2004

ALLAHABAD, THIS THE 3rd DAY OF June 2005

HON'BLE MR. JUSTICE S. R. SINGH, VICE-CHAIRMAN  
HON'BLE MR. S. C. CHAUBE, MEMBER (A)

Vidya Sagar Prasad  
Aged about 43 years,  
Son of Shri Hanuman Ram,  
Posted as Divisional Forest Officer,  
Sonbhadra Forest Division, Sonbhadra.

Applicant in O.A. No.1072/2004

(By Advocate : Shri Vikas Budhwar)

ALONG WITH O.A. NO.1255/2004

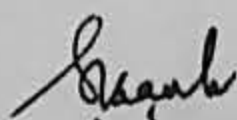
1. Kuruvilla Thomas aged about 41 years son of Shri P.T. Kuruvilla, Posted as Divisional Director, Social Forstry Division, Kanpur.
2. Sanjay Srivastava son of Shri R.G.L. Srivastava, Divisional Forest Officer, Rampur.

Applicants in O.A.No.1255/2004

(By Advocate : Shri Vikas Budhwar)

V E R S U S

1. Union of India through its Secretary, Ministry of Environment & Forests C.G.O. Complex, New Delhi.
2. State of Uttar Pradesh, through Principal Secretary, Department of Forests, Civil Secretariat, U.P. Lucknow.
3. Principal Chief Conservator of Forests, U.P. 17 Rana Pratap Marg, Lucknow.



4. Union Public Service Commission  
Dholpur House, Shahjahan Road,  
New Delhi through its Chairman.

..... Respondents in O.A. No.1072/2004 & 1255/2004

(By Advocate: Shri S. Singh/Shri K.P. Singh/  
Shri S. Chaturvedi)

ALONG WITH O.A. No. 939/2004

1. B. Shivanand Rao,  
Divisional Forest Officer, Forest Division,  
Allahabad.
2. Mukesh Kumar, s/o Sri M. Lal,  
Divisional Forest Officer,  
Forest Division,  
Gorakhpur.
3. Arvind Gupta, s/o Sri P.C. Gupta  
Presently posted as Plan Officer, Bijnor.
4. Atul Jindal, S/o Sri R.P. Jindal  
Divisional Forest Officer,  
Forest Division, Mirzapur.
5. Anjani Kumar Acharya, S/o Shri R.S. Acharya  
Presently posted as Silviculturist,  
Sal Region, Bareilly.

..... Applicants in O.A. No.939/2004

(By Advocate: Shri K.M. Mishra)

V E R S U S

1. Union of Indian through its Secretary,  
Ministry of Forest & Environment  
C.G.O. Complex, New Delhi.
2. Union Public Service Commission through its Chairman,  
New Delhi.
3. State of U.P. through its Principal Secretary,  
Department of Forest, Civil Secretariats, U.P.  
Lucknow.
4. Principal Chief Conservator of Forests, U.P. Lucknow.
5. B.C. Tiwari, Silviculturist, Southern Region, Kanpur.
6. R.N. Pandey, Forest Utilization Officer, Office of the  
PCCF, Lucknow.

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7. A.K. Pandey, presently posted as D.C.F. Wildlife,  
Lucknow

All the three representing PFS Officers.

Respondents in O.A. No.939/2004

(By Advocate: Shri S. Singh/Shri K.P. Singh/  
Shri S. Chaturvedi/ Shri A. R. Masoodi)

O R D E R

BY HON'BLE MR. S. C. CHAUBE, MEMBER (A)

As the facts and reliefs sought by the applicants are similar, therefore, we are deciding these cases by a common order. The O.A. No. 1072 of 2004 is the lead case.

2. Through these O.As the applicants who are direct recruits to Indian Forest Service having been appointed in the years 1987 and 1988 and allotted to U.P. Cadre of Indian Forest Service have sought direction to the respondents to finalize the Review Departmental Promotion Committee/Select List for the years 1985 to 1996 of the substantively appointed State Forest Officers while taking 33-1/3 percent of the maximum ceiling limit on the basis of the directly recruited Indian Forest Service Offices working on Senior Duty Posts; to finalize the aforesaid Review Departmental Promotion Committee by excluding the initial recruits as per provisions contained in Rule-4 (1) and 4(2) of the IFS Recruitment Rules 1966; to finalize the review departmental promotion committee for the years 1985 to 1996 strictly in conformity with rules, 4, 8 and 9 of the IFS Recruitment Rules 1966 and to set aside the notification/select list dated 10.09.2004 issued by Govt. of India Ministry of Environment and Forest. They have further sought a direction to restrain the respondents from according any benefit of

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retrospective promotion to the selectees on the basis of preparation of year wise select list referable to the date of occurrence of the vacancy.

3. According to the applicants, last selection for promotion from State Forest Service to Indian Forest Service in U.P. was held some time in the year 1984. Then followed a spate of litigation regarding promotion and inter-se seniority amongst U.P. Forest Service Officers and officers of Indian Forest Service. After the controversy was finally settled by the Decision of the Hon'ble Supreme Court the selections were held in the year 1996 for all the accumulated vacancies commencing from the year 1984. As the respondents clubbed all the accumulated vacancies and prepared a combined select list instead of year-wise select list, the combined select list was quashed by the Central Administrative Tribunal who directed the respondents to prepare year-wise select list by holding review D.P.C. The judgment and order dated 10.09.1997 passed by the Central Administrative Tribunal became a subject matter of challenge before the Hon'ble High Court of Allahabad who dismissed the Writ Petition. In these circumstances, Selections on the basis of preparation of year-wise select list was to be made by holding a Review DPC. Thereafter fresh proposal regarding year-wise vacancy position in Indian Forest Service were sent by respondent no.3 including therein 20 vacancies which had arisen on account of triennial review was shown to be in the year 1990 as held by the Division Bench of Hon'ble High Court Allahabad in Writ Petition No.45500 of 2003.

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4. According to the applicants, the respondents while computing the vacancies available for State Forest Service Officers for promotion to Indian Forest Service have violated the relevant rules and regulations and failed to take into account actual and physical vacancies instead they have worked out the number of posts to be filled by promotion on the basis of hypothetical and notional vacancies which were non existent at the time of computation of vacancies. The entire exercise of computation of vacancies by the respondents, according to the applicants, is grossly illegal for following reasons:

- (i) According to Rule-9 of Indian forest Service Recruitment Rules 1966, Recruitment by promotion under Rule-8 shall not exceed 33-1/3 per cent of the number of senior duty posts including Central Deputation Reserve @ 20% under the State Government.
- (ii) While determining the maximum of 33-1/3 per cent the direct co-relation with the number of direct recruits who are working on the Senior Duty Posts should essentially be taken into account as the relevant rules do not prescribe any quota for promotion of State Forest Service Officers to the Indian Forest Service in terms of Rule-8 and 9 of the Indian Forest Service (Recruitment) Rules 1966.
- (iii) Rule-9 of IFS Recruitment Rules does not reserve any vacancy in favour of State Forest Officer but only prescribes a ceiling up to which State Officers may be recruited into the Indian Forest Service. This aspect has already been adjudicated upon and decided by the CAT Allahabad Bench Allahabad in O.A. No.288/1992 and 320/1994 i.e. the U.P. Forest Service Association and Ors. Vs. U.O.I. & Ors.
- (iv) The determination of 33-1/3 per cent on the basis of entire cadre strength is patently illegal and in utter

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violation of Rule 9 of IFS Recruitment Rules 1966 read with IFS (Fixation of Cadre Strength) Regulations 1966.

- (v) The present practice of respondents while interpreting Rule 8 and 9 of IFS Recruitment Rules 1966 read with IFS (Fixation of Cadre Strength) Regulation 1966 is misconceived and not sustainable under law for the simple reason that once a quota was earmarked for the promotees (which is not in the present case) then 33 1/3 per cent ceiling limit was referable to the total cadre strength but once there is no quota prescribed by the Rules then the ceiling limit of 33-1/3 per cent has to be taken into consideration with the actual number of Direct Recruits working on the Senior Duty Posts.
- (vi) The select list dated 10.09.2004 has been finalized after including the initial recruits in the selection for the year from 1985 to 1986. This is patently illegal as the respondents have not excluded the initial recruits while determining 33-1/3% for State Forest Service. Thus the entire calculation of vacancies is erroneous, illegal, arbitrary and discriminatory in violation of Recruitment Rules and the judgment of the order of Central Administrative Tribunal rendered on 14.08.1995.

5. By way of illustration, the applicants have highlighted following charts relating to computation of vacancies:

Year	Position of Vacancies show by the government and considered by select Committee	Direct Recruits working on senior Duty Posts	Maximum number of Officers who could have been recruited by promotion under Rule 9 of Recruitment Rules 1966	Actual promotee officers already recruited and working	Excess promotion	Vacancies Available for promotion
1985	1	23	11	44	33	Nil
1986	3	27	13	43	30	Nil
1987	1	34	17	41	24	Nil
1988	1	52	26	38	12	Nil
1989	1	71	36	38	2	Nil
1990	22	86	43	37	-	6

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The aforesaid chart amply displays that the vacancies have been shown to be one in the year 1985, 3 in the year 1986 one each in the years 1987, 1988 and in the year 1989 and 22 in the year 1990. However, according to the applicants 33 excess promotees were working in the year 1985, 30, 24, 12 and 2 excess promoted were recruited in the years 1986, 1987, 1988 and 1989. Thus, the promotee officers were already in excess of the maximum of the ceiling of  $33\frac{1}{3}\%$ . In this view of the matter the computation of vacancies and the scheduled selections which are sought to be conducted are patently illegal as no vacancy exists for conducting the departmental promotion committee for State Forest Service Officers.

6. The applicants have further stated that in order to maintain the ratio of  $66\frac{2}{3}$ :  $33\frac{1}{3}$  per cent, total cadre strength on senior duty posts minus initial recruits still working is to be taken in to consideration as the basis of cadre strength from which  $33\frac{1}{3}$  per cent is available for recruitment through promotion as would be clear from the following charts:

Year	Total Senior Duty Posts	Initial Recruits Working	Remaining Posts
1985	136	55	81
1986	136	45	91
1987	138	38	100
1988	138	37	101
1989	138	37	101
1990	198	29	169

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Chart Excluding the Initial Recruits

Year	Available Senior Duty Posts for Recruitment	Maximum Post that may be recruited through promotion	State Forest Officers already promoted to IFS cadre and working	Surplus promoted in IFS	Vacancy
1985	81	27	44	17	Nil
1986	91	30	43	13	Nil
1987	100	33	41	8	Nil
1988	101	34	38	4	Nil
1989	101	34	38	4	Nil
1990	169	56	37	Nil	19

7. The applicants have stated that a conjoint reading of the aforesaid charts and correspondence referred to above will clearly reveal that computation of vacancies by respondents is itself patently illegal since excess number of surplus officers of State Forest Service were already promoted in Indian Forest Service of U.P. Cadre. Further while determining the vacancies, the initial recruits cannot be clubbed or intermingled with subsequent selection, which have been held after the initial recruitment to Indian Forest Service. In support of his contentions learned counsel for the applicant has cited the case of K. Prasad & Ors. Vs. U.O.I. & Ors. AIR 1988 SC Pg.535; U.P. Forest Service Association and Ors. Vs. U.O.I. & Ors. 1996 (33) ATC 747.

8. Respondent No.1 referring to the contentions of the applicants that the determination of the vacancies for the years 1985 to 1995-96 is based on wrong calculations as it has taken into account notional strength and the post of initial recruits have also been added along with senior duty posts for the purpose of determination of promotion quota

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posts, have contended that in the cadre review notification dated 22.09.1990 the post relating to the initial recruits have not been identified separately. They have further clarified that post relating to the initial recruits have been part of the senior Duty posts. Therefore, the contentions of the applicant regarding exclusion of the initial recruits is incorrect and invalid. Further the calculation of the applicants shown in various charts regarding notional vacancies are their own interpretation and assertions and therefore, not valid. Secondly at the point of time the number of posts to be filled up by promotion in accordance with Rule-8 of the IFS Recruitment Rules 1966 was 33-1/3 per cent of the senior duty posts + Central Deputation reserve (20%) taken together. Further the respondents have contended that the number of promotion posts is fixed at the time of review of the strength and composition of the IFS Cadre of the State in accordance with IFS (Fixation of Cadre Strength) Regulations 1966. The number of posts to be filled by promotion is indicated in the schedule to the IFS (Fixation of Cadre Strength) Regulations 1966. The cadre review notification dated 22.09.1990 has been enclosed as Annexure-A to the Counter filed by the Union of India.

9. The respondent No.1 i.e. U.O.I. have clarified that the Initial Recruits recruited under the IFS (Initial Recruitments) Rules 1966 are not covered by IFS (Appointment by Promotion Regulations) 1966. Therefore, they have correctly been clubbed with direct recruits appointed through competitive examination. As regards the contentions of the applicants that the post of initial recruits are not to be added to the Senior Duty Posts for the purpose of calculation

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of promotion quota, it has been contended by the respondent No.1 that in the cadre review notification dated 22.09.1990, the post relating to the Initial Recruits have not been identified separately. In fact the Initial Recruits have been part of the Senior Duty Posts. Therefore, the contentions of the applicants regarding exclusion of the Initial Recruits is incorrect and invalid. Besides the number of promotion post is fixed at the time for review of the strength and the composition of the IFS Cadre of the State in accordance with the IFS (Fixation of Cadre Strength) Regulations 1966. The number of promotion quota posts is indicated in the schedule of IFS (Fixation of Cadre Strength) Regulations 1966.

10. It has been further stated that the Union Govt. in the Ministry of the Environment and Forest on the basis of the recommendation of the selection committee have only notified the names included in the select list of the review DPC. Further the review selection committee has since been held on 29.12.2003 and the select list having been approved by the UPSC, the Central Govt. have notified the list on 14.09.2004. It has further been contended that the applicants have not come up with any concrete evidence or facts to indicate that there are irregularities in the preparation of the select list. They have in-fact put forward wrong interpretations of the Rules based on their assumptions with a view to stalling the promotions.

11. Referring to the Writ Petition filed by one Shri Chaitanya Narain before the Hon'ble High Court of Allahabad the respondents have clarified that as per the judgment of High Court that 20 vacancies relate to the year in which the

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notification has been issued and not prior to the issue of the notification. The respondent No.1 has further contended that the select list of 1984 was approved and acted upon long back and as such the question of raising the issue of determination of vacancies, inter-alia involving the initial recruits at this stage is barred by limitation and hence untenable. The Review Selection Committee only prepared the select lists from 1985 and onwards taking into consideration the incremental changes in the vacancy position from 1985 prevailing at that time. In the light of the decision in K.K. Goswami's case pursuant to the judgment of CAT Jabalpur Bench, the Ministry of Environment and Forest amended IFS (Recruitment) Rules 1966 which came into effect from 01.01.1998. According to this Amendment State Deputation Reserve and Training Reserve are also to be taken into consideration for the purpose of calculation of promotion quota posts. They have further stated that fixation of quota for promotion to the IFS cannot be treated as quota of reservation vacancies and is to be seen as distinct in IFS (Fixation of Cadre Strength) Regulation for the purpose of working out the number of promotion posts available in each cadre. Thus the applicants' contentions of reservation of vacancies in favour of SFS officers and encroachment in their quota by SFS are baseless.

12. The State Govt. of U.P. has stated that pursuant to the orders of CAT and Hon'ble High Court, the State Govt. in consultation with UPSC sent proposal for review selection to UPSC for year-wise vacancy from 1985 to 1995-96 as well the for the vacancies up to the year 2000 along with the year wise eligibility list and other relevant documents through

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letter dated 20.02.2002. On the intervention of UPSC fresh proposal for review selection only for the vacancies of 1985 to 1995-96 along with changed eligibility list and vacancies as per relevant rules and regulations were sent to UPSC when UPSC was satisfied by the year-wise vacancies and eligibility list. The selection was held by the UPSC on 15, 16, and 24 May 2002. Finally in the light of the order dated 03.09.2003 of the CAT, Review Selection was held by UPSC on 29.12.2003. Meanwhile the Writ Petition filed by one Shri Chaitanya Narain seeking direction to include 20 vacancy arising out of triennial cadre review was dismissed by the Hon'ble High Court of Allahabad. Therefore, Govt. of India has notified the selection list of said review selection vide notification dated 10.09.2004.

13. Referring to the non-impleadment of the applicants in several cases pending before CAT and High Court of Allahabad filed by State Forest Officers at this belated stage the same seems farfetched. The contentions of the applicants that there is no quota prescribed for State Forest Service Officers and that there is no reservation of vacancies but only prescribing ceiling up to which State Forest Service Officers may be recruited is not valid. On the other hand there is definite calculation of vacancies for the promotion quota after every cadre review and the same is based on the number of senior duty posts as well as Central Deputation Posts. This calculation is based on total number of senior duty posts and 20% of the central deputation posts not the actual number of officers working on State Deputation Posts. As regard initial recruits, they form part of the senior duty posts and there is no provision by which they can be

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segregated or separated from the direct recruit officers. Further in the IFS (Fixation of Cadre Strength) Regulations 1966 there is no separate head under which the initial recruits are shown as a separate class. Finally the raising of the issue of determination of vacancies, according to the respondent No.1 at this stage is motivated and baseless. On the other hand, review select lists were prepared on the basis of directions of CAT and that they have since been acted upon.

14. As regards calculation of number of year-wise vacancies for the year 1985 to 1995-96, according to the respondent No.2 and 3, the same are calculated according to relevant rules and regulations. Thus the number of promotes should not exceed 33-1/3 per cent of the number of posts shown against Item 1 and 2 in the schedule to the Indian Forest Service (Fixation of Cadre Strength) applicable to the Uttar Pradesh in various notifications of Govt. of India from 1985 to 1995-96. The schedule also specifically indicates number of posts to be filled by promotion. They have further clarified that the year-wise vacancies are calculated according to the provisions of Rule-9(1) of IFS (Recruitment) Rules 1966 and Indian Forest Service, (Fixation of Cadre Strength) Regulations. It is contended that initial recruitment posts is nowhere mentioned in the aforesaid regulations. Therefore, for the purposes of calculating the year-wise vacancies from the year 1985 to 1995-96 in the promotions posts, presence or absence of initial recruits has no meaning. They have further pleaded that the applicants should be required to put strict proof of their averments that the mandatory provisions of rules and regulations have

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been ignored while calculating the vacancies. As the entire process of review selection has been completed, raising the question of calculation of vacancies at this stage by the applicants has no force in the eye of law.

15. Learned counsel for the intervener in his reply in para-15 has stated that according to the own showing of the applicants in paras 45, 52 and 53 of the O.A. the position regarding available promotion posts and SFS Officers working on promotion post can be summarized in the following table:

Sl. No.	Year	Promotion Posts available under IFS (Fixation of Cadre Strength) Regulations	SFS Officers working on promotion posts.
1	1985	45	44
2	1986	46	43
3	1987	46	41
4	1988	46	38
5	1989	46	38
6	1990	66	37
7	1996	68	32
Total			

16. It has been contended for the respondents that the review selection has been held against year-wise vacancy and the concerned authorities have not worked out more vacancies than 33% the occurrence of vacancy can be gathered from a chart a copy of which has been filed as Annexure No.CA-9 to the counter affidavit of the Intervener. Similarly the vacancies notified by the Central Govt. as a result of cadre review in the year 1990 were decided to be taken into account for that year. Also it is wrong to suggest that the direct recruits had no knowledge of the initiation and court's proceedings because O.A. No.309/02' was filed by the Direct Recruits belonging to 1986, 1987, 1988 and 1989 batches. The vacancies, according to the interveners, have

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been computed strictly according to Rules and Regulations as provided in the amending notifications which have been issued by Govt. of India from time to time. These have gone unchallenged throughout. The legal position in this regard is settled and cannot be unsettled. Moreover, in compliance of the Judgment passed by the Hon'ble High Court on 11.05.2001 and 05.08.2004 the question regarding determination of year-wise vacancies and preparation of year wise select list has attained finality. The judgments are binding upon the Tribunal and the same controversy cannot be re-opened.

17. Learned counsel for the intervener has vehemently contended that cadre strength of IFS in UP Cadre was determined from time to time by amending the schedule appended to IFS (Fixation of Cadre Strength) Regulations 1966 under various notifications. In this connections he has filed copies of notifications issued by Govt. of India in the year 1981, 1986, 1990 and 1996 as Annexure Nos. CA 5, 6, 7 and 8 to the reply filed by the intervener. The said notifications determining the cadre strength were never challenged at any point of time. Accordingly, the number of posts to be filled by promotions as per IFS (Fixation of Cadre Strength) Regulations were 45 in 1985, 46 each during the period 1986 to 1989, 66 in 1990 and 68 in 1996.

18. The applicants have referred to Rule-4 of the Indian Forest Service (Cadre) Rules 1966 and have stated that under Rule-4 of the Cadre Rules 1966 the strength and composition of each of the cadres constituted under Rule-3 is to be determined by Regulations made by the Central Govt. in consultation with State Govt. in this behalf. Accordingly,

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pursuant to Sub Rule (1) of Rule-4 of Indian Forest Service (Cadre) Rules 1966 the Central Govt. framed regulations by name and nomenclature of Indian Forest Service (Fixation of Cadre Strength) Regulations 1966 (hereinafter referred to as the Fixation of Cadre Strength Regulations 1966). According to the applicants it may be convenient to re-produce relevant extracts of relevant Rules/Regulations for proper appreciation of their contentions:

Indian Forest Services (Recruitment) Rules 1966

Rule-3: **Constitution of the Service:-** The service shall consist of the following persons namely:

- (a) member of the State Forest Service recruited to the service as its initial constitution in accordance with the provisions of sub-rule (1) of Rule 4; and
- (b) persons recruited of the service in accordance with the provisions of sub-rules (2) to (4) of Rule-4

Rule-4. **Method of recruitment to the Service-** (1) As soon as may be after the commencement of the these rules, the Central Govt. may recruit to the service any person from amongst the members of the State Forest Service adjudged suitably in accordance with such regulations as the Central Government may make in consultations with the State government and the Central Government.

Provided that no member holding a post referred to in sub-clause (ii) of clause (g) of Rule 2 and so recruited shall, at the time of recruitment, be allocated to any State Cadre other than the cadre of a Union Territory.

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

(a) by a competitive examination;

(aa) by selection of persons amongst the Emergency Commissioned officers and short service commissioned officers of the Armed Forces of the Union who were commissioned after the 1<sup>st</sup> November 1962 but before 10<sup>th</sup> January 1968 and who are released in the manner specified in sub-rule (1) of Rule 7-A;

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(b) by promotion to substantive members of the State Forest Service.

(3) Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purposes of filling any particular vacancy or vacancies in the service as may be required to be filled during any particular period of recruitment, and the number of persons to be recruited by each of method shall be determined on each occasion by the Central Government in consultation with the commission.

Provided that where any such vacancy or vacancies relates or relate to a State Cadre or a Joint Cadre, the State Government concerned shall also be consulted.

(3-A) Notwithstanding anything contained in this rule, where appointments to the service in pursuance of the recruitment under sub-rule (1) have become invalid by reason of any judgment or order of any court, the Central Government may make fresh recruitment under that sub-rule may give effect to the appointments to the service in pursuance of such fresh recruitment from the same date on which the appointments which have become invalid as aforesaid had been given effect to.

(4) Notwithstanding anything contained in sub-rule (2), if in the opinion of the Central Government the exigencies with the State Governments and the Commission, adopt such methods of recruitment to the service other than those specified in the said sub-rule, as it may be regulations be made in this behalf prescribe.

(5) Notwithstanding anything hereinbefore contained in this rule in relation to the state of Sikkim, recruitment to the Central Government may after consultation with the State Government and the Commission prescribe.

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19. After the creation of Indian Forest Service, initial recruitment was made in pursuance of the Initial Recruitment Regulations 1966. The subsequent recruitment in the cadre of Indian Forest Service is to be made in accordance with the Rules 7, 8 and 9 of the Indian Forest Service (Recruitment) Rules 1966. Relevant extract of Rule 7, 8 and 9 are reproduced below:

7. **Recruitment by competitive examination.** (1) A competitive examination for recruit to the service shall be held at such intervals as the Central Government may in consultation with the commission, from time to time determine.

(2) the examination shall be conducted by the Commission in accordance with such regulations as the Central Govt. may from time to time makes in consultation with the Commission and the State Government.

(3) Appointments to the service will be subject to orders regarding special representation in the service for Scheduled Castes and Scheduled Tribes issued by the Central Government from time to time.

**8. Recruitment by promotion:-** (1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with the such regulations as the Central Government may, after the consultation with the State Government 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.

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

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(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.

**9. Number of persons to be recruited under Rule 8(1):**

The number of persons recruited under Rule-8 in any State or group of States shall not, at any time exceed  $31\frac{1}{3}$  per cent of the number of posts as are shown against Item 1 and 2 of the cadre in relation to that State the group of States, in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.

(2) For the purpose of determining the percentage specified in sub-rule (1) the offices of a State Forest Service, who may be appointed to any of the vacancies caused by the transfer of Cadre Officers to another Service or by their quasi permanent deputation to the Centre shall be excluded.

(3) Notwithstanding anything contained in this rule, in relation to the State of Jammu and Kashmir, the number of persons recruited under sub-rule (1) shall not upto the 30<sup>th</sup> April 1992, exceed at any time 50% of the number of those posts as are shown against item 1 and 2 of the Cadre in relation to the State in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966)

A perusal of Rule-9 read with Rule-8 of the Recruitment Rules 1966 will make it clear that the number of persons recruited under rule-8 in any <sup>State</sup> shall not at any time exceed  $33\frac{1}{3}\%$  of the number of Senior Duty Posts under the State Government together with the Central Deputation reserve which is 20% as notified in the Indian Forest (Fixation of Cadre Strength) Regulations 1966. The question

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as to whether 33-1/3% is the quota or the reservation of vacancies fixed for promotion from the State Forest Service to Indian Forest Service was considered by the Division Bench of Central Administrative Tribunal of Lucknow Bench in O.A. No.288/1992 and 320/1995 filed by the U.P. Forest Service Association and Ors. Vs. Union of India and Ors. The Division Bench held that there is no reservation of vacancy in favour of the officers of the State Forest Service in the matter of their appointment to Indian Forest Service.

20. It is evident from Rule 4(3) of IFS (Recruitment) Rules 1966 that the method or methods of recruitment to be adopted for the purposes of filling any particular vacancy or vacancies in the service as may be required to be filled during any particular period, the number of persons to be recruited by each method shall be determined by the Central Government in consultation with the U.P.S.C. and State Government. Further the issues relating to initial recruits has finally been settled by Hon'ble Supreme Court in the Case of K. Prasad Vs. U.O.I.

21. Respondent No.4 Union Public Service Commission in their reply have referred to the background of O.A. Nos.982,972, and 1120 of 1996 filed by Shri Indra Singh & Ors. Vs. U.O.I. & Ors. in which the Central Administrative Tribunal directed the respondents to prepare year-wise select list in accordance with law as also the Writ Petition Nos. 2663, 2666, 2668, 3935 and 3938 of 1998 filed by Govt. of U.P. and Private parties before Hon'ble High Court of Allahabad in which the Hon'ble High Court upheld the verdict of the Central Administrative Tribunal directing the authorities to

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prepare year-wise select on the basis of year wise vacancies restricting the zone of consideration of officers of State of Forest Service eligible in a particular year of recruitment. A meeting of the Review Selection Committee was held in the Month of May 2002. Meanwhile several original applications were filed particularly by Shri Nagendra Vikram Singh (O.A. No.539/2002 and O.A. No.536 of 203 filed by Shri Chaitanya Narain decided that 20 cadre review vacancies which came into existence on 31.08.1990 cannot treated as anticipated vacancy for the year 1989. The Hon'ble High Court upheld the judgment of Central Administrative Tribunal in Writ Petition No.45500 of 2003 filed by Shri Chaitanya Narain. According to UPSC the commission approved recommendation of review selection committee meeting held on 03.09.2004.

22. It has been contended by U.P.S.C. that select list of 1984 was approved and acted upon long back and as such, the question of raising the issue of determination of vacancy interalia, involving the initial recruits at this stage is barred by limitation and hence untenable. It is also stated by the UPSC that the Review Selection Committee meeting was held on 29.12.2003 for promotion to the IFS Cadre of Uttar Pradesh. The minutes of R.S.C.M. were forwarded to the State Government and Govt. of India, Ministry of Environment and Foreign for their observations. After taking into consideration the observations of State Govt. and Govt. of India the commission have approved the recommendation of the said review committee on 03.09.2004. Appointments will be made by the Govt. of India on receipt of the proposal from the State Government.

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23. We have had heard the counsel for the parties and perused the pleadings as well. All India Services Act 1951 was notified in the Gazette Extra Ordinary on 29.05.1951. Apart from Indian Administrative Service and Indian Police Service, Indian Forest Service was included as yet another All India Service by All India Services (Amendment) Act 1963, which was enacted on 06.09.1963. Thereafter the Central Govt. framed Indian Forest Service (Cadre) Rules 1966 (hereinafter referred to as the Cadre Rules) and Indian Forest Service (Recruitment) Rules 1966 (hereinafter referred to as the Recruitment Rules). While Indian Forest Service was created and established in the Year 1966 in pursuance of Sub Rule (1) of Rule-4 of Indian Forest Service (Recruitment) Rules 1966, a regulation was enacted by the name and nomenclature of Indian Forest Service (Initial Recruitment) Regulations 1966, which came into existence w.e.f. 01.07.1966 (hereinafter referred to as Initial Recruitment Regulations 1966). The conditions of eligibility of State Forest Service Officers on the date of constitution of service who were to be recruited from the State Forest Service is prescribed in Rule-4 and preparation of list of suitable officers is provided in Rule-5 and the appointment to service is provided in Rule-6. In accordance with aforesaid rules and regulations the initial constitution of the service and the recruitment have been made by a notification dated 29.07.1967.

23(A). After the creation of Indian Forest Service initial recruitment, which had been made in pursuance of Initial Recruitment Regulations 1966, subsequent recruitment in the Indian Forest Service is to be made in accordance with Rule-7, 8 and 9 of the Indian Forest Services (Recruitment) Rules

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1966. For the purposes of recruitment by competitive examination, the central Govt. in consultation with the State Govt. and the UPSC enacted Indian Forest Service (Appointment by Competitive Examinations) Rules 1967. However, for the purposes of Appointment by Promotion, the Central Govt. in consultation with the State Govt. and UPSC enacted Indian Forest Service (Appointment by promotion) Regulations 1966.

23(B). During the course of the arguments there has been a long debate on the question whether the officers who were inducted into the Indian Forest Service at the time of initial constitution of service could be counted as direct recruits or otherwise. The learned counsel for the respondents have argued that since they were recruited under the authority of the Indian Forest Service (Initial Recruits) Rules 1966 under entirely different set of conditions of eligibility and further have not been promoted from the State Forest Service in accordance with I.F.S. (Appointment by Promotion) Regulations, they could not be categorized as promotee officers.

24. It may be noted that Rule 3(A) of the Recruitments Rules deals with initial constitution of the Indian Forest Service. The manner of initial recruitments as provided in Rule-4 (1) relates to recruitment from amongst the members of the State Forest Service found suitable in accordance with such regulation as the Central Govt. may make in consultation with the UPSC. All those who were inducted in the IFS at the time of initial recruitment were infact serving one or the other state or the Union. A perusal of the procedure for

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recruitment as prescribed in IFS Initial Recruitment Rules would amply show that it is entirely different from the procedure prescribed for direct recruitment in Rule-4 of Indian Forest Service (Recruitment) Rules 1966 which is through a competitive examination conducted by the Union Public Service Commission. On the other hand, the Initial Recruitment as per Indian Forest Service (Initial Recruitment) Rules 1966 the selection was made by a special Selection Board, constituted by the Central Government as provided in Rule-3 of Initial Recruitment Rules 1966. As against the above procedure, direct recruitment under the IFS (Recruitment) Rules 1966 which is held through competitive examination conducted by the Commission has a much wider canvas and field and the candidates have to go through a stringent Examination. Accordingly, we are not inclined to equate those inducted in the IFS under the Initial Recruitments Rules 1966 with those recruited through direct recruitment after going through a stiffer competitive examination conducted by UPSC.

25. Similarly Indian Forest Service (Appointment by Promotion) Regulations 1966 provide for constitution of a high powered committee headed by the Chairman or a member of the UPSC in which the Chief Secretary, Secretary to the Govt. dealing with the Forest and Chief Conservator of Forest are present as members besides a nominee of Govt. of India not below the rank of a Joint Secretary. The procedure for the selection, the zone of consideration depending upon the number of substantive vacancies, classification of officers as 'outstanding' 'very good', 'good', etc., preparation of select list, appointment to the service from the select list

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etc. have been provided in detail in the appointment by Promotion Regulations (supra). Thus, the promotion regulations also contain their own procedure for selecting candidates of the State Forest Service into the Indian Forest Service. Any person who is not selected through that procedure cannot be categorized as a promotee officer. Accordingly, the initial recruits who are not inducted in accordance with a procedure prescribed in the promotion regulations cannot be classified as promotee officers or direct recruits.

26. In view of the above, those inducted at the time of initial constitution of service cannot be treated either as direct recruits or as promotee officers. We are, therefore, unable to accept the implied plea of the applicants that those inducted in IFS at the time of initial constitution should be counted and categorized as promotee officers. It would thus, follow that the applicants plea of excess posting of promoted officers in the Indian Forest Service of U.P. Cadre has not been established.

27. We now proceed to examine the question as to whether there are vacancies reserved for promotion of U.P. State Forest Service Officers to U.P. cadre of Indian Forest Service.

28. The respondents have contended that in the notification fixing the cadre strength a prescribed number of vacancies have been ear-marked to be filled by promotion of eligible officers of State Forest Service to Indian Forest Service and further these vacancies can be filled only by promotion of officers of the State Forest Service. It is pleaded that

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under the scheme of IFS Rules and Regulations there is no reservation of vacancies in favour of State Service officers and what is provided in the notification fixing the cadre strength is the ceiling or maximum number of cadre post which may be filled by promotion of officers of the State Forest Service. Thus, it is open to the Central Govt. either to fill up all the vacancies in the cadre post by direct recruitment only; it is only when the Central Govt. decides to fill up vacancies by promotion of State Officers that the restriction of numbers mentioned in the notifications comes into play. On the other, hand, the applicants have contested these contentions of respondents.

29. In view of the conflicting claims and counter claims of the parties, an examination of the scheme reflected in the IFS Rules, regulations and the notifications is called for. According to Rule-6 of the IFS (Recruitment) Rules 1966 all appointments to the IFS shall be made by the Central Government and no appointment shall be made except after recruitment by one of the methods specified in Rule-4 of IFS (Recruitment) Rules 1966 either by a competitive examination or by promotion of substantive member of the State Forest Service. Further Rule-7 (1) of IFS (Recruitment) Rules 1966 lays down that a competitive examination for recruitment to the service shall be held at such intervals as the Central Govt. may in consultation with the commission determine from time to time. Thus, there is no binding obligation on the part of the Central Government to hold competitive examination annually or at any other fixed intervals.

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30. It may be of interest to re-produce Rule-7 (A) of IFS (Recruitment) Rules 1966 notified by the Ministry of Home Affairs on 14.09.1968 but now deleted by notification NO.GSR 731(E) dated 31.12.1997

7-A. Recruitment by selection of persons from among the released emergency Commissioned Officers and short service commissioned officers commissioned in the Armed Forces of the Union after the 1st November 1962 but before the 10<sup>th</sup> January 1968. - (1) Till the 28<sup>th</sup> January 1971, 20 per cent of the permanent vacancies in the Indian Forest Service to be filled by direct recruitment in any year shall be reserved or being filled by the Emergency Commissioned officer and Short Service Commissioned Officers of the Armed Forces of the Union who were commissioned after the 1<sup>st</sup> November 1962 and who-

- (i) in the case of Emergency Commissioned Officers are released according to a phased programme; or
- (ii) in the case of Short Service Commissioned Officers are released on the expiry of the tenure of their service; or
- (iii) are invalidated owing to a disability attributable to or aggravated by military service;

from the Armed Forces of the Union after a spell of service and not during or at the end of training or during or at the end of Short Service Commission granted to cover the period of such training prior being taken in actual service.

31. This provision does make reservation of vacancies. The reservation is against the vacancies to be filled by direct recruitment in any year and is confined to demobilized defence personnel. There is also provision of "carry forward" of the reserved vacancies to the next year or the years. Sub Rule '6' puts a ceiling on reservation.

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32. Rule-8 deals with appointment to Indian Forest Service by promotion. Relevant extract of Rule-8 is reproduced below:

8. Recruitment by promotion - (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.

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

33. It may be noted that under the above sub-rules the appointment is made by the Central Government on the recommendation of the State Government in consultation with the commission. The selection is made in accordance with the regulations made by the Central Government from time to time in consultation with the State Government and Central Government. In the context of the present controversy Rule-9 of Indian Forest Service (Recruitment) Rules 1966 is relevant. Rule 9 is reproduced below:

Rule-9: Number of persons to be recruited under Rule-8:

(1) the number of persons recruited under rule=8 in any State or group of States shall not, at any time, exceed 33-1/3 per cent of the number of senior posts under the State Government, Central deputation reserve. State deputation reserve and the training reserve in relation to that State or to the Group of States, in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955:

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*Explanation:* For the purpose of calculation of the posts under this sub-rule, fractions if any, are to be ignored.

(2) For the purpose of determining the percentage specified in sub-rule (1) the officers of a State Forest Service, who may be appointed to any of the vacancies caused by the transfer of cadre officers to another service or by their quasi permanent deputation to the Centre shall be excluded.

(3) Notwithstanding anything contained in rule, in relation to the State of Jammu and Kashmir, the number of persons recruited under sub-Rule (1) shall not up to the 30<sup>th</sup> April 2002 exceed at any time, fifty per cent, of the number of senior posts under the State Government, Central Deputation reserve, State Deputation reserve and the training reserve in relation to that State in the Schedule to the Indian Administrative Service (Fixation of Cadre Strength) Regulations, 1955

*Explanation Note:* The provisions for reservations in respect of the other backward classes for recruitment to the service was commenced by the Central Government from the year 1994 onwards and hence it is proposed to give retrospective effect to the provisions of sub-rule(3) of Rule-7 from the 1<sup>st</sup> Day of January 1994. It is certified that by giving retrospective effect to the provisions of sub-rules (3) of Rule-7, nobody is being adversely affected.

34. It is note worthy that the language of Rule-9(1) is diametrically different from the language of Rule 7-A(1). Rule 9(1) does not reserve, unlike Rule 7-A(1) any percentage of vacancies in favour of the State Forest Service Officers. It only prescribes a ceiling up to which State Forest Service Officers may be appointed to the IFS, the ceiling being 33-1/3 percent of the number of posts as shown against Item 1

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and 2 of the cadre of the State as reflected in the scheduled to cadre strength fixation regulations. It is not possible to infer any intention of the legislature to reserve vacancies for State Forest Officers. In fact at the time of every recruitment, it is for the central government to decide whether the vacancies shall be filled by direct recruitment or by promotion. While reservation of vacancies for demobilized defence service officers is a statutory obligation, no such obligation in respect of promoted officers can be deciphered by a plain reading of the relevant rules and regulations. As a matter of fact the obligation on the part of Central Government is to keep the number of promotions in check and to ensure that promotions do not go beyond the figure of 33-1/3 per cent. This interpretation finds support in sub-rule (3) of Rule-4 which specifically provides that the method by which vacancies have to be filled and the number of vacancies to be filled by each method have to be decided by the Central Government. Therefore in the absence of any substantive provision authorizing the Central Government to reserve vacancies in favour of State Forest Officer for appointment to Indian Forest Service, we come to the obvious conclusion that there is no reservation of vacancies in favour of officers of the State Forest Service in the matter of their appointment by promotion to Indian Forest Service.

35. Learned counsel for the applicants has vehemently urged and highlighted in para-53 of the original application the particulars of surplus promoted IFS Officers from 1985 to 1990 and has further argued in-vain that the computation of vacancies is itself patently illegal and suffers from great

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illegality by the presence of excess number of surplus officers promoted in IFS in U.P. Cadre from 1985 to 1990. This according to the applicants has far exceeded the ceiling of 33-1/3 per cent for State Forest Service. Secondly, the alleged vacancy which the review departmental promotion committee is going to be finalized will only be taking into account vacancies which are non-existent, artificial and notional. The respondents on the other hand, have contested the claims of the applicants and have further stated that the number of year wise vacancy from the year 1985 to 1995-96 have been calculated according to rules and regulations as per provisions of rule 9(1) of Indian Forest Service (Recruitment) Rules 1966 and Indian Forest Service (Fixation of Cadre Strength) Regulations 1966. The contents of chart filed by the applicants in paragraph 52 and 53 have been refuted by the respondents and branded as wholly misconceived. On the other hand the learned counsel for the interveners has projected a chart (para-15 of his counter affidavit) according to which the number of SFS officers working on promotion post is well within the ceiling of 33-1/3 per cent. In support of his contentions he has annexed Annexure-5 to 8 which are notification dated 09.06.1981, 27.09.1986, 22.09.1990 and 26.12.1996. A plain reading of these notifications prescribing the cadre strength of U.P. cadre shows that posts to be filled by promotion in accordance with Rule 8 of Indian Forest Service (Recruitment) Rules 1966 were 45 in the year 1985, 46 each in the years 1986 to 1989, 66 in the year 1990 and 68 in 1996. The number of SFS Officers working on promotion post has been invariably lesser than the available promotion post from 1985 to 1986.

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36. According to Rule-4 of IFS Cadre Rules 1966, the strength and composition of each of the cadres shall be determined by regulation made by the central Government in consultation with the State Government in this behalf. The authorized strength of each cadre is determined by the Central Government by amending the Indian Forest Service (Fixation of Cadre Strength) Regulations 1966 from time to time, as a result of cadre review or otherwise. In the schedule to these regulations the number of senior duty posts under the State Government, number of Central Deputation Reserve, number of posts to be filled by promotion, number of posts to be filled by Direct Recruitment etc are clearly mentioned. We have no reason to disbelieve the contentions of the respondents that the number of promotee officers has never exceeded the ceiling limit of 33-1/3 per cent as prescribed under Rule 9 of the IFS (Recruitment) Rules 1966. There is a substantial weight in the contention of the respondents that the judgment of Central Administrative Tribunal in UP Forest Service Association, Vs. U.O.I. & Ors. referred to by the applicants in the paragraph-50 and 51 of the original application cannot be construed against the statutory rules particularly the Fixation of Cadre Strength Regulations which do not recognize Initial Recruits as a separate category. On the other hand, the relevant schedules to various fixation of cadre strength regulations recognized only two categories; posts to be filled by promotion and posts to be filled by direct recruitment and prescribed maximum ceiling for promotions with reference to total number of senior posts including those which are occupied by initial recruits.

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37. The Hon'ble <sup>Apex</sup> Court in the case of K. Prasad Vs. U.O.I. & Ors., A.I.R. 1998 SC 535 have held that the total authorized strength of cadre is to be counted by including the initial recruits and that all eligible officers adjudged suitable cannot be recruited to the service in excess of the total authorized strength. As the initial recruits continue to occupy the senior duty posts and are members of the IFS they cannot be excluded in determination of cadre strength and vacancies. Thus the relief claimed by the applicants seeking direction to the respondents to finalize review departmental promotion committee for the years 1985 to 1996 by excluding the initial recruits falls through in view of the judgment of the Hon'ble Apex Court in K. Prasad's case (supra) and in the absence of any statutory recognition of Initial Recruits in various notifications revising cadre strength of Indian Forest Service U.P. Cadre. Besides the strength and composition referred to or prescribed in the Cadre Regulations read with cadre Rules is of the entire cadre of the service in the State concerned and is not restricted to the recruitments made after the initial recruitment.

38. It is settled law that the Courts and Tribunals are not expected to play the role of an appellate authority or an umpire in the proceedings of departmental promotion committee and certainly cannot sit in the judgment over the selection made by the DPC until the selection is vitiated by malafide or on the ground of arbitrariness. In the present case the applicants have failed to point out the specific instances or elements of malafide or arbitrariness in the procedure followed by the Review Departmental Promotion Committee. Nor it is the function of the courts to hear appeals over the

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decisions of the selection committee and to scrutinize the relevant merits of the candidates.

39. For the aforesaid reasons and the case cited above, the original applications are devoid of merits and liable to be dismissed. Accordingly the Original Applications are dismissed without any order as to costs.