

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

(11)

Original Application No. 1079 of 1988
Connected With
Original Application No. 1320 of 1988
Connected With
Original Application No. 1324 of 1988

Allahabad this the 21.4~~th~~ day of Nov. 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)
Hon'ble Mr. D.S. Baweja, Member (Admn.)

Original Application No. 1079/88

G.P. Pandey, A/a 44 years, Post - Divisional Forest Officer (Deputy Conservator of Forest), Awadh Forest, Division Lucknow.

APPLICANT.

By Advocate Sri Sunil Gupta

Versus

1. Union of India through the Joint Secretary to the Government of India, Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex II, New Delhi-110003.
2. State of U.P. through Secretary, Forests, Secretariat, Government of U.P., Lucknow.
3. R.C. Tewari, Divisional Forest Officer, Forest Division, Tehri Dam, Uttarkashi.
4. K.C. Chowdhury, Divisional Forest Officer, Garhwal Forest Division, Pauri.
5. G.C. Misra, Silviculturist, Southern Region, Kanpur.
6. P.C. Joshi, Divisional Forest Officer, Soil Conservation Division, Nainital.
7. Brijendra Prasad, Divisional Forest Officer, Dehradun Forest Division, Dehradun.
8. B.S. Burfal, Divisional Forest Officer, Nainital Forest Division, Nainital.
9. D.S. Tomar, Working Plan Officer, Bijnor, Working Plan Circle, Nainital.

RESPONDENTS.

By Advocate Sri Ashok Mohiley
Sri A.K. Gaur

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Original Application NO. 1320/88

G.C. Mishra, A/a 45 years, State Silviculturist,
Southern Region, Uttar Pradesh, Kanpur-24.

Applicant

By Advocate Sri Sunil Gupta

Versus

1. Union of India through the Joint Secretary to the Government of India, Ministry of Environment and Forests, Paryavaran Bhawan, C.G.O. Complex II, New Delhi-110003.
2. State of U.P. through Secretary, Forests, Secretariat, Government of U.P., Lucknow.
3. P.C. Joshi, Divisional Forest Officer, Soil Conservation Division, Nainital.
4. Brijendra Prasad, Divisional Forest Officer, Dehradun Forest Division, Dehradun.
5. B.S. Burfal, Divisional Forest Officer, Nainital Forest Division, Nainital.
6. D.S. Tomar, Working Plan Officer, Bijnor, Working Plan Circle, Nainital.

Respondents.

By Advocate Sri Ashok Mohiley
Sri A.K. Gaur.

Original Application No. 1324/88

K.C. Chaudhari, A/a 45 years, Divisional Forest Officer,
Garhwal Forest Division, Pauri, U.P.

APPLICANT

By Advocate Sri Sunil Gupta.

Versus

1. Union of India through the Joint Secretary to the Government of India, Ministry of Environment and Forests, Paryavaran Bhawan, C.G.O. Complex II, New Delhi - 110003.
2. State of U.P., through Secretary, Forests, Secretariat, Government of U.P., Lucknow.
3. P.C. Joshi, Divisional Forest Officer, Soil Conservation Division, Nainital.

4. Brijendra Prasad, Divisional Forest Officer, Dehradun Forest Division, Dehradun.
5. B.S. Burfal, Divisional Forest Officer, Nainital Forest Division, Nainital.
6. D.S. Tomar, Working Plan Officer, Bijnor, Working Plan Circle, Nainital.

RESPONDENTS.

By Advocates Sri Ashok Mohiley.
Sri A. K. Gaur.

O R D E R

By Hon'ble Dr. R.K. Saxena, Jud. Member

These are the three cases O.A. No. 1079/88, 1320/88 and 1324/88. These three cases have been instituted by S/Shri G.P. Pandey, G.C. Mishra and K.C. Chaudhary, challenging the year of allotment in I.F.S. Since the same question of facts and law is involved in all the three cases, they are, therefore, taken up together and are being disposed of by one common Judgment.

2. We shall ~~discussed~~ the facts casewise and thereafter we shall take up the issues involved therein.

Original Application No. 1079/88

3. The applicant in this case is Sri G.P. Pandey. He contends that he was appointed to the superior Forest Service U.P. on 01.4.1968 as Assistant Conservator of Forest. In the year 1976, he was selected for deputation to Government of Bhutan and was sent to Bhutan where he joined on 24/5/1976 as Divisional Forest Officer. The services of the applicant were lent to Government of Bhutan in pursuance of a treaty between the two countries, the extract of which was given in the

circular dated 10.5.1973 (annexure .1). The applicant served in Bhutan till 03.6.1980. When he was on deputation to Govt. of Bhutan, his name was included in the Select-list of I.F.S., and the government of U.P. issued appointment letter dated 21.6.1979 (annexure-5) whereby eleven Officers including this applicant, Kailash Chandra Chaudhary and G.C.Misra were posted as Dy. Conservators of Forest. It was mentioned in that order that the incumbents should assume ^{charge and send} their charge certificates to the State government. It was also mentioned that those who were either on deputation or on foreign service, should continue on the same posts, but they were directed to send their charge certificates of the cadre post to the government. Copy of this order was also sent to the ~~government~~ ^{Secretary} Government of India, Department of Personnel and Administrative Reforms. In this list, the ^{names} ~~names~~ of two Senior Officers S/ Sri B.N.Misra and N.K.Upadhyaya and some junior officers namely S/ Sri R.C.Tewari, K.C.Chowdhury, G.C.Misra, P.C.Joshi and Brijendra Prasad, were also included. The applicant was issued a pay-slip in the grade of ^{Rs 1100-1600} ~~Rs. 1100-1600~~ admissible to the post of Deputy Conservator of Forest on 06.9.1979 (annexure-7). The Charge certificate (annexure-6) was also sent by the applicant through the government of Bhutan. The problem arose when the impugned order dated 19.9.1988 (annexure-12) was issued determining the seniority and assigning the year of allotment to the applicant. According to this order, the applicant was assigned 1976 as the year of allotment. Hence this Original application has been preferred challenging the seniority and year of allotment. In this order ^(annexure-5) S/ Sri P.C.Joshi and Brijendra Prasad had been assigned the ^{year} ~~year~~ of 1969 although they were junior to the applicant.

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~~the year of 1969 although they were junior to the~~
~~applicant~~
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4, The respondent no.1 is Union of India while the respondent no.2 is State of Uttar Pradesh and both the respondents have filed their separate counter-replies and opposed the O.A. The contention of the respondent no.1 in the counter-reply is that inclusion of the name in the select list is no guarantee to the IFS because the promotion is made on the availability of the post. It is also claimed that the year of allotment of the promotee officers is determined as the same as that of the junior most amongst the directly recruited officer who was promoted to the senior time scale. It is also claimed that the applicant was not officiating even temporarily on a post included in the State cadre of the I.F.S. between the dates of inclusion of his name in the select list and actual promotion to the I.F.S. It is also pleaded that the State Government had not issued a certificate in terms of Explanation-4 appended to Rule 3(2)(c) of the Seniority Rules to the effect that but for his officiation in an ex-cadre post, the officer would have continued to function in a cadre post. It is also contended that the period in which the applicant remained on deputation with Government of Bhutan, could not be counted for officiation because the officiation cannot be in absentia and also cannot be proforma^{of} officiation. Hence, the determination of the year of allotment and seniority, has been justified.

5. The respondent no.2 contended that the applicant had served on deputation on ex-cadre post in the Government of Bhutan and thus, the question of his having served concurrently at any post in Uttar Pradesh cadre, did not arise. It is, therefore, urged that the applicant had not officiated at all. As regards those officers who were junior to the applicant, it has been pointed out that since they had officiated on the post of promotion, they became senior and the assignment of the 1969 as the year of allotment, was justified.

6. The applicant submitted rejoinder-affidavit, reiterating the facts which were mentioned in the O.A. It has been pointed out that if the applicant could not officiate against the cadre post from 21.6.1979 till his return from deputation, it was because of the respondent no.1 and 2 both. It is also contended that the respondent no.1 was equally responsible for not having objected to the endorsement of respondent no.2 about the officers who were on deputation or foreign service to continue ~~there~~ with.

Original Application No. 1320/88

7. This O.A. has been filed by Sri G.C. Misra, challenging the impugned order dated 19.8.1988. It is claimed by this applicant that he was appointed as Assistant Conservator in State Forest Service on 01.4.1968 and was posted as Deputy Conservator of Forest, Breeding Centre, National Chambal Sanctuary Project, Lucknow but it was not taken into account as officiating period.

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Consequently, the seniority of the applicant was lowered and he was assigned 1976 as the year of allotment. He felt aggrieved and, therefore, filed this O.A.

8. The respondent no.1 and 2 filed their counter-replies respectively. In the counter-reply filed on behalf of the respondent no.1, the main ground is that there was no effective officiation in respect of the post held by the applicant and no certificate as required under the rules, was sent; and, therefore, the period which was spent on the post of Deputy Conservator of Forest, Breeding Centre, Lucknow, could not be taken into consideration as officiation on the cadre post.

9. The respondent no.2 also took the stand that the applicant had not officiated and, thus, there was no point of his claiming higher seniority.

10. The applicant had filed rejoinder-affidavit, in which the facts as were mentioned in the O.A., were re-stated.

Original Application No. 1324/88

11. This O.A. has been filed by K.C. Chaudhary with the plea that he was appointed as Assistant Conservator in the State Forest Service on 01.4.1968. He was sent on deputation as Deputy Director Project Tiger in Corbett National Park, Ram Nagar, U.P. vide order dated 17.6.78 and joined there. During the period when he was working as Deputy Director Project Tiger in Corbett National Park, Ramnagar, his name was included in the select list on 17.1.1979 and was placed at serial no.5.

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The respondent no. 2 had issued an order dated 21.6.79 asking the applicant and other incumbents to send their charge certificates and to continue on the place of posting. Accordingly the applicant submitted his charge certificate and continued at the Corbett National Park, Ramnagar. In his case also, the trouble started when impugned order dated 19.8.1988 (annexure-C) was issued and officiation period was shown NIL and assignment of 1976 as the year of allotment was given. The grievance of the applicant is that the entire period which was spent in Corbett National Park, should have been counted for officiation and allotment of year should have been 1979 as was done in the case of those officers who were junior to him.

12. The respondent no. 1 and 2 after filing their separate counter replies justified the determination of the year of allotment and seniority. The stand taken by them is that the applicant did not officiate on cadre post and officiation could not be in absentia. It is also claimed that no requisite certificate of officiation was sent, and therefore, no justification for change in the year of allotment or seniority, was possible.

13. The applicant filed supplementary affidavit in which the facts as were already mentioned in the Original application, were re-affirmed.

14. We have heard the learned counsel for the applicants and the respondents and have perused record.

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15. The main question for consideration in these three cases is as to whether a fresh certificate as has been claimed by the respondents no.1 and 2 about fixation of the applicants on the post of promotion, was needed when they had gone on the deputation and they were authorised by the respondent no.2 to fill in the charge certificate of the post of Deputy Conservator of Forest and to continue on the post which they held.

16. There is no dispute that of these applicants, ~~Shri~~ Shri G.P. Pandey had gone on deputation to Bhutan and ^{was} relieved ^{on} ~~for~~ on 18.5.76; and he had joined as Divisional Forest Officer under Royal Government of Bhutan on 24/5/76. He continued on Foreign Service upto 03/6/80 when he was relieved by the said Government.

17. Similar situation is obtainable with Sri G.C. Misra and K.C. Chaudhary, applicants in O.A. no. 1320/88 and 1324/88. Sri G.C. Misra was sent on deputation as Deputy Conservator of Forest Breeding Centre, National Chambal Sanctuary Project, Lucknow [&] vide order dated 25/27-1-79 (annexure -4). He had taken over the charge on 17/3/79. He continued to work there till he was transferred to Gorakhpur vide order dated 14/9/79 (annexure-9). Sri K.C. Chaudhary was appointed as Deputy Director Project Tiger in Corbett National Park, Ramnagar vide order dated 17.6.78 (annexure-4) and he had taken over the charge on 28.6.78 vide charge certificate annexure-5. He also worked on the said post till he was transferred to Gomti vide order dated 14/15-9-79 (annexure-8), and

he had taken over the charge as Divisional Forest Officer, Gonda on 13/10/79.

18. It is also an admitted fact to the applicants and to the defending respondents that the names of these applicants were included in the select-list of I.F.S. and an order dated 21.6.79 was issued by the respondent no.2 promoting them to the post of Deputy Conservator. The copy of this order was sent to the Government of India, and Chief Conservator of U.P., Lucknow was directed that he should get the charge certificates filled in from the date of promotion (which of course was 21.6.79). It was further mentioned in that order that those officers who were on deputation or on foreign service out of the department, they would continue on their posts. The Chief Conservator was, however, directed that the re-commendation for posting against the substantive vacancies in the quota of promotion, be also sent to the Government. In compliance ^{with} the order, the charge certificates were filled in and transmitted to the respondent no.2. It appears that the said order dated 21.6.79 in the case of G.P. Pandey, ^{it} reached Royal Government of Bhutan in August, 1979 and the said Royal Government of Bhutan had passed the order dated 06.8.79 (ann-7) making the applicant as Deputy Conservator of Forest in I.F.S. senior scale of pay of Rs.1100-1600/- ⁹ He had assumed the office and filled in the charge certificate on 07.8.79. The copy of which was sent to the Chief Conservator of Forest, U.P., Lucknow.

19. In the case of G.C. Misra, the order dated 21.6.1979 appears to have been delivered in the office of the Deputy Conservator of Forest, Breeding Centre, Lucknow in the same month and the charge certificate assuming the charge of the office of Deputy Conservator of Forest was ^{filled in} ~~assumed~~ on 25.6.79 with retrospective effect of 21.6.79; and the copies of the charge certificates were sent to the Secretary to the Government of India, Ministry of Personnel and Administrative Reforms, ^{to} ~~the~~ Secretary Government of U.P., Chief Conservator of Forest, U.P. and others. As regards K.C. Chaudhary, the charge certificate in compliance with the order dated 21.6.79 was filled in on 03.7.79 and the copies were forwarded to the Secretary, Government of India, Ministry of Personnel and Administrative Reforms, ^{to} ~~the~~ Secretary to the Government of U.P., Chief Conservator of Forest, U.P. and others. In this way, it is transpired that all the three applicants, on receipt of the copies of order dated 21.6.79, had filled in the charge certificates as was required of them. Since they were directed to continue on their posts held by them, they continued. Actually they joined the post of Deputy Conservator of Forest or equivalent thereto which were the cadre posts of I.F.S. on their return from deputation. In the mean-time, the year of allotment was assigned to them including others and seniority was also fixed. The problem started when these three applicants were shown to have been included in the select-list w.e.f. 17.1.1979. No period of continuous officiation was shown against

G.P. Pandey and G.C. Mishra but, in the case of K.C. Chaudhary it was shown from 13.10.1979, The date of promotion to the I.F.S. was shown 12.12.1979 in the case of Sri G.P. Pandey and K.C. Chaudhary but, 13.7.1982 in the case of G.C. Mishra. The copy of this order dated 19.8.88 (annexure -12) has been brought on record. The problem did not end here but, it continued when all these three applicants were assigned 1976 as the year of allotment. Their objection is that those who were juniors, were allotted 1969 as the year of allotment whereas they have been assigned 1976. In this connection, the argument advanced on behalf of the learned counsel for the respondents is that the State Government did not issue the certificate which was required under rules for counting the officiating period for the purpose of determination of seniority as well as assignment of the year of allotment. The question arises as to what is the connotation of a certificate. In common parlance, the certificate means giving certain information authentically by the person who issued the certificate to whomsoever it may concern^{ed}. Explanation-4 attached to Sub-Rule (2) (c) of Rule 3 of Seniority Rules provides that the State Government should certify^d within three months of the appointment of an officer of the service who has been posted on non-cadre post. It is also mentioned that the State Government should intimate through that certificate that such an officer would have so officiated but for his appointment on the non-cadre post. In this case, the respondent no.2 has come with an averment that no such certificate was issued by it to the

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Central Government. The same stand has been taken by the Central Government as respondent no.1. We have already discussed the order dated 21/6/79 whereby the State Government had specifically mentioned that all those officers who were inducted in I.F.S., were posted as Deputy Conservator of Forest and they were required to fill in the charge certificates with the same date which was the date of issue of the order. Not only this, it was clearly indicated in the said order that the holders of the posts on deputation or in foreign service, should continue on their posts. The learned counsel for the applicant argues that this direction should be treated as certificate which is required under the Rules. The reason assigned by him that all the three applicants were either on deputation or on foreign service and G.P. Pandey- the applicant in O.A.no.1079/88 had gone to join the services of Royal Government of Bhutan with the approval and selection made by the Central Government. It is also argued that whosoever goes ^{either} on deputation or in foreign service, shall not be permitted to handover the charge of the said post on deputation or of foreign service on his own accord and would immediately join the post offered on promotion as that of Deputy Conservator of Forest in these cases. The argument that State Government ought to have clearly mentioned in order that if the applicants failed to join the services, they would lose seniority or assignment of proper year of allotment. Not only this, it is claimed that the State Government should have taken steps to call of these applicants back to protect their interests but it was not done. We are in

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agreement with the argument advanced by the learned counsel for the applicant. It cannot be thought of that the applicants may be sent on deputation or on foreign service and at the same time they may be denied protection of their interest about their future promotion in the parent department. We are rather surprised at the argument made by the learned counsel for the State Govt., when he said that no such certificate, as was required under rules, was issued, and, therefore, the applicants could not claim the seniority and the assignment of the year of allotment which was given to their juniors in the State service. In our opinion, the applicants cannot be held responsible for not having actually joined the post of Deputy Conservators of Forest immediately on receipt of the orders because they were on deputation. The argument of the learned counsel for the respondents no. 1 and 2 that there can be no officialisation of the post of promotion or the cadre post of I.F.S. in absentia, is a fallacious argument. These are such circumstances in which legal fiction comes into play. The compliance of the order of joining the post of cadre of I.F.S. could not be done by the applicants because they were on deputation. In this connection, case of the applicant G.P. Pandey can particularly be mentioned because he was on foreign service on the basis of the agreement between the Government of India and Royal Government of Bhutan as is clear from annexure no.1. In our opinion, note which was given by the respondents no.2 in the order dated 21.6.1979 should be deemed as compliance of issuing certificate under

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the rules
/ of this fact, the change in the seniority and the assignment of the year of allotment of the applicants is needed.

20. There is no dispute that the applicant G.P. Pandey was ² senior to S/Shri R.C. Tiwari, P.C. Joshi, Brijendra Prasad, while Sri K.C. Chaudhary and G.C. Misra were senior to S/Shri P.C. Joshi and Brijendra Prasad in the State Service. The applicants as well as S/Shri R.C. Tiwari, P.C. Joshi and Brijendra Prasad were included in the select list of I.F.S. on 17.1.1979 vide impugned order dated 19.8.88. When the question of assignment of allotment came, S/Shri R.C. Tiwari, P.C. Joshi and Brijendra Prasad who were juniors to the applicants, were given 1969 as the year of allotment whereas the applicants were assigned 1976 as the year of allotment. All of them had joined as Deputy Conservators of Forest by the same order dated 21.6.1979. In these circumstances, there is no justification that the applicants should be treated juniors in I.F.S. to S/Shri R.C. Tiwari, P.C. Joshi and Brijendra Prasad. Since the year of allotment of S/Shri R.C. Tiwari, P.C. Joshi and Brijendra Prasad is 1969, the same year should be assigned to the applicants as the year of allotment.

21. Having considered the facts, circumstances and the legal position, we come to the conclusion that the applicants succeeded and the O.A.'s are allowed. No order as to costs.

[Signature]
Member (A)

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Member (J)