

Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH. (1)

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Registration O.A. No. 1145 of 1988

Birendra Dutt Raturi Applicant.

Versus

Union of India
and others Respondents.Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. K. Obayya, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant who was appointed on the post of Assistant Conservator of Forest in the year 1969 after being selected through U.P. Public Service Commission for U.P. Forest Service has approached this Tribunal challenging the year of allotment and the seniority which was given to him. He has filed this application against the Government of India order No. 1814-14/83 -IFS-II dated 19.8.1988 determining the year of allotment and inter-se seniority of 17 State Forest Officers of U.P. Cadre appointed in the Indian Forest Service. The applicant has been illegally assigned the year of allotment of 1980 and his seniority has been counted with effect from 15.11.1984.

2. The grievance of the applicant is that the respondent Nos. 21 & 22 were also recruited in the State Forest Service of U.P. in the year 1967 and 1968 and were confirmed w.e.f. 1.4.1973 and 1.4.1974 respectively and the respondent Nos. 23 and 24 were member of Subordinate Forest Service in U.P., working as Ranger and were recruited as such in the year 1951 and 1952

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and were given appointment in substantive capacity in the U.P. State Forest Service w.e.f. 1.1.1975, while, the respondent Nos. 3 to 20 are directly recruited officers of Indian Forest Service. The respondent no.3 was recruited in the year 1975, 4 and 5 were recruited in the year 1976, 6 and 7 were recruited in the year 1977, 8 to 11 were recruited in the year 1978, 12 to 15 were recruited in the year 1979 and 16 to 20 were recruited in the year 1980. The applicant was promoted from the State Forest Service to the Indian Forest Servicew.e.f. 15.11.1984. The applicant was brought in the select list prepared under Regulation-5 of the Promotion Regulation on 17.1.1979 and thereafter he continued in the subsequent select list also. The Respondent no.21 was brought on the select list on 12.2.1980, 22 was brought on the select list on 11.2.1981, 23 was brought on the select list on 17.1.1979 and 24 was brought on the select list on 28.1.1984 and thereafter they also continued in the subsequent select list. After being brought in the select list, the applicant was promoted under rule-9 of the Cadre Rules on a senior post in officiating capacity vide Govt. of U.P. order dated 21.6.1979. Vide order dated 21.6.1979, the applicant was appointed on the senior post which has included in the U.P. Cadre of the Indian Forest Service but he was appointed on the non-cadre post of Project Manager, Water Shed Management, Project from 18.1.1984 to 30.9.1986. According to the applicant, he is entitled for the entire period towards continuous officiation ever since, he was appointed on a senior post and on the post on which he was sent, i.e. the post of Project Manager was not of his own

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option but the respondents had sent @ him and the post was to be deemed as a cadre post, as such he was entitled to the benefit of the said entire period. While, according to the respondents, as the applicant was appointed on a non-cadre post, the applicant would have counted for the purposes of determination of seniority, if the Government would have issued a certificate covering the period of applicant's appointment in a non-cadre post as provided in Explanation-4(2+3 C) below rule but no certificate appears to have been issued by the State Government which was the Competent Authority in this behalf within the stipulated period; Rule-3 of the Seniority rules lays down manner for assignment of year of allotment and rule 4 lays down manner for determination of inter-se seniority of Indian Forest service which are being quoted below:

"3-Assignment of year of allotment:-

(1) Every officer shall be assigned a year of allotment in accordance with provisions hereinafter contained in this rule.

(2) The year of allotment of an officer appointed to the service shall be-

(a) Where an officer is appointed to the Service on the results of a competitive examination the year following the year in which such examination was held.

(b) Where an officer is appointed

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to the Service at its initial constitution in accordance with sub-Rule (1) of rule-4 of the Recruitment rules, such year will be determined in accordance with the following formula;

3. From the fact it is clear that for effective management of Water Shed in Hill areas the U.P. Government established a Directorate under Chief Project Director having its office at Dehradun. The above establishment gave requirement of two conservator of Forests, four Dy. Conservator of Forests and Six Assistant Conservator of Forests. A selection committee held its meeting on 8.9.1983 wherein it recommended only two incumbents for the post of Dy. Conservator of Forests under Water Shed Management and recorded in its meeting that the remaining two incumbents cannot be made available due to great scarcity of officers in the department. Subsequently, the Government deliberated for creation of the two posts of Project Manager equivalent to the post of Dy. Conservator of Forest and in pursuance of the said contemplation, the Chief Project Director, Water Shed Management, U.P. Dehradun vide his letter dated 1.10.1983 sought consent of Sri A.S. Negi and Sri R.S. Thapa, Divisional Forest Officers posted at Banda and Lanes-down at the relevant time for their posting as Project Manager at Pauri and Srinagar. The State Government vide its letter dated 15.12.1983 also communicated the sanction of creation of the post of Project Manager in the pay scale of Rs.1250-2050. The post of Project Manager being under State

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deputation reserve was given its own pay scale but it was equivalent and interchangeable with the senior scale post of Indian Forest Service which was Rs. 1100-1600 at the relevant time on account of the fact that in the State of U.P., the pay scale by that time having already revised the dearness allowance had merged and hence, higher pay scale technically was available with no substantial difference in the total pay packet ~~with corresponding scale of the Central Government~~ with corresponding scale of the Central Government which was not revised till that date. The post of Project Manager and Senior Scale I.F.S. i.e. Dy Conservator of Forest were interchangeable and equivalent will be apparent from the letters dated 5.10.1984, 10.11.1984 and 18.12.1984. Vide letter dated 21.6.1979, the respondent no. 2 in consultation with the Government of India vide their letter dated 3.5.1979 gave ~~11~~ eleven officiating promotions to the officers of the State Forest Service who were already included in the select list of 1979, 4 senior scale posts of Indian Forest Service, but the office of the Accountant General, U.P. Allahabad did not clear payment of salary to the said incumbents including the applicant on the plea that before clearing salary, they required notification from the Govt of India, although the above eleven incumbents including the applicant continued to hold senior post in Indian Forest Service, U.P. Cadre, hence, the State Government paid salary to them in the pay scale applicable in the State Forest Service, ~~against~~ ~~which~~ against which the applicant sent several

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representations for payment of salary in the senior pay scale of Indian Forest Service.

Before dealing with the contravertial issue, it will be relevant to make a reference to some of the rules, which are attracted in this case.

Rule-6(A) reads as follows;

" 6-A Appointment of officers in the junior time scale of pay to posts in the senior time scale of pay; (1) Appointments of Officers recruited to the Service under clause(a) or clause (aa) of such rule (2) of Rule-4 to posts in the senior time scale of pay shall be made by the State Government concerned.

(2) An officer referred to in sub rule(1) shall be appointed to a post in the Senior time scale of pay if, having regard to his length of service and experience, the State Government is satisfied that he is suitable for appointment to a post in the senior time scale of pay.

Provided that if he is under suspension or disciplinary proceedings are instituted against him, he shall not be appointed to a post in the senior time scale of pay until he is reinstated in the service or the

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disciplinary proceedings are concluded and final orders are passed thereon, as the case may be;

Provided further that on the conclusion of the disciplinary proceedings,

(a) if he is exonerated fully and the period of suspension, if any, is treated as duty for all purposes he shall be appointed to the senior time scale of pay from the date on which he would have been so appointed, had the disciplinary proceeding not been instituted against him and paid accordingly, and

(b) if he is not exonerated fully and if the State Government, after considering his case on merits proposes not to appoint him to the senior time scale of pay from the date on which he would have been so appointed had the disciplinary proceedings not been instituted against him, he shall be given an opportunity to show cause against such action.

(3) Notwithstanding anything contained in the sub-rule(2) the State Government may,

(a) withhold the appointment of an officer, referred to in sub rule-(1) to a post in the senior time scale of pay.

(i) till he is confirmed in the service or
(ii) till he passes the prescribed departmental examination or examination and appoint to such a post an officer junior to him.

(h) appoint an officer, referred to in sub-Rule (i) at any time to a post in the senior time scale of pay as a purely temporary or local arrangement."

Indian Forest Service appointment by promotion, Regulation 1966(hereinafter known as Promotion Regulations) also has got material for the purposes of this case. The inter-se seniority and year of allotment is governed by the Indian Forest Service (Regulation of Seniority)Rules, 1968, hereinafter referred to as seniority rules, Rule-2 is the definition clause defining various terms used in the seniority rules, Relevant definitions contained in rule-2(a) (d) (g) (I) are being quoted below;

2-Definitions- In these rules unless the context otherwise requires;

(a) 'Cadre' means an Indian Forest Service Cadre constituted in accordance with rule-3 of the Indian Forest Service (Cadre) Rules, 1966.

(d) "gradation List" means a gradation list prepared under rule-5.

(g) 'Senior Post' means a post included and specified under item -I of the cadre of each State in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 and includes a post included in the number of posts specified in items-2 and 5 of the said cadre, when held on senior scale of pay by an officer recruited to the service in accordance with sub rule(I) of Rule-4 or rule-7 of Recruitment Rules".

(I) 'Select List' means the select list prepared in accordance with the Indian Forest Service (Appointment by promotion) Regulations, 1966,"

4. The assignment of year of allotment of officers of the Indian Forest Service is governed by the provisions of Regulation-3 of the Indian Forest Service (Regulation of Seniority) Rules, 1968. The relevant provisions of which are reproduced hereunder;

"3. Assignment of year of allotment-(1) Every officer shall be assigned a year of allotment in accordance with provisions hereinafter contained in this rule.

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(c) where an officer is appointed to the service by promotion in accordance with rule-8 of the Recruitment Rules, the year of allotment of the junior most amongst the officers recruited to the service in accordance with rule-7 or if no such officer is available the year of allotment of the juniormost amongst the officers recruited to the service in accordance with rule 4(1) of these rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former.

Explanation-1: In respect of an officer appointed to the service by promotion in accordance with sub-rule(1) of rule-8 of the Recruitment rules, the period of his continuous officiation in senior post shall, for the purposes of determination of his seniority, count only from the date of the inclusion of his name in the select list, or from the date of his officiating appointment to such senior post, whichever is later."

The terms of the provisions of Explanation-4 below rule 3(2) (c) which read as Under;

"Explanation-4 An officer appointed to the service in accordance with sub-rule (1) of Rule-8 of the Recruitment Rules shall be treated as having officiated in a senior post during any period of appointment to a non-cadre post if the State Government has certified within three months of his appointment to the non-cadre post that he would have so officiated but for his appointment, for a period not exceeding one year, and with the approval of the Central Government, for a further period not exceeding two years, to a non-cadre post under a State Government or the Central Government in a time-scale identical to the time scale of a senior post.

Provided that the number of officers in respect of whom the certificate shall be current at one time shall not exceed one-half of the maximum size of the select list permissible under sub-regulation(2) of Regulation-5 of the Indian Forest Service (Appointment by promotion) Regulation, 1966 and follow the order in which the names of such officers appear in the select list.

Provided further that such certificate shall be given only, if for every senior officer in the select list appointed to a non-cadre post in respect of which the certificate is given, there is one junior select list officer officiating in a senior post under rule-9 of the Indian Forest Service (Cadre) rules, 1966.

Provided also that the number of officers in respect of whom the certificate is given, shall not

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~~no certificate shall be given~~, shall not exceed the number of posts by which the number of cadre officers holding non-cadre posts under the control of the State Government falls short of the deputation reserve sanctioned under the schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulation, 1966.

4. On behalf of the applicant, it was contended that the applicant had no hand in the matter of appointment and he was sent on deputation without his ~~volition~~ ~~and~~ the post of equivalent to the post of Deputy Conservator of Forest and his pay was fixed at a higher level and the post being State Deputation Reserve, and it was to be deemed to be the senior post equivalent to the post of Dy. Conservator of Forest, as such, he was deemed to be continuously on a senior post and he was entitled to the benefit of the said period. As he was sent on deputation, by the Government itself, the period during which he worked on deputation will be deemed to be working on a cadre post. It was further contended that the explanation -4 below rule 3(2) (c) will not stand in his way. The explanation -4 itself provides that such certificate shall be given only, if for every senior officer in the select list appointed to a non-cadre post in respect of which the certificate is given, there is one junior select list ~~an~~ officer officiating in a senior post under rule-9 of the Indian Forest Service (Cadre) Rules, 1966.

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~~and~~ Even if the condition was not satisfied for issuing the certificate, the applicant cannot be made to suffer for the same.

5. The applicant has raised the ground that the provisions of rule 2(g) in the Indian Forest Service (Regulation of Seniority) Rules, 1968 act in a discriminatory manner between the initial recruits and direct recruits on the one hand and promotees on the other hand. This is on account of an error of comprehension on the part of the applicant as promoted officers cannot be covered under the said provisions as their appointments under items 2 & 5 of the cadre strength can only follow and not precede their promotion to the Indian Forest Service.

The second proviso to Rule-4 provide that the State Government may add for a period not exceeding 1 year and the Central Government may add the period not exceeding two years to State or Joint Cadre one or more posts carrying duties and responsibilities of a like nature to the cadre post. Thus while, every cadre post is not a senior post, but a senior post may be in a cadre or outside cadre. Rule 29(2) of the Cadre rules deals with appointment of a non-select list officer, or a non-cadre officer or the appointment of a non-cadre officer to a cadre post but this is not the position here.

6. In the instant case, the appointment of the applicant on a non-cadre post would have counted for the purpose of determination of seniority if the State Government has issued a certificate

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covering the period of the officer's appointment in a non-cadre post and it is a settled principle of law that no person should be allowed to suffer for the delay and laches on the part of the Government. In this case, no clarification in this behalf has been given.

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7. Regulation-8 of the Recruitment by Promotion, provides that 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 Government and the commission from time to time make recruit to the service persons by promotions from amongst the substantive members of the State Forest Service. If the junior officers were appointed from the select list by the State Government, by overlooking the claim of the Senior officers, the same would violate regulation-8 of the promotion Regulation and a person cannot be made to suffer from the same. In this connection, a reference may be made to the case of Amrik Singh and others Vs. Union of India, AIR, 1980 SC which was a case of IPS officer, the provisions of which service are more or less analogous to the Indian Forest Service. In this case, the court observed that Rule-9 has a crucial impact in regard to temporary appointment of non-cadre officers to cadre post. With reference to the State

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Government failure to report to Central Government ~~consequently~~ and to consult UPSC regarding officiation in cadre post by a non-cadre officer beyond six months the court held that same was not fatal to the period of officiation. It was further observed that the appointment to the senior post of in the cadre from amongst the officers/select list should be done in accordance with their seniority. A reference has also been made to the case of State of Maharashtra Vs. J.A. Karandikar, AIR, 1989 SC, 1133 in which it was held that no one is to suffer from the delay and laches on the part of the Government. Accordingly, by legal fiction, the applicant will be deemed to be continuing to hold a cadre post i.e. the post which was equivalent to the post of Dy. Conservator of Forest on which the salary of the applicant was given. Even if, no formal declaration was given by the applicant for its inclusion in the cadre, it ~~would be~~ deemed to have ^{been} included and in any case, it was a case of State Deputation Reserve and the applicant will be entitled to count the said period as he continued to hold the cadre post.

8. Accordingly, the applicant having been holding a continuous post, as such, the entire period is to be treated as period towards continuous officiation and the applicant will be entitled to the benefit of the same. Accordingly, this application deserves to be allowed and the order dated 19.8.1988 determining the seniority of the applicant is

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quashed and the respondents are directed to determine the seniority and the year of allotment of the applicant in accordance with law in the light of observations made above within a period of 3 months from the date of communication of this order and if necessary, issue a necessary certificate as required under Explanation-4 of the Indian Forest Service (Regulation of Seniority) Rules which could not be issued because of the fault and laches on the part of the State Government. The application is allowed as above. No order as to Costs.

[Signature]
Member (A)

[Signature]
Vice-Chairman

Dated: 16th February 1993

(n.u.)