

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 1368 of 1995

Allahabad this the 21st day of Nov. 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)
Hon'ble Mr. S. Dayal, Member (Adm.)

Chandra Bhushan, S/o Shri Ganga Sagar Srivastava,
R/o Village and Post Office Panika, Distt. Deoria.

A PPLICANT

By Advocate Shri Ashok Bhushan

Versus

1. Union of India through the Secretary, Ministry of Environment and Forests, C.G.O. Complex, Lodi Road, New Delhi.
2. The Union Public Service Commission, Dholpur House, New Delhi through its Chairman.
3. The State of Uttar Pradesh through the Principal Secretary Forests, Van Anubhag-1, Secretariat, Government of Uttar Pradesh, Lucknow.

RESPONDENTS.

ORDER

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

The applicant Chandra Bhushan, a member of Indian Forest Service has sought quashment of the order dated 22/24-8-95 (Annexure A-1) whereby the representation regarding fixation of seniority and year of allotment, was rejected.

2. The brief facts of the case are that the applicant was recruited in the Forest Service of U.P. in 1965 and was appointed as Assistant Conservator

of Forests. The Indian Forest Service (for short I.F.S.) was created on 01.10.1966 and all those officers who were working in the State Forest Service, were appointed as initial recruits in the I.F.S. The posts of Deputy Conservator in the State were subsequently merged in I.F.S. cadre.

3. The applicant claims to have been promoted as Deputy Conservator of Forest on 19.3.36 and was posted as Divisional Forest Officer at Agori in Mirzapur District. He took over the charge on 20/3/76. He remained^{ed} posted as Deputy Conservator of Forests or ^{on} equivalent posts at several places starting from 1976 to 1992. It appears that while the applicant was posted at Agori Division Obra in the year 1976-77, some disciplinary inquiry^{was} started against him. He was also awarded adverse character-role entry for the said year but, on representation being made, the said adverse entry was expunged in the year 1979-80. As regards the disciplinary inquiry, the applicant had filed a Writ Petition No.11562 of 1985 in the High Court, which quashed the disciplinary proceedings vide order dated 05.10.1993. In the Judgment of the Writ Petition, the respondents were directed to consider the applicant for promotion in accordance with the rules. It is contended that the State Government intimated the applicant vide order dated 29.5.95 that he was ^{ex}onerated of the charges.

4. On 20.12.1977, the Selection Committee for I.F.S. met but, the name of the applicant could not be considered because of adverse remarks given to the applicant

and because of the pendency of the disciplinary inquiry. The result was that the name of the applicant could not be included in the select list for that year. In subsequent years also, the applicant could not be considered for those two reasons. Ultimately the applicant filed a Writ Petition 6175 of 1981 in the High Court but, the same was transferred to the Central Administrative Tribunal where it was allotted T.A.No.635 of 1987. The said T.A.no. 635 of 1987 was decided on 01.7.1992 and it was ordered that Review Selection Committee be convened to consider the case of the applicant alongwith the cases of the candidates who were selected in the year 1977. It was also directed that the adverse remarks which were expunged subsequently, be ~~ex~~cluded. The further observation was that in/case the applicant was selected, he would be given promotion on notional basis w.e.f. the date his next junior was promoted. It was also observed that in/case the applicant was not found fit to be selected in that year, the Selection Committee should consider him for the next year and so on in the like manner and promotion too would be given to him accordingly. The period of two months from the date of communication of the order was given to the Selection Committee for completing all the formalities. In pursuance of this direction, the meeting of the review of Departmental Promotion Committee was held on 16.12.1992 and the name of the applicant was considered. It is claimed by the applicant that his name should have been included in the select list of the year 1977 alongwith his immediate junior Sri D.N. Bhatt and his date of appointment in the I.F.S. as well as

the year of allotment should have been 05.8.78 and 1969 respectively but for the purpose of entry in I.F.S. and allotment of the year, the directions of the Tribunal were ignored. Contrary to his expectations, the entry in I.F.S. was allowed w.e.f. 27.11.87 which was subsequently changed to 1983. Similarly the year of allotment was given 1987 and subsequently changed to 1983 and he was placed below Sri Ashok who was appointed in I.F.S. in the year 1983. The applicant submitted representation about the correct determination of the year of allotment but, the same was rejected. Hence, this O.A. with the relief as is disclosed above.

5. There were three respondents, namely Union of India, Union Public Service Commission and State of Uttar Pradesh in this case. Of them, respondent no.1 and 3 have filed separate counter-replies but, no counter-reply was filed by the respondent no.2. The counter-reply of respondent no.1 was filed by one Sri R. Sanehwal, Under-Secretary Ministry of Environment and Forest. The impugned order has been supported by the respondent no.1, by saying that the applicant was assigned 1983 as the year of allotment in the Indian Forest Service in accordance with the Rule 3(2) and 4(4) of the Indian Forest Service (Regulation of Seniority) Rules, 1968. The representation of the applicant for modification in the year of allotment assigned to him, was rejected on the ground that the applicant had not officiated in the cadre post in accordance with the Indian Forest Service (Cadre) Rules, 1966. It is pleaded on behalf

of the respondent no.1 that the officiation on the cadre post requires prior approval of the Central Government and Union Public Service Commission if it goes beyond the period of 3 months. It is averred that in pursuance of the directions of the Tribunal, a meeting of the Review Selection Committee was held on 16.12.1992 for review of the select list for the year 1977 to 1980 and 1983-84 to consider the case of the applicant for inclusion in any of those select lists for promotion to the Indian Forest Service. On the basis of the review, the Selection Committee recommended the name of the applicant for inclusion in the select list prepared on 31.12.1984. It is claimed that accordingly the applicant was promoted to the Indian Forest Service w.e.f. 27.11.1987 - the date from which his juniors have been promoted.

6. It is contended on behalf of the respondent no.1 that the provisions of Cadre Rules in the case of Indian Police Service officers were examined by the Apex Court in the case 'Syed Khalid Rizvi & Ors. Vs. Union of India etc.1992(3) SCALE 287' and it was held that officiation of State Police Service officers on post included in the State cadre of the Indian Police Service if not approved by the Central Government and the Union Public Service Commission, as required in terms of the provisions of the Cadre rules, the said period of officiation has to be treated as purely temporary and local arrangement made by the State Government. It is furthered that such arrangement cannot give to the concerned officers benefits for the purposes of

seniority. It is, therefore, pleaded that the year of allotment in the case of the applicant was determined in accordance with the Rule 3(2) (c) of the Seniority Rules. It is also pointed out that no approval was accorded by the Central Government in the case of the applicant and, therefore, the period which is said to have been the period of officiation, was not included. It is clarified that one Sri Ashok was juniormost direct recruit of the year 1983 batch ^{and he} was officiating in the Senior time scale on 27.11.1987 and, therefore, the applicant was placed below him. It is, therefore, contended that the applicant has no case.

7. The respondent no.3 has filed counter-reply through Mahendra Singh, Deputy Secretary to the Government of Uttar Pradesh in Forest department. The plea taken by the respondent no.3 is that the applicant was never promoted on a cadre post of Indian Forest Service but he alongwith some other persons ^{was} promoted on ad-hoc basis by the State Government on 19.3.1976 without obtaining the concurrence of Government of India. It is also admitted that the State Government is not competent to promote or induct at its own without the consultation and approval of the Government of India. It is claimed that the order of appointment on ad-hoc basis, did not mention that the applicant was inducted in Indian Forest Service cadre. The averments of paras 4 (c) (f) and (g) of the O.A. about the transfer of the applicant against cadre post and appointment after returning from leave, were denied. It is contended that the name of the applicant was considered for induction in Indian Forest Service by the Departmental Promotion Committee but, ^{the} ~~it~~

did not recommend his name for inclusion in the select-- list on the basis of his service record. It is further submitted that juniors to the applicant had far better record and for that reason they were included in the select list.

8. The respondent no.3 has also come with the plea that in compliance with the Judgment of the Tribunal, a meeting of Review Departmental Promotion Committee was held on 16.12.1992 in which the name of the applicant was considered in every year in which meetings of Departmental Promotion Committee were held namely on 20.12.1977, 16.12.78 15.12.1979, 12.12.80, 21.12.83 and 13.12.84. The said Review Departmental Promotion Committee did not adjudge the applicant in the category of "very good" officer for the years 1977 to 1980 and 1983. The Committee, however, adjudged him in the category of "very good" officer only for the year of 1984 and recommended his name for inclusion at the top of the select list for that year. It is also averred that the year of allotment of the applicant was correctly fixed in accordance with Indian Forest Service (Regulation of Seniority) Rules, 1968. As regards the services rendered by the applicant prior to 1984, it is stated that the said service cannot be taken into account for fixation of seniority. It is specifically denied if the applicant had worked on cadre post from 30.9.79 to 19.12.1982. The respondent no.3 also stated that six officers whose names are given in para 18 of the counter-reply, were included in the select list for the year 1984 and the Government of India had approved their officiation vide order no.17020/20/87-IFS - II, dated 28.7.90 as an ex-post-facto sanction. It is

further mentioned that the officers S/ Sri M.C. Misra, B.D. Bahaguna, C.P. Nathani and G.S.S. Khatkhatia as given in para 18 of the counter-reply, were not appointed in Indian Forest Service because they had retired or had passed away. The officers namely H.S. Saxena and B.S. Rawat were inducted into Indian Forest Service vide order dated 27.11.1987. It is said that after the name of the applicant was considered, he too was appointed into I.F.S. w.e.f. 27.11.1987.

9. As regards further promotion to the post of Conservator of Forest, it is averred that only those officers who had completed 13 years of service from the year of allotment ^{are} eligible for consideration. The officers whose year of allotment is 1982 have yet to be considered for promotion on the ~~top~~ post. Thus, it is claimed that ^{the question of} promotion of the applicant to the post of Conservator of Forest does not arise. The O.A. is, therefore, opposed.

10. The applicant has filed separate rejoinders to the counter-replies filed on behalf of respondents no.1 and 3. The facts which were given in the O.A, were reiterated. Besides, it is clarified that the applicant should have been assigned 1969 as the year of allotment in place of 1983. It is asserted that the applicant was promoted on senior post in the year 1976 and continued for several years but no effective steps were taken by the Central Government to approve of the officiation particularly when the State Government had recommended the case of the applicant for approval. It is, therefore, claimed that the applicant

cannot be deprived of his rights of inclusion of the period of officiation for the inaction on the part of the Government of India.

11. It is also averred that several officers who were included in the select list for the year 1977 to 1979, 1984 and 1984 were granted the benefit of period of officiation in accordance with Rule 3(c) but, it was denied in the case of the applicant. It is, therefore, urged that the Central Government cannot take the advantage of its own wrong.

12. In reply to the contents of para 15 of the counter-reply of respondent no.1, it is stated that the rules regarding the I.P.S. are different as compared to the rules applicable to the I.F.S. and, thus, the ratio in the case of Syed Khalid Rizvi and Others (Supra), is not applicable in his case.

13. In reply to the counter-reply filed on behalf of respondent no.3, it is contended that after the promotion of the applicant on 19/5/76 on the cadre post of I.F.S., no subsequent promotion was made by the State Government on the cadre post. It was further stated that those who were given promotion after 19.5.76, were posted as Assistant Conservators of Forest, the benefit of their officiation was given to all such officers who ^{were} ~~was~~ promoted and posted as Assistant Conservators of Forest whereas the said benefit of officiation ~~was~~ denied in the case of the applicant. Since the applicant, it is averred, ^{he} ~~is~~ continued on the cadre post for the period of 10 years, this fact

establishes the conclusion that his promotion was on regular basis and not as Stop Gap Arrangement or to meet the administrative exigencies temporarily. It is also contended that the applicant was illegally superceded by Departmental Promotion Committee in the year 1977 while he was entitled to be considered in accordance with the unamended rules. The applicant states in reply to para 17 of the counter-reply of respondent no.3 that the post of Divisional Forest Officer was subsequently included in the cadre post; hence, it would be incorrect to suggest that the applicant did not work during the period of officiation on the cadre post.

14. We have heard Sri S.C. Budhwar and Sri Ashok Bhushan on behalf of the applicant and Sri A. Mohiley on behalf of the respondent no.1. The record is also perused.

15. The question for determination in the case is as to what should be the year of allotment of the applicant in Indian Forest Service. In order to appreciate the points which have been raised, it would be necessary to go through certain rules relating to the service. The assignment of year of allotment is the subject which is dealt with in the Indian Forest Service (Regulation of Seniority) Rules, 1968. Rule 3 deals with the assignment of the year of allotment. In the present case, sub-rule (2) (c) of Rule 3 is of material consideration. This sub-rule deals with the assignment of year of allotment to an officer who is appointed to the service by promotion in accordance with the Rule 8 of the Recruitment Rules.pg. 11/-

It reads :

"(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 among the officers recruited to the Service in accordance with Rule 7 or if no such officer is available, the year of allotment of the junior most among 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:

Provided that seniority of officers who are substantively holding the post of a Conservator of Forests or a higher post on the date of constitution of the Service and are not adjudged suitable by the Special Selection Board in accordance with the Indian Forest Service(Initial Recruitment) Regulations, 1966 but who may later on be appointed to the Service under Rule 8 of the Recruitment Rule, shall be determined ad hoc by the Central Government in consultation with the State Government concerned and the Commission.

Explanation 1- In respect of an officer appointed to the Service by promotion in accordance with sub-section(1) of Rule 8 of the Recruitment Rules, the period of his continuous officiation in a 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.

Provided that where an officer is appointed to the Service by promotion under Rule 8 of the Recruitment Rules on the basis on his name having been included in the first Select List prepared by the Selection Committee constituted under Regulation 3 of the Indian Forest Service(Appointment by Promotion) Regulations, 1966, the period of his continuous officiation in a senior post or post declared equivalent thereto prior to the date of the inclusion of his name in the first Select-List, shall also count, if such officiation is approved by the Central Government in consultation with the Commission.

Explanation-2 - An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement.

Explanation -3 - An officer shall be treated as having officiated in a senior post during any period in respect of which the State Government concerned certifies that he would have so officiated but for his absence or leave on training.

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 further period not exceeding two years, to a non-cadre post under a State Government or the Central Government in a 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) Regulations 1966 and follow the order in which the name 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 exceed the number of posts by which 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.

(d) When an officer is appointed to the Service in accordance with Rule 7-A of the Recruitment Rules, deemed to be the year in which he would have been so appointed at his first or second attempt after the date of joining pre-commission training or the date of his commission where there was only post-commission training according as he qualified for appointment to the Service in his first or second chance, as the case may be, having been eligible under Regulation 4 of the Indian Forest Service (Appointment by Competitive Examination) Regulation, 1967.

Explanation - If an officer, who qualified himself for appointment to the Service in a particular year, could not be so appointed in that year, on account of non-availability of a vacancy and is actually appointed in the next year, then his year of allotment would be depressed by one year. He shall be placed above all the officers recruited under Rule 7-A of the Recruitment Rules and who have the same year of allotment."

16. A perusal of the above mentioned rule speaks that an officer who is appointed to the service by promotion, the period of his continuous officiation in a senior post shall 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 proviso which is attached to Explanation 1 further lays down that the period of continuous officiation in a senior post or a post declared equivalent thereto prior to the date of the inclusion of his name in the first Select List, shall also count, if such officiation is approved by the Central Government in consultation with the Commission.

17. Explanation 4 appended to the said sub-rule further lays down that 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 3 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 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. The provisos which are appended to Explanation 4 deals with the conditions under which the certificate as is given in Explanation 4, may be issued.

18. In this case, the applicant claims the allotment of the year in the service from the year 1969 after adding the period of continuous officiation on cadre post from 19.3.76 to 26.11.87. It may not be out of place to mention that the applicant was posted as Assistant Conservator of Forests in the year 1965 and was subsequently promoted as Deputy Conservator of Forests on 19.3.1976 as is claimed by him. The respondent no.3 disputed this situation. It has been mentioned by the respondent No.3 that no doubt the applicant was promoted vide order dated 19.3.1976 but on adhoc basis and without obtaining the concurrence of Government of India. The same situation was earlier taken by the Respondent No.1 and it was contended that

3

officiation on cadre post was required to be in accordance with the Cadre Rules wherein the prior approval of Central Government and in some cases of Union Public Service Commission, was needed. The respondent No.1 has come with the plea that the applicant was promoted to the Indian Forest Service with effect from 27.11.1987 which ^{is} the date from which his juniors were promoted.

19. The applicant has come with a case that while he was posted at Agori Division in the year 1976-77 a Vigilance/Disciplinary Inquiry was started against him and he was also awarded adverse character roll entry for the same year. He had represented against the said entry which was expunged in the year 1979-80. Since the Disciplinary Inquiry continued against him, he had filed a Writ Petition No. 11562 of 1985 in the High Court which had quashed the disciplinary proceedings against him vide judgement dated 5.10.1993. It is said that the respondent No.3 also intimated the applicant vide order dated 29.5.1995 that he was exonerated of the charges. Meeting ^{of} the selection Committee for consideration of the State Government servants of Forest in I.F.S., was held on 20.12.1977 but, the applicant was not considered and therefore a writ petition No. 675 of 1987 was filed which was subsequently transferred to the Central Administrative Tribunal and was registered as T.A.No. 635 of 1987. This T.A. was decided by the Tribunal on 1.7.1992. The Tribunal had directed the respondents to convene the review selection committee and consider the

case of the applicant alongwith the case of candidates selected in the year 1977. Further direction was given that the adverse remarks which were expunged subsequently, should be ignored and in case the applicant was selected, he would be given notional promotion with effect from the date his next junior was promoted. In view of these facts, it is necessary first to see whether the applicant was eligible for consideration in I.F.S. in the year 1977-²~~76~~. Thereafter the issue as to what year of allotment should be assigned to the applicant, shall be determined. The learned counsel for the applicant submits that because of junior² of the applicant was brought in the Select List, in the year 1977 and was allotted the 1969 for I.F.S., the same year of selection and assignment² year of allotment be given to the applicant. The promotion to the Indian Forest Service is made in accordance with the Indian Forest Service (Recruitment Rules), 1966. Rule 4 of these Rules deals with the method of recruitment to the service. One is by a competitive examination, the other is by selection of persons from among the emergency commissioned officers and short service commissioned Officers of the armed forces and the third is by promotion of substantive members of the State Forest Service. Rule 8 of the Recruitment Rules deals with the recruitment by promotion. As is mentioned in Rule 5 of I.F.S. (Appointment by Promotion) Regulations, 1966, the² suitable persons should be appointed to the post. In view of the fact that the applicant was

12

awarded adverse entry in the year 1975-76 and he had been facing disciplinary inquiry during those years, it becomes necessary to scrutinize if the applicant could be called a suitable candidate for promotion to I.F.S. Counsel for the rival parties have advanced rival arguments. The contention of the learned counsel for the applicant is that since the adverse entry was expunged in subsequent year 1979-80, and disciplinary ~~proce~~ inquiry was also quashed by the order of the ^{High Court &} Tribunal, there was no hinderance for the promotion of the applicant which was ultimately done in the year 1987 in I.F.S. Our attention has also been drawn to the case of Chandra Gupta I.F.S. Vs. Secretary, Government of India, Ministry of Environment and Forest & others ((1995(1) S.C.C. 23) in which Their Lordships of Hon'ble Supreme Court considered the similar situation. The petitioner, Chandra Gupta in the said case could not be promoted to the post of Chief Conservator of Forest because there were certain adverse entries in his character roll for certain years and when his case came up for promotion to be considered, he was superseded by other Officers who were junior to him. The adverse remarks given to the petitioner Chandra Gupta were however, expunged subsequently, and he was also promoted to the post of Chief Conservator of Forest but his seniority was fixed below others who were previously juniors to him but were promoted as Chief Conservator of Forest prior to him. The petitioner Chandra Gupta

then assailed the seniority list and contended that previous seniority should be restored. Their Lordships of Supreme Court rejected this plea of the petitioner-Chandra Gupta and it was observed that the respondents in that case were promoted as Chief Conservators of Forests by virtue of superior merit and suitability. Since this selection post to be filled by merit with due regard to seniority, it was further held that only when the merit was equal in the matter of promotion of a selection post, seniority became relevant otherwise merit alone should count. It was also held that mere expunction of remarks itself would not make the petitioner more meritorious. The view of their Lordships also was that unless and until the appellant proved that after expunction of remarks, he had a meritorious record than the respondents, he could not succeed. When this ratio is applied in the present case before us, we find that the present applicant - Chandra Bhusan was also facing the same situation. He was given adverse remarks in the year 1975-76 which were expunged only in the year 1979-80. Thus, the applicant cannot claim promotion during this period and cannot seek the same year of allotment which was given to his juniors who were promoted prior to his promotion.

20. The matter does not end here. The applicant was also facing disciplinary proceedings during this period and those proceedings came to an end only by the Judgment of the Tribunal which was rendered on 01.7.1992. No doubt, the Tribunal had given direction to consider the case of the applicant in the year 1977

ignoring the adverse remarks which were given to him and were subsequently expunged. The Review Committee considered the name of the applicant and found him suitable only in the year 1987 and thus, he was promoted to the Indian Forest Service w.e.f. 27.11.1987. The Review Committee did not mention that the applicant was more meritorious than the officers who were promoted in I.F.S. in the years starting from 1977 to 1987. There is no doubt that selection in I.F.S. can be made only of meritorious persons. The seniority list is ^{not} the governing factor. In view of this legal position, we come to the conclusion that the applicant could not establish his case for consideration in I.F.S. before 1987.

21. Now we deal with the contention of the learned counsel for the applicant about the allotment of the year of the applicant in I.F.S.. A number of cases have been cited on behalf of both the parties but we take up only those cases which are directly connected with the issue which is involved in the case before us. The learned counsel for the applicant relied on 'M.V. Krishna Rao and Others Vs. Union of India and Others 1994 Supp (3) S.C.C. 553', 'O.S. Singh & Anr. Vs. Union of India & Anr. J.T., 1995(7) S.C. 664', and 'Ashok V. David, M.G. Halappanavar Vs. Union of India and Ors. J.T. 1996(6) S.C. 157'. Of these cases, the case of M.V. Krishna Rao and Others was decided on 27.1.1994 i.e. subsequent to the decision in the case Syed Khalid Rizvi (supra) decided on 20/11/92. Both these cases are related to the year of allotment and to Indian Police Service. It may, however, be

mentioned that rules regarding the allotment of year in different All India services are pari materia. Thus, the law which has been laid down by their Lordships of Supreme Court in different cases is to be ascertained. The learned counsel for the respondents heavily relied on the decision of Syed Khalid Rizvi (supra) and it is contended that the law on the point of year of allotment has been finally decided in the said case. The contention of the learned counsel for the applicant on the other hand is that the decision in M.V. Krishna Rao's case (supra) was subsequent to the decision in Syed Khalid Rizvi's case and the law which was laid down in Syed Khalid Rizvi's case has been clarified in M.V. Krishna Rao's case. Their Lordships while dealing with the case in Syed Khalid Rizvi and Others, held that promotion by temporary appointment of non select-list officers of State service to cadre posts in Central service on ad-hoc or local arrangement basis if made, can be taken into consideration and seniority of such promotees should be reckoned from the date of their inclusion in the select list or from the date of their continuous officiation in the cadre post whichever is later. It was further observed that period of their continuous officiation prior to such date would be treated as fortuous and not countable and hence the year of allotment could not be assigned from the date of initial appointment. Their Lordships did not approve of ~~an~~ ^{the} Act of the State Government to post non-cadre officers on cadre post. It could be done only in case of non-availability of cadre officers as authorised under rules. It was also held that Regulation-8 of Indian

Police Service (Appointment by Promotion) Regulation, 1955 did not empower the State Government either to tamper with Regulation 9 or to cut down its operation to favour undue weightage either to select list or non select list promotee officers. It was further observed that in its guise the State Government had no power to make any substantive appointment of the promotees to the cadre posts. On these grounds, the period of officiation prior to the said officer having come in the select list, was not taken into consideration for the purposes of seniority and ascertainment of the year of allotment. The decision in M.V. Krishna Rao's is also following the same rationas was enunciated in Syed Khalid Rizvi's case. No doubt, the learned counsel for the applicant has strenuously argued and contended that the applicant can be benefited if the law laid down in M.V. Krishna Rao's is followed. At the very out set, it may be pointed out that in the case of M.V. Krishna Rao, the promotees were not seeking to count their service rendered in the cadre posts prior to their inclusion in the select list. They were only seeking to count the continuous officiating service rendered by them in the cadre post on and after their inclusion in the select list. In our opinion, the factual matrix of the case of M.V. Krishna Rao and one present before us is altogether different. In the present case before us, the claim of the applicant is that he should be given 1969 as the year of allotment because he claims to have officiated on the cadre post right from 1976. At the cost of repetition, it may be mentioned here that the applicant was actually brought in select list

on 27.11.1987. In this way, he is seeking seniority for the period prior to his name being included in the select list. Thus, it is clear that the facts of the two cases are different. Apart from it, we have gone through both the Judgments in the cases of Syed Khalid Rizvi and M.V. Krishna Rao and find that the ratio in both the cases was one and the same. It is, therefore, incorrect to argue that something different was held in M.V. Krishna Rao's case.

22. In order to make the ratio of the different decisions of the Hon'ble Supreme Court, we would like to refer to certain facts of the cases connected with the determination of seniority and assignment of year of allotment in I.F.S. The Indian Forest Service (Regulation of Seniority) Rules, 1968 which have been quoted earlier deal with ascertainment of seniority and year of allotment. The applicant has come with the plea that he was promoted to the post of Deputy Conservator of Forest on 19.3.1976 and he had taken over the charge on 20/3/76. This post of Deputy Conservator of Forest is a cadre post of I.F.S. It is an admitted situation that the applicant was not included in the select list of I.F.S. in the year 1976-77. Thus, his appointment to the post of Deputy Conservator of Forest is to be considered in the light of Sub-Rule (2) (C) of Rule 3 of Seniority Rules. It is provided in Explanation I that when an officer was appointed to the service by promotion in accordance with Sub-Rule (1) of Rule 8 of Recruitment Rules, the period

.....pg.23/-

2

of continuous officiation in a senior post should count only from the date of inclusion of his name in the select list or from the date of his officiating appointment to such senior post whichever is later. Thus, the condition precedent is that the appointment of officer should have been made in accordance with Rule 8 of the Recruitment Rules. In the case of the applicant, it was not so. The proviso which is appended to Explanation -1 as aforesaid deals with a situation where an officer is appointed on the basis of his name having been included in the select list, the period of continuous officiation in a senior post or a post declared equivalent thereto prior to the date of inclusion of his name, shall also count ~~even if~~ such officiation is approved by the Central Government.

23. In order to determine the seniority in the service and allotment of the year, Rule 3 of Seniority Rules shall have to be read alongwith the Indian Forest Service(Cadre) Rules, 1966. Rules 8 and 9 of these Rules are relevant and material for arriving at the correct conclusion. Rule 8 postulates that the cadre post should be filled by the cadre officers. It is also provided that cadre officer shall not hold an ex-cadre post in excess of the number specified for the concerned state under the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulation, 1966. Sub Rule(3) of Rule 8, however, permits the State Government with the prior approval of the Central Government to appoint a cadre officer to hold an ex-cadre post

in excess of the number specified for the concerned State and for so long as the approval of the Central Government remains in force, the said ex-cadre post shall be deemed to be an addition to the number specified in the Schedule. Rule 9 permits temporary appointment of non-cadre officers to cadre posts, on the conditions that the vacancy is not likely to last for more than three months or that there is no suitable cadre officer available to filling the vacancy. The proviso to sub-rule (1) to this Rule lays down that where a cadre post is filled by a non-select list officer, or a select list officer who is not next in order in the select list, the State Government shall forthwith report the fact to the Central Government together with the reasons therefor. Sub-Rule (2) of the Rule further provides that where in any State a person other than a cadre officer is appointed to cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment. There is proviso also appended to sub-rule (2) which speaks that a non-select list officer or a select list officer who is not next in order to the select list, shall be appointed to a cadre post only with the prior concurrence of the Central Government. Sub-rule (3), however, provides that the Central Government may direct the State Government to terminate such an appointment and the State Government shall accordingly give effect thereto. Sub-rule (4) of the Rule again lays down that where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months,

the Central Government shall report the full facts to the Union Public Service Commission with the reason for holding that no suitable officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission, give suitable directions to the State Government concerned.

24. A reading of these provisions makes the position clear that on the cadre post, only cadre officers are to be appointed. Only in certain exceptional circumstances where the vacancy is ¹⁵/₁₂ continue upto 3 months and the cadre officer is not available, the vacancy may be filled by non-cadre officer. In case the vacancy is likely to exceed three months, approval of the Central Government is necessary. In case the vacancy is to extend ~~six~~ months, the approval not only of Central Government but, of Union Public Service Commission is necessary. This position was clarified by their Lordships of Supreme Court in the case 'Syed Khalid Rizvi (supra)' and it was laid down that Regulation 8 did not empower the State Government either to tamper with Regulation 9 or to cut down its operation to favour undue weightage either to the select list or non-select list promotee officers. It is also observed that because this ~~guise~~ ^{way}, the State Government had no power to make any substantive appointment of the promotees to the cadre post; The view of the Hon'ble Supreme Court is also that the appointment under Regulation 8 is only fortuitous due to administrative exigencies and such an appointee cannot claim any seniority from the date of initial appointment. It is also held that any

B

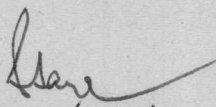
appointment made otherwise than in accordance with the Promotion Regulation or Recruitment Rules was not a valid, regular appointment in the eye of law and such temporary appointment would be transient and would be operative when gleaned through Seniority Rules.

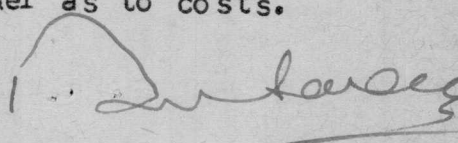
25. The facts of the case when scrutinised through this legal position, we come to the conclusion that the Present applicant was appointed on the post of Deputy Conservator of Forest by the State Government without any approval of the Central Government and Union Public Service Commission. The State Government exceeded its power when the appointment continued beyond the period of three months. Besides, it is to be seen that a State officer becomes the member of service (I.F.S.) only when his name is included in the select list. In the present case, the name of the applicant was included in the select list in the year 1987. No doubt, the Tribunal while deciding T.A.No. 635/87 had given directions to consider the name of the applicant for induction in I.F.S.^{and} the direction also was that the adverse remarks which were given earlier should be ignored,^{but} the ultimate decision was taken by the Review Departmental Promotion Committee which found him suitable only in the year 1987 and the seniority of 1983 was given. There ~~was~~ no such direction of the Tribunal nor could it be that the applicant should be deemed to have been included in the select list of 1977. Thus, the applicant cannot make capital out of the Judgment of the Tribunal in the said T.A. 635/87.

26. The learned counsel for the applicant vehemently argued that some officers who were junior to the applicant, were also inducted in I.F.S. and the Central Government give ex-post-facto sanction to their officiation and, therefore, they were given earlier years of allotment in the service. Therefore, it is pleaded that the same view should be taken in the case of the applicant. He contends that if the same view is not taken, it would be discriminatory. In this connection reliance has been placed on 'Vishundas Hundumal etc. V. The State of Madhya Pradesh A.I.R. 1981 S.C. 1636', 'Sengara Singh and Others Vs. State of Punjab and Others A.I.R. 1984 S.C. 1499', 'Dr. A.K. Jain and Others Vs. Union of India and Others 1987 (Supp) S.C.C. 497', and 'Golden Films and Finance Pvt.Ltd and another Vs. State of Jammu and Kashmir and Others 1987 (Supp) S.C.C.501'. The learned counsel for the respondents on the other hand resisted this argument and took the plea that by the time the ex-post facto sanction was given to others, the law as was laid down in the 'Syed Khalid Rizvi' (supra) was not in existence and, therefore, the said view was taken. He, however, contends that when a power is given to do certain thing in a certain way, the things must be done in that way alone. In this connection, reliance has been placed on 'Gangadhar Kar Vs. Durgacharan Panda and Others 1995 S.C.C.(L&S) 1107'. It is further contended that illegality once committed, cannot be pleaded to legalise other illegal acts. The reliance has been placed on

'Harpal Kaur Chahal (Smt.) Vs. Director, Punjab Instructions, Punjab and Another 1995 Supp(4) S.C.C. 706'. We have given considerable thought to the case law which has been cited by the rival parties in their support and we come to the conclusion that the officiation can be counted, only when the name of the officer is included in the select list. In the present case, we have already held that the name of the applicant was included in the select list only in the year 1987 and thus, his officiation from the year 1976-77 cannot be allowed to be taken into consideration. This position is made quite clear by their Lordships of Supreme Court in the Judgments disclosed above.

27. Having considered the factual and legal position, we come to the conclusion that there is no merit in the case of the applicant and it is, therefore, dismissed. No order as to costs.


Member (A)


Member (J)

/M.M./