RESERVED

CENTRALL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 3rd DAY OF SEPT., 2003

Original Application No.539 of 2002

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.D.R.TIWARI,MEMBER(A)

1. Nagendra Vikram Singh,
a/a 46 years, son of
Late A.L.Singh, presently working
as Divisional Forest Officer
South Kheri, Forest Division
Kheri, R/o Forest Colony,
Lakhimpur Kheri.

.. Applicant

Versus

1. union of India through its
Secretary, Ministry of Forest
Environment, New Delhi

2. Union Public Service Commission
through its Secretary, New Delhi.

3. Principal Secretary/Secretary
Forest Department, U.P.
Civil Secretariat, Lucknow.

4. Principal Chief Conservator
of Forest, U.P.Lucknow

5. Shri Chaitanya Narayan,
S/o Shri I.P.Srivastava, Divisional
Director, Zonal Forest Division
Fatehpur.

6. Ashok Dixit, S/o Shri G.N.
Dixit, Divisional Director
Zonal forestry Division, Faizabad

7. Shri V.P.Singh, S/o Shri S.B.
Singh, Asstt. to CCF, Bareilly

8. M.K.Tripathi, S/o Shri Rama
Shanker Tripathi, DFD,
Kushi Nagar Forest Divisiob,
Kushi Nagar.

9. Abhinandan Kumar Jain,
Son of Late Shri P.C.Jain,
DFO,Deoria, Resident of T-4/10
Officers Colony, Deoria.

.. Respondents

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Along with OA.No.536 of 2003

Chaitanya Narain, Son of
Shri Indra Pratap Srivastava
Divisional Forest Officer,
Fatehpur.

.. Applicant

Versus

1. Union of India through its Secretary, ministry of Forests& Environment, new Delhi.

2. State of U.P. through Principal Secretary, Forest Department, U.P.Civil Secretariat, Lucknow.

3. Principal Chief Conservator of Forests, Maharana Pratap Marg, Lucknow.

4. Union Public Service Commission through its Secretary, Shahjahan Road, New Delhi.

.. Respondents

With OA No. 618 of 2003

1. Rameshwar Tiwari, a/a/ 49 years Son of Late Gopinath Tiwari presently working as Silviculturist (D.F.O Research), Ram Nagar (Kashi), U.P., Resident of Forest Campus, Ram Nagar Forest Colony.

2. Kamal Kishore, a/a 48 years, Son of Shri Shyam lal Ahirwar, presently working as D.F.O, Shahjahanpur.

.. Applicants

Versus

1. Union of India, through Secretary Ministry of Environment, New Delhi

2. Union Public Service Commission through its Chairman, New Delhi.

3. State of U.P. through Principal Secretary, Department of Forest, Bapu Bhawan, Civil Secretariat, Lucknow.

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

.. Respondents

With OA No. 343 of 2003 (U)

Bhuwan Chandra, son of Shri Safari lal, Divisional Forest Officer, Dehradun.

.. Applicant

Versus

1. Union of India through its Secretary, Ministry of Forests and Environment, New Delhi.

2. Principal Secretary/Secretary Forest Department, U.P. Civil Secretariat, Lucknow.

3. Union Public Service Commission through its Secretary, Shahjahan Road, New Delhi.

.. Respondents

With O.A. 1357 of 1996

1. B.C.Tiwari,a/a 40 years Son of Shri M.D.Tiwari, posted as Divisional Director Social Forestry Division, Jaunpur.

.. Applicant

Versus

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

2. The Union Public Service Commission, through its Secretary New Delhi.

3. The State of Uttar Pradesh through its Secretary, Forest Department, U.P. Shasan, Lucknow.

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

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5. S.K.Rastogi, D.F.O, Farrukhabad Division.

6. Suresh Chandra, D.F.O. Pilibhit Forest Division, Pilibhit.

7. Anuradha Kumari, Assistant to C.C.F(Central), Central Zone, Lucknow.

8. K.Praveen Rao, D.F.O. Ballia.

9. Kartik Kumar Singh, D.F.O. Hamirpur.

10. M.S.Bhuppal, D.F.O, Bijnore Forest Division, Bijnore.

11. R.R.Jamuar, D.F.O, Central Tarai Forest Division, Haldwani.

12. Rakesh Shah, D.F.O. Civil & Sonam Forest Division, Almora

13. S.S.Rasaily, D.F.O. Mainpuri

14. B.K.Singh, D.F.O., Jhansi

Pawan Kumar Shgarma, D.F.O. Bullandshahar.

16. Arvind Gupta, Asstt. Project Director, Lucknow.

17. G.P.Sharma, Dy.Chief Wild Life Warden, 17 Rana Pratap Marg, Lucknow.

18. Sanjaya Singh, D.F.O. Soil Conservation Division, Ranikhet

19. R.Hemant Kumar, D.F.O. Bijnore Forest Division

Kotdwar.

20. R.N.Jha, Divisional Director Social Forestry Division, Pratapgarh.

21. Anupam Gupta, Divisional Director, Social Forestry Division, Allahabad.

.. Respondent s

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With OA. No.1209 of 1999

1. Kamal Kishore, a/a 45 years
Son of Sri S.L.Ahirwar, posted
as Divisional Forest Officer,
Gautambudh Nagar.

2. Rameshwar Tiwari, a/a 46 years
Son of Sri Gopi Nath Tiwari,posted
as Divisional Forest Officer,
Uttar Kashi.

3. R.N.Pandey, a/a 46 years
Son of Sri K.P.Pandey,
presently posted as Divisional
Forest Officer, Social Forestry
Division, Rae-bareilly.

4. S.C.Pant, a/a 45 years
Son of Shri S.A.Pant, posted as
Assistant to the Addl.
Principal Chief Conservator of
Forest, 17- Rana Pratap Marg,
Lucknow.

5. A.K.Pandey, a/a 46 years
Son of Sri M.D.Pandey, posted
as Forest Economist, in the
office of Chief Conservator
of Forest, U.P. Lucknow.

.. Applicants

Versus

1. Union of India through the
Secretary, Ministry of Forest &
Environment, New Delhi.

2. The Union Public Service
Commission, Dhaulpur House,
New Delhi through its Secretary.

3. The State of U.P. through the
Principal Secretary, Forest Deptt.
U.P.Shasan, Lucknow.

4. The Principal Chief Conservator of
Forests, U.P.Lucknow.

5. Sri Ashok Rai, Dy.Chief
Conservator of Forests, to be
served through Principal Chief
Conservator of Forest,
Lucknow.

6. Shri Diwakar Kumar,
Conservator of Forests, Garhwal
Circle, Pauri.

.. Respondents

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With OA 334 of 2002

O.P.Shukla, sub-Divisional
Officer, Forest Department
Allahabad.

.. Applicant

Versus

1. Union of India, through its
Secretary, Ministry of
Forest & Environment,
C.G.O. Complex, New Delhi.

2. State of U.P. through its
Principal Secretary, Forest
U.P. Lucknow.

3. Principal Chief Conservator
of Forests, U.P. Lucknow

4. Union Public Service Commission,
through its Chairman, New Delhi.

.. Respondents

With OA No. 688 of 2002

1. Girija Shanker Saxena,
S/o Sri prem Narain saxena,
Asstt. Conservator of Forests,
Social Forestry Division,
Basreilly.

2. Saiyed Mueed Ahmad, S/o
Shri Khalil Ahmad, Asstt. Conservator
of Fiorests, Social Forestry
Division, Bareilly.

3. Ram Naresh Yadav, S/o Late
Sorai Yadav, Sub-Divisional
Forest Officer, Social Forestry
Division, Jaunpur.

4. Shiv Pratap singh, S/o
Shri Chandra Bhushan singh,
Asstt. Conservator of Forests,
Circle Office Allahabad(UP)

5. Sankatha Prasad Gupta,
Son of late Raghunandan Lal gupta
Sub Divisional Forest Officer,
Bagpat Social Forestry Division
Meerut, U.P.

6. Devesh Kumar Srivastava,
Son of Radhey Krishna Dubey
Sub-Divisional Forest Officer,
Gupta Forest Division, Gonda(UP)

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8. Nakhru Yadav, S/o Late Mangal Yadav, Asstt. Conservator of Forests, Social Forestry Division, Pilibhit(UP)

9. Narendra Kumar Upadhyay, S/o Sri K.P.Upadhyay, Sub-divisional Forest Officer, Integrated watershed Development Project, Rishikesh Haridwar, Uttaranchal.

10. Anil Kumar Porwal, S/o Sri Radhey Shyam porwal, Sub-divisional Forest Officer, Social Forestry Division, Mathura (UP)

11. Gopal Chandra Sinha, Son of Sri Baij Nath Prasad Sinha Sub-divisional Forest Officer, Azamgarh Social Forestry division, Azamgarh (UP)

12. Pramod Kumar Singh, Son of Late Lallan Singh, Sub-Divisional Forest Officer, Nighasan, Kheri Forest Division, Lakhimpur Kheri.

13. Awadhesh Narain Singh, son of Late Markandey Singh, Sub-divisional Forest Officer, Soil Conservation Forest Division, Nainital, Uttaranchal.

14. Shivaji Rai, Son of Late Ram Asrey Rai, Sub-divisional Forest Officer, Social Forestry Division, Rae-bareilly (UP)

15. Binod Bihari Srivastava, Son of Late Awadh Bihari Srivastava, Sub-Divisional Forest Officer, Social Forestry Division, Siddhartha Nagar (UP)

16. Rajendra Prasad Yadav, Son of Late Ram Kishun Yadav, Sub-divisional Forest Officer, Social Forestry Division, Ghazipur (UP)

17. Javed Alam, S/o Sri S.M.Habib Sub divisional Forest Officer, Puranpur, Pilibhit Forest Division, Pilibhit.

18. Ram Saran Singh, S/o Late Sukh Deo Prasad, Sub-divisional Forest officer, Working Plan circle, Nainital, Uttaranchal

19. Ram naresh Singh, S/o Sri Laxman Singh, Sub-divisional Forest Officer, Social Forestry Division Obra, Sonbhadra (UP)

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20. Parashuram Maurya, son of Late Ram surat Maurya, Sub-divisional Forest Officer, Shrawasti Forest Division, Gonda (UP)

21. Chandrika Prasad, S/o Late Ram Avtar, Sub-divisional Forest Officer, Katarniya Ghat Wild Life Forest Division, Bahraich (UP)

22. Saurath Swaroop Srivastava, Son of Sri Vidya Prasad Srivastava Sub divisional Forest Officer, Churk Forest Division, Sonebhadra (UP)

23. Madhukar Dayal, S/o Sri R.D.Srivastava Sub-divisional; Forest Officer, Social Forestry Division, Kaushambi

24. Satya Prakash Sharma,Son of Late M.L.Sharma,, Sub-divisional Forest Officer, Bullandhahar Social Forestry Division, Bullandshahar

25. Rakesh Kumar Vashista,Son ofLate Shyam Behari lal Sharma, Sub-Divisional Forest Officer, Fatehabad, Social Forestry Division, Agra (UP)

26. Shiv Nath Singh, S/o Sri Ram Nath Singh, Assistant Conservator of Forests, Gorakhpur (UP)

27. Jitendra Pratap Singh, Son of Late Bajrang Bali Singh, Asstt. Conservator of Forests, South Khiri Forest Division, Khiri (UP)

28. Vijendra Kumar Singh, S/o Sri I.B.Singh Asstt. Conservator of Forests, Dudhwa National Park, U.P.

29. Chandra Bhushan Tripathi, son of Sri H.N.Tripathi, Sub divisional Forest Officer, North Kheri Forest Division, Lakhimpur Kheri, U.P.

30. Ram Gopal Kannaujia, son of Late Jaman Lal, Sub-divisional Forest Officer, West Terai Forest Division Ramnagar Uttaranchal.

31. Uma Shanker Dohrae, son of Devi Dayal Dohare, Sub Divisional Forest Officer, Corbet Tiger National Park, Ramnagar, Nainital, Uttaranchal.

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32. Binod Shanker, Son of Late
Murari Rama, Asstt. Conservator
of Forests, World Food Programme
Lucknow,, U.P.

33. Ishwar Dayal, S/o Ram Murti
Asstt. Conservator of Forests
Etah, U.P.

34. Shiv RAM Singh, Son of A.R.Singh
Sub-divisional Forest Officer,
Social Forestry Division, Etah (UP)

35. Shyam Behari Lal, S/o Ram Narain
Asstt. Conservator of Forests
Social Forestry Division,
Shahjahanpur U.P.

36. Mahesh Chandra, son of Late Puttu Lal,
Sub-divisional Forest Officer,
Shikohabad, Ferozabad, U.P.

.. Applicants

Versus

1. Union of India through its
Secretary, Ministry of Forest &
Environment, new Delhi.

2. State of U.P. through its Principal
Secretary, Forest U.P., Lucknow.

3. Principal Chief Conservator of
Forests, U.P. Lucknow

4. Union Public Service Commission
through its Chairman, New Delhi.

.. Respondents

With O.A. No. 309 of 2002

1. C.P. Goel, Divisional Forest
Offiucer, Varanasi.

2. Y.S.K. Sheshu Kumar, Divisional
Forest Officer, Azamgarhx Jaunpur.

3. Alok Srivastava, Divisional Forest
Officer, Azamgarh.

4. S.P.Yadav, Silviculturist,
Vindhyan Region, Ramnagar,Varanasi.

.. Applicants

Versus

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1. Union of India through its Secretary, Ministry of Forest & Environment, C.G.O. Complex, New Delhi.

2. State of U.P. through its Principal Secretary, Forest U.P. Lucknow.

3. Principal Chief Conservator of Forests, U.P. Lucknow.

4. Union Public Service Commission, through its Chairman, New Delhi.

.. Respondents

With Civil Contempt Petition No. 60 of 1998

Indra Singh, a/a 51 years
Son of Shri Bishambhar Dayal,
presently posted as Divisional
Forest Officer, Forest Division
Mahoba, Bundel Khand Circle, U.P.

.. Applicant

Versus

1. Union of India through Secretary
Shri K.N.Prasad, Ministry of Forest,
New Delhi.

2. Union Public Service Commission,
New Delhi.

3. Shri T.George Joseph, Principal
Secretary, Forest Department, U.P.
Civil Secretariat, Lucknow.

4. Shri P.L.Punia, Ex-Principal Secretary
Forest, U.P. presently posted as
Chairman, Administrative Tribunal,
Jawahar Bhawan, Lucknow.

5. Shri P.C.Srivastava, Principal &
Chief Conservator of Forest,
17, Rana Pratap Marg Lucknow.

.. Opp. Parties

Counsel for Applicant: S/Shri A.R.Masoodi/Sudhir Agrawal
K.M. Mishra/

Counsel for Respondents: S/ Shri Satish Chaturvedi/K.P.Singh
R.C.Joshi/V.K.SINGH.

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O R D E R (RESERVED)

JUSTICE R.R.K.TRIVEDI,V.C.

In this bunch of Original applications, applicants have challenged the procedure of selection of State Forest Service Officers for appointment as Indian Forest Service officers in various ways. The questions of facts and law involved are similar and the OAs can be decided by a common order against which parties have no objection. The leading case will be OA No.539 of 2002. Before discussing the disputes raised in these OAs by the applicants, it shall be appropriate to mention the back ground of the disputes. The recruitment to the Indian Forest Service(in short I.F.S) is done in accordance with the provisions contained in Indian Forest Service (Recruitment) Rules 1966. rule No.4 (2) of the aforesaid Rules provides for recruitment to the service;

a) by competitive examination

aa) by selection of persons from among the emergency Commissioned officers and Short Service Commissioned officers of the Armed Forces of the Union and

b) by promotion of substantive members of the State forest Services.

The percentage of promotion of State Forest Service officers is 33/1/3%. The recruitment to the I.F.S by promotion from the members of the State Forest Service officers is made according to the provisions contained in I.F.S(Appointment by promotion) Regulations 1966. In state of Uttar Pradesh the last recruitment of State Forest

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Service Officers to I.F.S was made in 1984. After a long delay the recruitment by way of promotion was undertaken in 1996. The select list was prepared which was challenged before this tribunal by filing OA No.982 of 1996, O.A. No.972 of 1996 and O.A No.1120 of 1996. The select list was quashed by this Tribunal by order dated 10.9.1997 on the ground that the select list was not prepared according to yearwise vacancies which was illegal and contrary to the rules. The Tribunal gave the following direction:-

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

Aforesaid order of the Tribunal was challenged before Hon'ble High court by filing five writ petitions namely, civil writ petition No.2663/98,2666/98,3935/98 and C.W.P. No.2558/98. The writ petitions were dismissed by Hon'ble High court by a common order dated May 11th, 2001. It may be noticed that the order of the Tribunal was passed on 10.9.1997 but the fresh selection as per direction of the Tribunal could not take place on account of the present OAs filed by various State Forest Service officers. It appears that the State government initiated steps for holding a review DPC on 7.10.2001 when a list was sent to Union Public Service Commission. U.P.S.C by its letter dated 26.11.01(Annexure 6) suggested certain guidelines & corrections accordingly and to prepare a list. The State govt.forwarded a seniority list of the State Forest

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Service officers alongwith letter dated 20.2.2002(Annexure 9) In this letter State of Uttar Pradesh also mentioned the yearwise vacancy position wherein in respect of 1989 one vacancy was shown. Whereas, in respect of 1990, 22 vacancies were shown. In the present OAs the dispute centres round the aforesaid two figures of vacancies mentioned against 1989 and 1990. The case of one group of officers is that 20 vacancies which were sanctioned by Central government on 30.8.1990 should be treated as vacancies of 1990, whereas, another group of officers wants that as the process for review of the strength and composition of the cadre had started in 1989, the 20 vacancies though sanctioned in 1990 should be clubbed with the vacancies of 1989.

On receipt of the letter of the State government dated 20.2.2002, UPSC again noticed certain descrepencies which were pointed out by letter dated 13.3.2002 and state government was requested to furnish the details and also comments on the recommendations made by various officers. It appears that the state government in its turn asked respondent no.4, Principal Chief Conservator of Forest to give his report on the letter of the UPSC dated 13.3.2002. Respondent no.4 submitted his report on 30.3.2002(Annexure 11). Alongwith this letter he also mentioned the yearwise position of vacanc ies. Against 1989 he mentioned 22 vacanc ies, whereas against 1990 he mentioned ' nil ' vacancy. A day after he submitted another report on 31.3.2002(Annexure 12) in which he mentioned one vacancy against 1989 and 22 vacancies against 1990. The yearwise details of the vacancies were also mentioned. Aggrieved by it, applicants of OA No.539/02 who were already selected in the year 1996 for appointment of I.F.S

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apprehended adverse effect from letter dated 30.3.02 in which the 20 vacancies were clubbed with the vacanc ies of 1989 by respondent no.4 and consequently they filed OA No.539/02 and prayed for interim relief. The interim order was passed on 13.5.02. Respondent no.3was directed to consider the claim of applicants in the light of the proposal forwarded on 31.3.02 by respondent no.4 and that his claim to I.F.S.cadre shall be considered by review DPC and when proposal reaches to respondent no.2 UPSC it shall be considered there also. The result may be declared which shall be subject to outcome of the OA. The above interim order was challenged before Hon'ble High court by filing writ petition No.31562/02 in which interim order was passed on 21.8.02 to the following effect:-

> "Issue Notice.
> The operation of the order dated 13.5.02 passed in OA No.539/02 by the Central Administrative Tribunal shall remain stayed until further orders of the court.."

The above writ petition was, however, dismissed by hon'ble High court on 17.2.03 with the following direction:-

> ".....on the facts and in the circumstances of the case we dispose of the writ petition with a direction to the Central Administrative Tribunal, Allahabad to decide the original application within a period of three months of the date of production of the certified copy of this order in accordance with law and till the decision is taken in the OA No.539/02 (wrongly written as 534/02). The interim order of this court dated 21.8.02 shall continue to operate. The parties will co-operate in the hearing of the original application before the Tribunal and will not seek un-necessary adjournments....."

This bunch has thus come up before us for hearing. Pleadings have been exchanged between the parties. We

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have heard Shri A.R.Masoodi learned counsel for applicant and Shri V.K.Singh learned counsel for respondents 5 to 8 and Shri Satish Chaturvedi learned counsel for respondents no.2 and Shri K.P.Singh learned counsel for respondents 3 &4 and Shri R.C.Joshi learned counsel for respondent no.1. Respondent no.9 Shri A.K.Jain appeared in person and he submitted his written submissions dated 21.8.03.

The counsel for the applicant after refering to the provisions contained in I.F.S Cadre Rules 1966 and I.F.S(Appointment by Promotion) Regulations 1966 has submitted that 22 vacancies of 1990 could not be clubbed with the vacancies of 1989 according to the rules. He submitted that 22 vacancies were sanctioned by Central Government on 30.8.1990 by way of cadre review. These vacancies could not be anticipated for the year 1989. The learned counsel has further submitted that the judgment of Hon'ble Supreme court in case of 'S.Ramanathan Vs. Union of India & Ors (2001) 2 SCC 118 is not applicable to the present case and is distinguishable on facts. It is also submitted that the stand taken by the applicants is supported by State of U.P. and UPSC.

Shri V.K.Singh learned counsel appearing for the respondent 5 to 8 and respondent no.9 have submitted that the OA filed by applicants is not legally maintainable and is premature and liable to be rejected at this stage. Relying on the judgment of Hon'ble Supreme court in case of 'S.Ramanathan(Supra) it has been submitted that the triennial cadre review was required under rule 4(2).

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The provision is mandatory and though vacancies were created in 1990 but they will relayed back to the year 1989 when the steps were initiated for cadre review and the applicants are not entitled for any benefit on the ground of delay on the part of the central government in sanctioning the increase in strength in 1990. It has also been said by respondents that state government and UPSC have been influenced by the interim order dated 13.5.02 and consequently they have taken 20 vacancies for the year 1990. It is also submitted that the OA was filed only with the purpose to compell the state government not to count 20 vacancies against the year 1989. It is also submitted that the interim order dated 13.5.02 was based in ignorance of the full facts. The learned counsel has placed before us various provisions of I.F.S Recruitment Rules 1966, I.F.S Cadre Rules 1966 and I.F.S(Appointment by promotion) Regulations 1966.

It may be mentioned here that respondent no.5 Chaitanya Narayan has filed OA No.536/03 wherein he has prayed to quash the recommendation of the state government if the same is found contrary to the principles of law laid down by the Apex court in 'S.Ramanathan's case (Supra) in respect of the vacancies occurring on account of triennial review for the year 1989 and to direct the state government to recommend 20 vacancies arising on account of triennial review to the year 1989 and to direct the respondents to hold review DPC by allocating 20 vacancies in I.F.S cadre to the candidates becoming eligible in the year 1989. From the aforesaid it is clear that the main dispute between the parties is about the 20

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vacancies which came in existence by order of the c-entral government by way of cadre review on 30.8.1990.

We have carefully considered the submissions of the counsel for the parties. It would be appropriate at this stage to reproduce the provisions contained in Rule 4 of I.F.S Cadre Rules 1966.

"4.Strength of Cadres.-

(1) The strength and composition of each of the cadres constituted under rule 3 shall be as determined by regulations made by the Central Government concerned with the State Governments in this behalf.

(2) The Central Government shall, at the interval of every three years, reexamine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit.

Provided that nothing in this sub-rule shall be deemed to effect the power of the Central Government to alter the strength and composition of any cadre at any other time:

Provided further that the State Government concerned may add 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 State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts. "

From perusal of the provisions contained in sub rule (2) of Rule 4 it is clear that the Central Government is required to re-examine the strength and ccmposition of each such cadre in consultation with the State government concerned, at the interval of every three years. The words ''at the interval of every three years ' are very significant and important for resolving the present controversy. The dictionary meaning of word 'interval' is a period of time between the two events, or a short

break separating the different parts of a play, film, or concert etc, a break in performance. Thus if the plain meaning of the word 'interval' is taken into acceout it suggests that there could be a break or gap of three years for cadre review by central government.

> " According to MAX-WELL, the word 'year' when used in a statute may be either the caledar year running from January 1st to the following December 31st, or some other period of 365 days in each case, the court will have to decide which kind of period was in contemplation of the legislature."

In the present case there is nothing to suggest that the word 'year' used in Rule 4(2) refers to any other year except the year running from January 1st to December 31st. The plain meaning of the words used in the rule thus suggest that there could be a gap or break of three years. It is not disputed that the last review was done in the year 1986 vide notification dated 8.9.1986. Thus, three years namely 1987, 1988 and 1989 could be excluded for cadre review. Thus the increase of 20 posts by cadre review on 30.8.1990 could be counted only for the year 1990 and not against 1989. The submissions of the counsel for the parties that the review was required every third year is not correct and based on misconception regarding the phrase used in rule 4(2) of the Cadre Rules 1966. The judgment of Hon'ble Supreme court in case of 'S.Ramanathan' does not help applicants in the facts of the present case. Before Hon'ble Supreme court in case of 'S.Ramanathan' the facts were that triennial review was due in the year 1987 but the exercise was initiated by notification in the year 1989. The cadre strength was reviewed in the year 1991 with the finding that there have

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been an increase in the cadre strength. Thus, there was a clear infraction of the provisions. In the peculiar facts and circumstances of the case the Hon'ble Supreme court granted benefit to the appellants treating the increase in the cadre strength in the year 1989 when the process was started. The Hon'ble Supreme court further observed in para 6 that;

> "...it is no doubt true that an infraction of the aforesaid provision does not confer a vested right with an employee for requiring the court to issue any mandamus. But it cannot be denied that if there has been infraction of the provisions and no explanation is forthcoming from the Central Government indicating the circumstances under which the exercise could not be undertaken, the aggrieved party may well approach a court and a court in its turn would be well within in its jurisdiction to issue appropriate dcirections depending upon the circumstances of the case. ...."

From the aforesaid observations of Hon'ble Supreme court it is clear that directions could be only given to the respondents if there was infraction of the rule by the Central Government and there was no explanation for such an infraction. In the present case we have noticed earlier that there is no infraction and the cadre review had been rightly done in the year 1990. However, even if the submissions of the respondents 5 to 9 is accepted for sake of argument that cadre review was required to be done in 1989, the process was admittedly started in 1989 by State Government and the cadre review was done in 1990 there was not much delay so as to treat it as an infraction of Rule 4(2). The first proviso to rule 4(2) provides that the central government may alter the strength and composition of any cadre at any other time and its power is not effected by sub-rule 2. Thus, even if considered in this angle, there was no infraction and no explanation was

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required from the central government. In case of 'S.Ramanathan the cadre review was due in 1987 which was done in the year 1991. Thus, on facts the case is clearly distinguishable. In the present case, UPSC respondent no.2 and state government, respondent no.3 both have taken the stand that the 20 vacancies have came in existence in the year 1990 and they could not be treated as anticipated vacancies and they cannot be clubbed with the vacancies of 1989. This view taken by the respondents was already expressed in the letters dated 20.2.2002 and 31.3.2002 and it is difficult to accept the submissions of the respondents that the view has been taken by the respondents on account of the interim order passed by this Tribunal. In our considered opinion, the view taken by respondent no.2 & 3 is justified and calls for no interference by this Tribunal.

Now the question is what relief can be granted in the OAs filed. We shall deal with each OA separately according to the relief claimed therein.

OA 539/02

In this OA applicants have prayed for a direction to the respondents to determine the yearwise vacancies in accordance with the provisions contained in I.F.S(Appointment by promotion) Regulations 1966 as amended in the year 2000. The direction claimed has already been given by this Tribunal by order dated 10.9.1997 and no further direction is required in this regard. So far as relief no.2 and 3 are concerned, the UPSC and the state government have already filed counter wherein they have stated that as the cadre review was made on 31.8.1990 and 20 vacancies were sanctioned, the vacancies which came in existence on publication of the notice dated 31.8.1990 cannot be treated as anticipated

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vacancies for the year 1989. In view of this stand expressed by respondents 2 & 3 no order is required. Thus the OA is disposed of accordingly with no order as to costs.

OA No.536 of 2003

In this OA applicant has prayed for quashing the recommendation of the State which is contrary to the principles laid down by Hon'ble Supreme court in 'S.Ramanathan's case and for direction to include 20 vacancies against the year 1989. For the reasons stated above, the 2o vacancies created in the year 1990 cannot be clubbed with the vacancies of 1989. The OA is accordingly dismissed. However, there will be no order as to costs.

OA No.618 of 2003

By this OA applicants have prayed for a direction to the opp.party no.2 to declare the result of the review selection held on 15th,16thy and 24th May, 2002 and accordingly to direct the opp.parties to notify the appointments of the selected candidates in I.F.S,U.P.Cadre against their respective years of selection and for a further direction not to fill up the posts of Conservator of Forest and the post may be kpet vacant until decision of the instant OA. In this case counter has been filed on behalf of respondent no.2. Respondent no.2 has stated difficulty in declaring the result on account of the fact that interim order passed by Hon'ble High court dated 21.8.02 passed in writ petition no.31563 of 2002 was operating and the result could not be declared. It has been further stated in para 6(10) that State government informed that certain officers in the zone of consideration did not have the stipulated 8 years continuous service and they should therefore be excluded. Since certain officers who had been considered by review

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selection committee in May 2002 were not eligible to be considered and other eligible officers would have to be consaidered in their place, the selection committee which met in 2002 may have to be reconvened. The difficulty expressed by respondent no.2 appears to be justified hence no direction can be given instantly. However, as the OAs are being disposed of, the interim order dated 21.8.02 passed by Hon'ble High court shall come to an end. We hope respondent no.2 & 3 shall conclude the proceeding and declare a select list within a reasosnable time. So far as the direction to keep the post of Conservator of Forest vacant, we do not find any justification for the direction as the position of the applicants for induction to I.F.S is subject to review and final result will be known only on publication of the select list. The OA is disposed of accordingly with no order as to costs.

OA No.343 of 2003

In this OA applicant has prayed to adjust the applicant in the Indian Forest Service against the vacancies so determined on yearwise basis as he has already been selected and appointed to I.F.S, U.P.Cadre on the basis of the select list of 1996. He has further prayed that the respondents may be directed to make the provisions for adjustment of the applicant while holding review DPC. In our opinion, applicant is not entitled for the relief claimed. This Tribunal in order dated 10.9.1997 has already directed that officers who have been promoted on the basis of the impugned select list shall not be reverted. However, their further continuance shall be subject to the outcome of the review DPC. No direction contrary to the direction already given by this Tribunal can be given as prayed by the applicant. His continuance is subject to the review of the select list by

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the DPC. The OA is dismissed. However, there will be no order as to costs.

OA No.1357 of 1996

We have heard Shri Sudhir Agrawal learned counsel for the applicant and Shri Ashok Mohiley and Shri Satish Chzaturvedi and Shri K.P.Singh learned counsel for the respondents. By this OA applicants have prayed to quash the year of allotment, allotted to the applicant by Government of India order dated 16.9.1996. However, as the select list of 1996 has already been quashed by this Tribunal by order dated 10.9.1997 and direction has been given to hold a review DPC and to prepare a select list yearwise and as consequence year of allotment shall also be reconsidered. The process has already started for review of the select list. In view of this development the applicant is not entitled for relief claimed in this OA. The OA is accordingly disposed of with no order as to costs.

OA No.1209 of 1999

We have heard Shri Sudhir Agrawal learned counsel for the applicant and Shri K.P.Singh and Shri K.M.Mishra learned counsel for respondents.

By this OA applicants have prayed for a direction to the respondents to consider the applicants for promotion to the post of Conservator of Forest after making yearwise selection and appointment against the vacancies of promotion quota in I.F.S service of U.P.Cadre from 1985 till date as directed by this Tribunal vide order dated 10.9.1997 in OA No.982 of 1986. It has also been prayed that respondents be directed to promote applicants to the post of Conservator of Forest. As the select list under which the applicants were selected for I.F.S has already been quashed by this Tribunal, the applicants are not

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entitled for the direction. Their position is subject to result of the review by selection committee. In the circumstances, they are not entitled for any direction. The respondents 2 & 3 have already initiated steps and the result may be declared soon. In the circumstances, the OA is disposed of finally with no order as to costs.

OA No.334 of 2002

We have heard Shri K.M.Mishra counsel for the applicant and Shri Satish Chaturvedi and Shri K.P.Singh aND Shri R.C.Joshi learned counsel for respondents. By this OA applicant has prayed for quashing the order dated 20.2.02 of the State government by which certain recommendations were made to the UPSC. It cannot be disputed that the recommendations were sent back by the UPSC on 13.3.2002 for fresh consideration. In the circumstances, the impugned order/recommendation has become non-existent and the applicant is not entitled for relief. The respondents have already started the exercise for consideration of names by a review selection committee. The exercise is in progress. In the circumstances no direction is required to be given. The OA is disposed of with no order as to costs.

OA No.688 of 2002

Heard Shri K.M.Mishra learned counsel for the applicant and Shri K.P.Singh learned counsel for respondents. By this application applicants have prayed to quash the selection in I.F.S cadre based on the impugned select list appended with the order dated 20.2.2002 and modified on 30.3.2002. In this regard detailed discussion

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has already taken place in OA No.539 of 2002 and the applicants are not found entitled for the relief claimed. The process has already started for review of the select list by selection committee. The applicants may raise their grievances after the final select list is declared if they are aggrieved by the same. The OA is disposed of with no order as to costs.

OA No.309 of 2002

We have heard Shri K.M.Mishra counsel for the applicant and Shri Satish Chaturvedi and Shri K.P.Singh learned counsel for respondents. By this OA applicant has prayed for quashing the order dated 20.2.02 of the State government by which certain recommendations were made to the UPSC. It cannot be disputed that the recommendations were sent back by the UPSC on 13.3.2002 for fresh consideration. In the circumstances, the impugned order/recommendation has become non-existant and the applicant is not entitled for relief. The respondents have already started the exercise for consideration of names by a review selection committee. The exercise is in progress. In the circumstances, no direction is required to be given. The OA is disposed of with no order as to costs.

Civil Contempt petition No. 60 of 1998

By this contempt petition applicant has prayed to punish respondents for committing contempt by willful disobedience of the order dated 10.9.1997 passed by this ribunal in OA No.982/96. Applicant Indra Singh had filed No.982/96. While deciding OA No.539/02 the facts in have already been noticed as to how the respondents t proceed to comply the order dated 10.9.1997. s for compliance has already started and it is ed stage and likely-hood is that the order

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will be complied with very soon. However, in the facts and circumstances we do not find that there was any willful disobedience of the order. The writ petition was dismissed by High court on 11.5.01 i.e. long after the period of two months originally granted by this Tribunal in the order dated 10.9.1997. The state government initiated steps on 26.11.01 towards implementation of the order within reasonable time. However, the implementation could not be completed on account of various factors mentioned in the earlier part of this order. Thus, no contempt is made out. The contempt application is dismissed. Notices are discharged. No order as to costs.

Before parting with the above cases we would like to mention that after 1984 the State Forest Officers could not be promoted to I.F.S. on account of the litigations pending between the officers of this cadre. The State government and Central government were also responsible for the delay. Hon'ble Supreme court has observed in 'S.Ramanathan's case that such delay would not only upset the smooth working of the rules but also undo the prescribed ratio between the promotee officers and direct recruits.

Considering the facts and circumstances, we direct the State government, respondent no.2 and Union Public Service Commission, respondent no.4 to complete the exercise of selection of State Forest Service Officers for promotion to the I.F.S. within a period of three months from the date a copy of this order is filed. To our knowledge, now no interim order is operating against respondents No.2 & 4.

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we also advise the officers of the State Forest Service not to delay the process of selection by challenging the interlocutory stages of the selection. They will have full right to challenge after, final selection and declaration of the select list. A long delay has already occurred and it is in their interest to avoid litigation at this stage. We hope that the above directions and observations will be considered and complied with in the right spirit.

(D.R.Tiwari)
Member(A)

(R.R.K.Trivedi)
Vice Chairman

Dated:3rd September, 2003

Uv/