

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
(Circuit Sitting at Nainital)

Dated: This the 29th day of July, 2016

Hon'ble Mr. Justice V. C. Gupta, Member-J

Hon'ble Mr. O.P.S. Malik, Member-A

Original Application No. 331/00548/2003

(U/s 19, Administrative Tribunals Act, 1985)

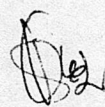
1. S.P. Nautiyal, Senior Technical Assistant, Forest Survey of India, Kaulagarh Road, Dehra Dun.
2. Harpal Singh, Senior Technical Assistant, Forest Survey of India, Kaulagarh Road, Dehra Dun.
3. S.C. Thapliyal, Senior Technical Assistant, Forest Survey of India, Kaulagarh Road, Dehra Dun.
4. G.S. Rawat, Senior Technical Assistant, Forest Survey of India, Kaulagarh Road, Dehra Dun.
5. Chandan Bandyopadhyay, Senior Technical Assistant, Forest Survey of India, Kaulagarh Road, Dehra Dun.
6. T.S. Bisht, Senior Technical Assistant, Forest Survey of India, Kaulagarh Road, Dehra Dun.

.....Applicants

By Adv. : Shri Ashish Srivastava

v/s

1. Union of India through the Secretary, Department of Forests, Department of Forest & Wild Life, C.G.O. Complex, New Delhi.
2. The Director, Forest Survey of India, Kaulagarh Road, Dehra Dun.
3. Sunil Chandra, Senior Technical Assistant (Cartography/Photo Tech), Forest Survey of India, Kaulagarh Road, Dehra Dun.
4. Dharma Singh, Senior Technical Assistant (Cartography/Photo Tech), Forest Survey of India, Kaulagarh Road, Dehra Dun.



5. Sanjay Agarwal, Senior Technical Assistant (Cartography/Photo Tech), Forest Survey of India, Kaulagarh Road, Dehra Dun.
6. A.K. Saxena, Senior Technical Assistant (Cartography/Photo Tech), Forest Survey of India, Kaulagarh Road, Dehra Dun.
7. Om Prakash, Senior Technical Assistant (Cartography/Photo Tech), Forest Survey of India, Kaulagarh Road, Dehra Dun.

.....Respondents

By Adv: Shri R.K. Srivastava

Alongwith Original Application No.1338 of 2010

1. Harpal Singh aged about 58 years, S/o Shri Sukh Ram Singh, Presently posted as Senior Technical Assistant Forest Survey of India, Kaulagarh Road, Dehradun.
2. S.C. Thapliyal aged about 57 years, S/o Late J.P. Thapliyal, Presently posted as Senior Technical Assistant Forest Survey of India, Kaulagarh Road, Dehradun.

.... Applicants.

By Advocate :Shri Ashish Srivastava

Versus

1. Union of India through Secretary, Department of Forest and Wild Life, C.G.O. Complex, New Delhi.
2. The Director General, Forest Survey of India, Kaulagarh Road, Dehradun.
3. Sunil Chandra, Senior Technical Assistant, Forest Survey of India, Kaulagarh Road, Dehradun.

.... Respondents.

By Advocate : Shri R.K. Srivastava



ORDER

Delivered by Hon'ble Mr. V.C. Gupta, Member (J)

As both the petitions are relating to common question of facts and law in giving promotions to Senior Technical Assistants in Forest Survey of India (FSI), so both petitions were heard together. Hence, both the original applications are being decided by a common order.

2. The brief facts of Original Application No.548/2003 are as under :-

This OA is filed by Six applicants, S.P. Nautiyal and 05 others after impleading 05 private respondents – Sunil Chandra & others apart from UOI & Others and Director for the Survey of India for the following reliefs :-

"(i) That the Hon'ble Tribunal may be pleased to call for the records relating to appointment of private respondents and also the records wherein it was decided to treat them as Senior Technical Assistant and to fix their seniority.

(ii) That the Hon'ble Tribunal may be pleased to hold that the appointment of private respondents as Senior Technical Assistants being not in conformity with the provisions of recruitment rules to the post of Senior "Technical Assistant as the same was not by way of promotion or by way of transfer on deputation, the private respondents cannot be included in list of seniority list of Senior Technical Assistants.

(iii) That the Hon'ble Tribunal may further be pleased to hold that consequent to the illegal appointment of the private respondents, their seniority in the grade of Senior Technical Assistant is also illegal and accordingly the seniority list at AnnexureA-1 be quashed and set aside.

(iv) That the Hon'ble Tribunal may be pleased to direct the respondents to recast the seniority list of Senior Technical Assistant strictly on the basis of their promotion to the said post and without any interpolation by way of direct recruitment etc.

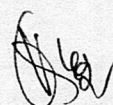
(v) The Hon'ble Tribunal may pass any such suitable order or orders as it may deem fit to meet the ends of justice.



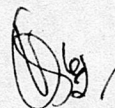
(vi) That costs of this petition may also be granted to the applicant."

3. The applicants were working as Senior Technical Assistants (STA) of FSI, Kaulagarh, Dehradun, were promoted from the post of Junior Technical Assistant (JTA). S.P. Nautriyal, applicant No.1, G.S. Rawat, applicant No.4, T.S. Bisht, applicant no. 6 and one Kanchi Lal, non-applicant were appointed as STA on adhoc basis after their ad hoc promotion from the post of JTA vide order dated 16.7.1990 for a period of six months. However, the period of ad hoc appointment was extended twice.

4. Vide order dated 29.11.1996, the applicant No.2 Harpal Singh, applicant No.3 – S.C. Thapliyal, applicant No.4 – G.S. Rawat, applicant No.5-Chandan Bandyopadhyay and applicant No.6 – T.S. Bisht and Kanchi Lal and Sanjay Samant, non applicants, were regularly promoted to the post of STA subject to decision of the OA No.691,692 and 1222/95. According to the applicants as per recruitment rule the post of STA could be filled by promotion or failing which by transfer on deputation and could not be filled by direct recruitment. The post of STA is a selection Group 'B' non gazetted post. To stream line the functioning and also with intend to collection of data of FCI the Govt. Of India, Ministry of Environment of Forest setup a National Forest Data Management Centre (NFDNC) Dehradun and some post were created for it. In 1988 an advertisement was issued to fill-up the post of STA (Cartography) and STA (Photo technician) in NFNDNC by direct recruitment. The applicant did not notice this fact keeping in view that mode of appointment is direct recruit and do not belong to the cadre of STA simplicitor. The applicant did not apprehend that their seniority would in any



way effect. In pursuance of that advertisement, the private respondent No.3 to 7 Sunil Chandra and others were appointed and took over the charge. The applicant for the first time came to know when a seniority list of STAs was published and circulated on 17.5.2002 (Annexure-A-1) then they find that private respondents were placed above to the applicants in the seniority list and their name were inducted in the seniority list as direct recruits. In order to their joining to the post of STA Cartography/Photo technician as direct recruitment, the applicant felt aggrieved and raised his grievances by serving a notice upon the official respondents on 29.5.2002. When official respondent did not reply, the present application under Section 19 of A.T. Act, 1985 was filed seeking the aforesaid reliefs on the ground that the appointment of respondent No.3 to 7 by way of direct recruits is de-hors of recruitment rules of STA in FCI. Hence, their appointments have no-est in the eye of law and subsequently they cannot be figured in the seniority list of STA as they are not eligible to be appointed as STA. The only known source of recruitment of STA is by way of promotion from its feeder cadre of J.T.A. and in case of non availability of suitable candidates same could be filled up by transfer on deputation. The manner adopted for appointment of respondent No.3 to 7 is illegal. The applicant categorically pleaded in ground E of para 5 that they have no grievance to the appointment of the private respondents as STA Cartography/Photo Technician as the case may be as long as they do not figured in the seniority list of STA. It is only on the induction of private respondents in the seniority list of STA has given rise to this grievance. It has been further pleaded that being the direct recruit, the private



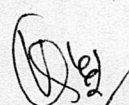
respondents are younger in age will seriously effect the promotional avenues of the applicants and their induction in the seniority list shall seriously prejudice their career.

5. The counter affidavit has been filed by the respondents wherein they pleaded that when adequate data could not be effectively collected scientifically a need has been arisen to formulate a separate unit with prior approval of new scheme formulated by GOI. In this new scheme an amount of Rs. 04 crore was allocated by Govt. Of India as evident from letter dated 8.7.1987 issued by Ministry of Environment of Forest. Under this scheme an organisation was setup in the name and style National Forest Data Management Centre (NFDMC). The centre provided with digital image processing and cartographic system and various other facilities to facilitate digital interpretation of satellite, aircraft and other data for vegetation mapping and storage of forestry related data. The centre was managed by a Board of management which authorised to lay down policy guidelines for functioning of computer centre and to monitor performance for the centre following posts were sanctions :

Annexure-I

The sanctioned strength of the National Forest Data Management centre (NFDMC).

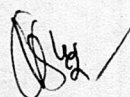
S. No.	Name of Post	No.of Posts sanctioned	Scale of pay Rs.
1.	Joint Director	1	Rs.4500-5700
2.	Deputy Director (System Manager	1	Rs.3000-4500



3.	Assistant Director (Programmer)	2	Rs.2200-4000
4.	Assistant Director	5	Rs.2200-4000
5.	Senior Technical Assistant (Photo technicians)	3	Rs.1640-2900
6.	Junior Technical Assistant (Computer operator)	3	Rs.1400-2300
7.	Junior Draughtsman	1	Rs.1200-2040
8.	Junior Technical Assistant (Cartography)	8	Rs.1400-2300
9.	Senior Technical Assistant (Cartography)	4	Rs.1640-2900
10.	Office Superintendent	1	Rs.1640-2900
11.	Stenographer (Senior)	1	Rs.1400-2300
12.	Lower Division Clerk	1	Rs.950-2300
13.	Driver	1	Rs.950-1600
14.	Peon	1	Rs.750-910

Total	33
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6. To fill-up the above mentioned posts the Board made a proposal keeping in view the urgent need of functioning of the Centre to the Govt. of India, Ministry of Environment of Forest vide letter dated 5.4.1988 (Annexure-CA-3). It was proposed that for the above mentioned posts at item No.5 to 9 the permission to fill-up may be granted by inviting the application through open market by way of direct recruitment. The relevant recommendation is quote herein below :



"6. In view of the fact that appointment of suitable persons for running the NFDMC is extremely urgent, it is proposed that the Director, FSI, may kindly be permitted to fill up the following technical posts by making advertisement in the News Papers and in accordance with the recruitment norms as indicated in Annexure-A :

- 1. Sr. Technical Assistant
(Photo Technicians)**
- 2. Jr. Technical Assistant
(Computer Operator)**
- 3. Junior Draughtsman**
- 4. Jr. Technical Assistant
((Cartography))**
- 5. Sr. Technical Assistant
((Cartography))**


The Selection Committee for selection of suitable candidates for the above posts is also proposed to be constituted as below :

- 1. Director,
Forest Survey of India** **– Chairman**
- 2. Head, IIRS, Dehradun** **– Member**
- 3. An Officer from Survey of
India not below the rank of Scientist-SF**

7. This proposal of the centre also proposed the norms of recruitment. The proposal of Board of NFDMC was accepted by the Government of India vide its letter dated 03.05.1988. The relevant extract of this letter is given below :

"(ii) The posts at Sl. Nos. 10-14 of the list are administrative posts for which recruitment rules have already been notified. Recruitment to these posts may be made in accordance with the notified recruitment rules.

(iii) The remaining posts at sl. Nos. 5-9 of the list are non-gazetted technical posts for which recruitment rules have not



been notified. In view of the urgency in the filling up of these posts, you may taken action to fill up these posts, pending notification of the recruitment rules, in accordance with the norms attached as Annexure A' to your letter. Selection may be made by a committee as proposed in para 06 of your letter."

8. Thereafter by adopting due procedure for selection by way of direct recruits, the selection process was initiated and the private respondents were recruited as STA Cartography/Photo Technician under the policy of Government of India. The Government of India decided to create a common cadre of STA non gazetted under the policy. A seniority list of STA of all the discipline was published as on 01.06.1995 by letter dated 31.4.1995, in which the private respondents were shown at Sl. No.27 to 33. The private respondents No.27 to 33 were appointed in between 29.9.1988 till 26.11.1989. By that time, the applicants were not find place in the seniority list because they were promoted on regular basis on 29.11.1996 except petitioner No.1 S.P. Nautiyal. So it is wrong to say that applicants were not aware with the first seniority list of STA published in 1995. The list of 2002 was the second seniority list. The names of the applicants were included and they have rightly been shown below to the private respondents in the seniority list.

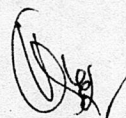
9. It was further submitted that the earlier litigation was initiated by the direct recruits. Two petitions having no. 692/1995 & 691/1995 were filed against the change of recruitment rules for the post of Assistant Director. The petitions were decided with direction to the authority to consider the



matter in the light of judgements of Hon'ble Supreme Court in the case *of Dr. (Mr.) O.Z. Hussain Vs. UOI & ors. – 1991 (SCC) (L&S) 649 and S.P. Shivprasad Pippal Vs. UOI & ors. – 1998 (SCC) 1119*. A review petition has been filed against that order. The same was also dismissed.

10. It was also pointed that the appointment of the private respondents was not de-hors of the rules and direct recruitment was made by the respondents in terms of decision of competent authority, hence, it cannot be said that placement of the private respondents in the seniority list of STA is illegal or bad in law. The applicants were not promoted to the post of STA prior to respondent Nos. 3 to 7 and they have been regularly promoted in 1996, hence, they are rightly been placed in the seniority list. During the pendency of this petition Shri Sunil Chandra i.e. respondent No.3 was promoted as Assistant Director by an order dated 01.09.2010 passed by respondent No.2. The same was challenged by filing another OA having No. 1338/10. The ground to challenge the promotion of respondent No.3 – Sunil Chandra was also on the similar ground on the basis of placing his name in the seniority list prepared in 2002 over and above the applicants.

11. This subsequent petition No.1338/2010 was filed by Harpal Singh and S.C. Thapliyal, the applicant No.2 and 3 of OA No.548/2003. In this OA, the private respondent Nos. 4, 5, 6, and 7 were not made a parties. The submission of the applicant in OA No.1338 of 2010 is that as this placement of the name of respondent No.3 was illegal and he was inducted de-hors



the rule as STA therefore, he cannot be promoted to the post of Assistant Director.

12. In O.A. No. 1338/10 also the counter affidavit has been filed and almost similar pleas have been taken which were taken in OA No.548/2003. However, in this case the recruitment rule framed by Government of India for the promotion to Assistant Director has been annexed.

13. The relief claimed in this application are as under :

- (i) ***This Hon'ble Court may graciously be pleased to quash the impugned order dated 01.09.2010 (Annexure A-1 to this original application) passed by respondent No.2 whereby on recommendation of DPC the respondent No.3 has been promoted as Assistant Director in the pay scale of Rs.15600-39100/-.***
- (ii) ***This Hon'ble Court may graciously be pleased to direct the respondents to promote the applicants on the post of Assistant Director in the respondent Department on the basis of the seniority of Senior Technical Assistant without clubbing their seniority with Senior Technical Assistants, Cartography and Photo Technician.***
- (iii) ***Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.***
- (iv) ***Award the costs of the original application in favour of the applicant.***

14. These new recruitment rules for promotion to the Assistant Director were promulgated vide gazette notification dated 24.12.1994. The mode of recruitment/appointment may be by direct recruits or promotion or by transfer on deputation.

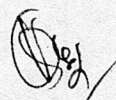


15. As this OA No.1338/2010 is consequential in nature hence following common questions are involved which are of prime important:

- (a) Whether the appointment of private respondents in OA No.548/03 by way of direct recruits is de-horse of the rule.
- (b) Whether the STA Cartography/Photo Technician is a separate cadre or a common cadre of Senior Technical Assistant.

Question No.1 - It is not disputed that private respondent No.3 to 7 were directly recruited. It is also clear from the pleading of the applicant that they have no grievance if they could not have been included in the cadre of promotee STA. The grievance arises for them when the private respondents were added in the seniority list of STA prepared after consolidating all discipline of STA's.

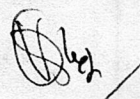
16. We have heard the learned counsel for the parties. From perusal of the record and pleadings and material available on record, it is not disputed that Government of India created a unit to improve the collection of data in scientific manner which is known as NFDMC. The NFDMC was being governed by a Board which has been conferred with the power to regulate the functioning of this centre. In Board meeting a proposal was forwarded for consideration to Government of India for filling up the post of STA Cartography/Photo Technician by way of direct recruitment. Considering the nature of work the Government of India (the competent authority) granted permission to make direct recruitment as proposed by the Board of NFDMC. In pursuance thereof the direct recruitment was taken place and



the private respondent no. 3 to 7 were appointed on the basis of direct recruitment. The Government of India thereafter again taken a decision to merge all the streams of STA and to create a common cadre under a policy decision taken by the Competent Government. In pursuance thereof the seniority list of STA was published in the year 1995 wherein the private respondents were placed at the bottom being inducted in service after other counterpart who were inducted in the cadre earlier to private respondents on the basis of promotion in the cadre of STA. By that time, the present applicant did not challenge the seniority list wherein the private respondents were placed in bottom.

17. The applicants have not denied that the private respondent no 3 to 7 were inducted in services prior to their appointment on the basis of promotion. Even from the date of ad-hoc appointment in STA in 1991 the applicants could not claim that they were appointed prior to private respondents. They were appointed as STA after the appointment of private respondents on the basis of direct recruitments. Thus, seniority list prepared on the basis of date of appointment cannot said to be arbitrary or illegal on the ground that private respondents are direct recruited. In these circumstances, it could not be said that appointment of private respondents by way of direct recruitment was de hors of the rules. They have rightly been inducted in service hence it cannot be held that they were illegally inducted in service or their appointment is no-est.

Question No.II - As discussed herein above under a policy decision of the competent Government STA of all the discipline were included in common

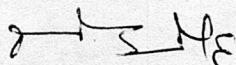


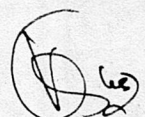
cadre of STA. After the aforesaid policy decision, it cannot be said that private respondents being recruited for NFDMC form a separate cadre.

18. Moreover, a common seniority list was published in 1995 where in private respondents were placed at the bottom. No objections were raised by the applicants or by the then promote STA. The applicants were appointed as STA after seniority list of 1995, cannot be allowed to raise an objection on the basis of seniority list of 2002 wherein the applicants were shown below to the private respondents on the basis of date of their appointment and induction in services. Hence, it cannot be said that the STA Cartography/Senior Tech. Assistant Photo Assistant was a separate cadre.

19. In view of the aforesaid discussions made, we are of the view that the seniority list of 2002 which has been assailed in OA No.548/2003 and promotion order of private respondents Sunil Chandra in 2010 assailed in OA No.1338/2010 could not be set aside.

20. Hence, both the OA Nos. 548/2003 as well as 1338/2010 sans merit and accordingly dismissed. There shall be no order as to costs.


Member-A

 29/07/2016
Member-J

RKM/