

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

O.A. NO. 477/93**T.A. NO.**DATE OF DECISION 13.10.95D.C.Suthar & Ors

Petitioner

Dr.Mukul Sinha

Advocate for the Petitioner (s)

Versus

State of Gujarat & Ors.

Respondent

Mr.P.B.Sherma ,Mr.S.Tripathy

Advocate for the Respondent (s)

Mr.Akil KureshiMr.D.A..J.Bambhania

CORAM

The Hon'ble Mr. N.B.Patel

Vice Chairman

The Hon'ble Mr.K.Ramamoorthy

Member (A)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

1. Shri D.C.Suthar,
Dy.Conservator of Forest,
S/o. C.Suthar,
Banaskantha Forest Division,
Palanpur.

2. Shri R.S.Ajara,
Asst.Conservator of Forest,
S/o.Conservator of Forest,
Community Forestry Project,
L.K.Society,
Memnagar, Ahmedabad.

Applicants

(Adv: Dr.Mukul Sinha)

Versus:

1. State of Gujarat,
(Notice to be served through the
Secretary, Forest & Environment Dept.,
New Sachivlaya,
Gandhinagar.

2. Union of India,
(Notice to be served through the
Secretary,
Forest & Environment dept.,
South Block, Near Parliament House,
New Delhi

3. Union Public service Commission,
having its offices at
Bhavalpur House,
New Delhi

4. Shri Nityanand Shrivastava,
Asst.Conservator of Forest.
5. Shri Narad Singh Yadav,
Asst. Conservator of Forest.
6. Binod Kumar Sinha,
Asst. Conservator of Forest.
7. Shri Ashutosh Kumar Jha,
Dy.Conservator of Forest.
8. Shri Shyamal Tikadar,
Dy.Conservator of Forest.
9. Shri Niranjan Kumar Singh,
Dy.Conservator of Forest.
10. Shri Umeshkumar Dayal Singh,
Dy.Conservator of Forest.
11. Shri G.Yadaiah,
Dy.Conservator of Forest,

(Address of Resptd. No.4 to 11, all
C/o. Principal Chief Conservator of Forest)
Baroda).

12. Shri Mahesh Singh,
Asst. Conservator of Forest.
- 13 Shri Anirudh P.Singh,
asst. Conservator of Forest.

(Resptd. No.12 & 13
C/o.Principal Conservator of Forest,
Baroda.)

Respondents

(Advocate: Mr.P.B.Sharma, Mr.S.Tripathy
Mr.Akil Kureshi
Mr.D.A.Bambhania

JUDGEMENT

O.A.NO.477/93

Dated: 13.10.95

Per: Hon'ble Mr.K.Ramamoorthy, Member(A)

In this application relief has been sought to restrain the respondent from promoting any direct recruit to the senior time-scale as such a promotion would adversely affect the prospects of the applicants in their to entry into Indian Forest Service. Specifically the relief has been worded as under:-

Permanently restraining the respondents Nos 1&2 from appointing/promoting any direct recruit from the IFS cadre (Junior time scale) to the post of Deputy Conservator of Forest or any other equivalent post in the senior time scale till the shortfall in the number of promotees from the State Forest Service as shown in the annexure-II is fully filled up from amongst the members of the State Forest Service.

The second relief sought in para 13. B was not pressed during arguments, and hence need not concern at us this stage.

By way of a Miscellaneous Application No.55, the applicant No.2 further sought direction that in view of the fact that against "clear substantive vacancies in the senior duty post of IFS cadre", "cases of 39 G.F.S.officers are required to be considered for preparing the select list of 13 officers", and hence sought also the following direction:

A. Directing the respondents to include the name of the applicant in the zone of consideration for considering the cases of the GFS officers for the promotion to the IFS cadre in the ongoing process of selection to the IFS cadre, and

B. Further directing the respondents to consider the case of the applicant for appointment to the IFS cadre forthwith.

The applicants belong to the Gujarat Forest Service and as per the IFS Recruitment Rules, 33 1/3 percent of the posts were to be reserved for such officers. In accordance with the rules, provision has been made for a certain number of posts for promotion in the State I.F.S.(cadre) rules. In the notification under sub-section (1) of Section 3 of the All India Act read with Rule 4 of the I.F.S.(cadre) Rules, 25 posts have been specifically indicated as

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the number of posts given for filling in by promotion in accordance with the Rule 8 of the I.F.S. in Gujarat. It is the contention of the applicant that promotion of State Officers into IFS should be done in time and as and when a vacancy arises for recruitment by promotion, since the seniority of the officer is otherwise adversely affected vide Section 8(c) of IFS rule. Any delay in promotion in time would affect their seniority and hence the present application.

The following 3 points have been made:

1. While there is a back-log in the number of officers to be appointed by promotion to the IFS, the number of direct recruits allotted to the Forest Service has actually exceeded the number that should have been given to them.
2. Even though there were sufficient number promotee of officers available, with necessary seniority as provided under rules, they were not being considered, while direct recruit officers were getting promoted at the earliest stage.
3. The action in excluding other names for consideration for promotion to IFS is illegal, as the applicants were holding substantive posts.

In their reply, the respondents have stated that Government have not shown any bias in respect of promotion as between direct recruit and promotee officers. In fact, there is deficiency in both the quotas. According to the respondents, both, the direct recruit quota, and promotees quota, fell short of 14 in each case and according to the respondents " even today there is shortage of IFS and GFS officers with a shortfall of equal number of officers under each category and in that view of the matter, it cannot be said that the actions of the authority are in any way arbitrary."

The respondents have specifically averred that only 16 eligible persons were available for nomination to posts in IFS against the permissible 39, & "rest could not be included because of non fulfilling the requirements of confirmation and other criterion. The important other criterion relates to inter-se-seniority within GFS for which purpose there was pending litigation which matter is now been taken to the Supreme court. As per the decided

judgement of the High Court, the training period is not to be counted towards seniority. In view of this decision, the respondents have stated.

" It is submitted that from a rough calculation there are atleast 48 people who are ahead of the petitioner for being considered and be included in the zone of consideration even assuming that the aspect of being confirmed for being considered is ignored for the time being for the sake of argument without admitting the same. It is thus submitted that the petitioner did not come within the zone of consideration even if the question of the confirmation is ignored."

The Learned Counsel for the applicant and the Respondent had both argued at length, both on the rules as well as on the catena of the judgements deciding the issue as between direct recruits and promotees. In addition to the oral arguments, counsels have also advanced written arguments in this case.

On the excess appointments, the specific argument of the applicants runs as under

Direct recruits IFS officers cannot hold senior duty posts in the state in excess of their share in cadre posts plus, No. of posts prescribed at serial No.5 of the Regulations. Whereas in the whole service, they cannot hold post beyond their share in item No.1,2 & 5. In case of Gujarat, 63 senior duty cadre posts are identified and 16 posts are provided as deputation Reserve at Sr.No.5 of the Regulation, out of which 25 posts are reserved for promotees and only 54 direct recruit IFS officers are eligible to hold senior duty posts in the state as per these provisions. Contrary to this, as many as 59 direct recruit IFS officers were appointed on senior duty posts in the state.

The counsel for the respondents on the other hand even argued that even the overall 33 1/3 percent as mentioned in the IFS Recruitment Rule (in Rule 9

of the reference) referred only to the upper limit and does not establish a legal claim even for the number 25. The rules specifically states as under:-

The number of persons recruited under Rule 8 in any state or group of states shall not, at any time, exceed $33 \frac{1}{3}$ percent of the number of posts as are shown against items 1 & 2 of the cadre in relation to that state or the group of states, in the schedule to the Indian Forest Service (Fixation of cadre strength) Regulations, 1966."

Quoting this rule, counsel for the applicant further went on to argue that it is nowhere incumbent on the Government to fill this promotion quota in full and therefore the applicants have no right to claim that such posts should be filled up fully.

At the outset it has to be stated that the notification clearly laying down the number allotted for recruitment through the promotion cadre has been issued on 26.8.91. In the case of I.F.S. in Gujarat State it is fixed at 25. Any deficiency in this regard therefore has to be seen only on the light of this particular number since notification itself is not so far being challenged.

The argument of the applicant that the promotee quota should be reflected specifically in the deputation reserve or leave reserve is not borne out by any legal provision as these are merely classification of the different slots to be occupied by the IFS officers who could be either from the direct promotion quota or from the promotee quota. The tabular statement of the applicant showing that the quota of the direct recruit has been exceeded by showing the posts held by direct recruit officers against these slots is irrelevant, so long as the total number does not exceed the limit.

As regards the argument that 25 represents the upper limit and cannot be construed as right of the promotee officers to legally claim promotion to that number, this argument is hypothetical inasmuch as the respondents have themselves stated that there has been deficiency in both the quotas. The intention of this provision is obviously to provide the necessary mix of experience and youth in All India Services if officers with sufficient seniority and experience were not to become available. The intention of the

rule is not to deny such an opportunity for promoting State Service Officer. The wordings of the rule is to be explained in the light of administrative consideration of not diluting the mix of youth and academic excellence. We, are therefore, not inclined to accept the argument that the promotees as are represented by the applicants have no justifiable casue if promotions are not given up to the limit prescribed in the rules. Their Lordships of the Supreme court have aptly given us the guiding principle to be followed in such cases in the judgement of N.K.Chauhan Vs.State of Gujarat (AIR 1977 Supreme Court p.251) which reads as under:-

"Force, there may be, in the rival versions, individual injustice there can be whichever view were accepted and precedential pushes and pressures may also be brought into play by either side if we surrender to scriptural literality of decisions of this Court and miss the thrust of the ratio therein."

Though the applicants had in their application sought relief to cancel the notification representing promotion in excess of the quota, they had not pressed this relief during the hearing. The point has also to be conceded that if direct recruit candidates are available and who have completed training and who have put up minimum modicum of service, their promotions cannot be withheld specially when deficiency in quota is available for direct recruits. If such officers are available in sufficient number, they can be even promoted to fill in other senio scale posts which could have normally gone to promotee officers, just as it would be open to the Government to fill in senior scale posts in the cadre from promotion quota, against direct recruit post if direct recruitment quota officers with sufficient seniority were not available. What is necessary in either case would be however, to regulate the seniority as per the push down formula which is now a settled principle as per N.K.Chauhan's judgement(AIR 1977 SC 272). In that judgement their Lordships of the Supreme Court had observed as under, in regard to promotee officers filling in the cadre post in excess of their quota.

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"Promotees who had been filled into vacancies beyond their quota .. must suffer survival as invalid appointees acquiring new lives when vacancies in their quota fall to be filled up. To that extent they will step down, rather be pushed down as against direct recruits who were later but regularly appointed within their quota."

The same logic can be applied for the direct recruit officers coming to occupy the slots meant for promotee officers as decided to be filled in by the State Government ^{fill} ~~after~~ the stalemate, regarding seniority question within the State Service cadre is resolved. Since the IFS cadre has been in operation in Gujarat for some time now, with sufficient number of officers in both the streams (Direct & promotees) becoming available and aspiring for further promotion, the above principle can now be applied prospectively. A retrospective application of the principle cannot, understandably, be recommended during the formulative stages of a cadre.

During the argument, the real grievance of the counsels for applicants is the one mentioned in M.A. that the respondent State Government is not promoting the State Forest Officers merely on the ground that they were not available because of the misreading of the provision relating to "substantive status." The counsel for the applicant strongly urged that the requirement of "substantive" status should be liberally interpreted to reflect the actuality of posts and should not be merely related to the actual order of permanency as may be issued by the State Government. The counsel for the applicant referred to administrative apathy and rigmarole regarding various requirements before final orders of permanency which invariably caused delay in the issue of formal orders of permanency. There have been more than one judgement by the Supreme Court that the requirement of permanency will have to be seen merely with reference to the validity of the recruitment mode and facts of posts being available. The latter requirement is self-evident by the fact of long period of officiation in the posts. If, therefore, the case of a promotee officer is not taken merely on the ground that the State Officer did not have permanent status that particular recruitment procedure should be annulled.

Whether the person is in a substantive capacity or not, is to be decided by

the consideration laid down by the SC in its judgement of 1980 quoted in AIR 1981 SC/41 Baleswar Das & Ors. Vs. State of U.P. & Ors. wherein SC has observed " if the appointment is to a post and the capacity in which the appointment made is of indefinite duration, if the Public Service Commission has been consulted and has approved, if the test prescribed have been taken and passed, if probation has been prescribed and has been approved, one may well say that the post was held by the incumbent in a substantive capacity." (para-33). This view has been repeated by SC in its judgement in other cases as under:

1. B.Bhimappa Vs.State of Karnataka, AISLJ 31988 A 140
2. AIR 1991 SC 284 Keshavchandra Joshi Vs.Union of India.
3. (1994) 27 ATC 184 Makar Dwajpal & Others Vs. Neera Yadav & another.

If, therefore, sufficient number of officers are available for filling in by promotion and if there are sufficient number of officers available with necessary seniority whose case have not been considered merely because formal confirmation order had not been issued, it would be wrong and cases of such officers as are covered by categories mentioned in the SC judgement quoted above will have to be considered. The promotion exercises should not be held back merely on this ground.

As on academic issue, therefore, there can be no disagreement with the argument by the counsel for the applicant. None of the present applicants should have been held back on account of the "permanancy" factor.

In the particular case of Gujarat Forest Service, there is a further problem of inter-se-seniority within the State Forest Officers as is evident by litigation which was going on in the High Court and which has now been taken to the Supreme Court. As stated earlier, in one of the replies, the respondents have averred that there were now as many as 48 officers above applicant No.2. This fact itself however need not be and should not be used to affect the

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rights of promoted officers to get into the IFS, as a whole as one or the other officer could have been considered.

If, therefore, for lack of decision regarding seniority, it is not possible to effect promotion and it should become necessary for the State Government to fill in senior posts from direct recruit officers who are available in such cases, the State should ensure that to the extent an officer is promoted from direct recruitment quota against promotion quota, such officer should be given notice that they are likely to face push down in the manner of seniority when promotee officers become available on the settlement of their seniority problem. It is necessary to see that the promotee officers seniority should not be jeopardised because of such pending litigation. //

The above position, however still begs the question as to how to fill in posts when deficiency exists in both the quotas. In this particular case, there has been deficiency in promotees quota slots and direct recruit quotas. It will have to be left to the discretion of the administrative department to decide on the proper ratio. To fill in the quota, keeping a parity in the deficiency numbers is not an irrational formula.

Under the circumstances, as regards the relief sought by the applicants, we see that no case has been made regarding actual illegality in any promotion and even in taking up officers for consideration for promotion to IFS. As stated in the reply to the M.A., been keeping apart the ground of permanency in relation to seniority the scope of the applicants falling within the zone is under a legal dispute. Therefore, the application fails.


However, we direct the respondents to see that a proper ratio is maintained in the deficiencies in two quotas as andf when action is taken to fill in the vacancies. We would also direct the respondent State Government to see that the eligibility for the State Forest Officers for the promotion should be seen in the true meaning of the substantive character of their appointment and the mere fact that there is an inter-se-seniority dispute within the Forest

Officers cadre should not be utilised to deny seniority to the State Forest Officers. The slot decided to be filled in for promotion as per Rule 8 (2) could be of course filled in by a direct recruitment officers, if the latter, otherwise, fulfils requirements for promotion. Such a promoted directed recruit officers should be clearly given notice regarding possible push-down when a promotee officer's right is established and decided.

With the above directions, the application is disposed of.

2 M. A 55/94 also stands disposed off in view of the above
No order as to costs.


(K. Ramamoorthy)
Member (A)


(N.B. Patel)
Vice Chairman

ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

Application

041473/93

Transfer Application No.

CERTIFICATE

Certified that no further action is required to be taken and
the case is fit for consignment to the Record Room (Decided).

Dated : 18.10.95

Countersign :

[Signature]
6/11/95

Section Officer.

[Signature]

Signature of the Dealing
Assistant

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

I N D E X - S H E E T

CAUSE TITLE

CA/477/93

NAME OF THE PARTIES

D.C. Suthar & Anr.

VERSUS

U.O.I. & Ors.

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