

54-
O.A. 152 of 1989

RESERVED ORDER

FOR KIND PERUSAL OF
HON'BLE VICE-CHAIRMAN

56

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No. 152 of 1989

Cuttack this the 23rd day of May, 1995

Manoranjan Rath ... Applicant(s)

Versus

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No

2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? No


(D.P. HIREMATH) 23/5/95
VICE-CHAIRMAN


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

23 MAY 95

52

CENTRAL ADMINISTRATIVE TRIBUNAL: CUTTACK BENCH

Original Application No.152 of 1989

Cuttack this the 23rd day of May, 1995

C O R A M:

THE HONOURABLE MR.JUSTICE D.P.HIREMATH, VICE-CHAIRMAN

AND

THE HONOURABLE MR.J.RAJENDRA PRASAD, MEMBER (ADMN.)

...

Manoranjan Rath, 46 years, son of
P.C.Rath, a permanent resident of
Balasore town, PO/PS/Dist:Balasore,
at present working as Divisional
Forest Officer, Angul Division,
Angul, Dist:Dhenkanal

...

Applicant

By the Advocate: M/s.A.K.Mishra,
S.K.Das,
S.B.Jena

Versus

1. Union of India, represented through
Secretary to Government of India,
Ministry of Environment and Forests,
Parivaran Bhawan, CGO Complex
Phase-II, Lodi Road, New Delhi-110003
2. State of Orissa represented through
its Secretary to Government of Orissa,
General Administration Department,
Bhubaneswar
3. State of Orissa represented through
Secretary to Government of Orissa,
Forest, Fisheries and A.H Department,
Bhubaneswar
4. Union Public Service Commission,
Dholpur House, New Delhi
5. Sri Sriram Sagar
6. Sri Pravat Ranjan Mohanty
7. Sri Saroj Kumar Patnaik
8. Sri Bibhuti Bhusan Routray
9. Sri Suresh Chandra Mohanty
10. Sri Bijaya Ketan Patnaik

11. Sri Arun Kumar Bansal
12. Sri Prasanna Kumar Parida
13. Sri K.Jude Sekar
14. Sri Priyanath Padhi
15. Sri Ashutosh Chitranshi
16. Sri Ram Vir Singh
17. Sri Vinod Kumar
18. Sri Dinesh Singh
19. Sri Janardhan D.Sharma
20. Sri Bhagirathi Behera
21. Sri Bhanu Pratap Singh
22. Sri Bairagi Charan Prusty
23. Sri Kumuda Chandra Das
24. Sri Pitambar Sethi
25. Sri Pitambar Sethi
26. Sri A.P.Tripathy
27. Sri S.S.Srivastava
28. Sri R.A.Sharma
29. Sri A.K.Mohapatra
30. Sri M.Gurinath Misra
31. Sri Subash Ch.Misra
32. Sri G.Bhaskar Reddy
33. Sri B.Laxmikanta Reddy
34. Sri Sarat Ch.Patra
35. Sri Narendra Sethi
36. Sri Satrughan Padhi
37. Sri Ajit Kumar Patnaik
38. Sri Sidhanata Das
39. Sri Subash Ch.Misra
40. Sri Kumar Raghavendra
41. Sri R.N.Reddy
42. Sri Srikrishna Sherawat
43. Sri Stephen Behera
44. Sri M.Satyana Rayana
45. Sri Dr.D.Sahu
46. Sri S.Raghavan
47. Sri J.P.Singh
48. Sri S.B.Samant

- 59
- 49. Sri Jogeswar Sahoo
 - 50. Sri Debabratta Swain
 - 51. Sri Ajaya Kumar Mohapatra
 - 52. Kumari Rebecca Nayar
 - 53. Sri V.Raje Reddy
 - 54. Sri Sandeep Tripathy
 - 55. Sri M.Satyana Rayana
 - 56. Sri Shekwan Kumar Sinha
 - 57. Sri Pandab Behera
 - 58. Sri Annop Orian Franklin Bakhala
 - 59. Sri Ajit Bhattachar
 - 60. Sri Subash Chandra Swain
 - 61. Sri Harishankar Upadhyaya
 - 62. Sri Anup Kumar Nayak
 - 63. Sri Birendra Kumar Shukla
 - 64. Sri Amresh Kumar Jeyaswal
 - 65. Sri T.H.S.Burney
 - 66. Sri Kulamani Sethy

Respondents

By the Advocate: Shri K.C.Mohanty,
Government Advocate
(State of Orissa)

... For Respondents 2 & 3

Shri U.B.Mohapatra,
Addl.Standing Counsel
(Central Government)

... For Respondents 1 & 4

Shri G A R Dora

... For Respondents 13, 16, 19
22 & 63

M/s.L.Pangari

R.Patnaik ...For Respondents 10, 21 & 38 & 7
S.Samal

...

O R D E R

H. RAJENDRA PRASAD, MEMBER (ADMN) : The Applicant, Shri Manoranjan Rath, was selected for appointment to Orissa Forest Service (O.F.S.) ⁱⁿ 1965 and was on probation between that year and 1967 during which period he underwent the prescribed training in Forest Training College, Dehra Dun.

1.1. In 1972, the State Government published a gradation list in which some of the promotee-officers were ranked senior to the applicant, whereupon he filed a writ petition in the Hon'ble High Court of Orissa (O.J.C. No.588/72) challenging his placement in the said gradation list. The petition was allowed and he was directed to be placed above ten promoted officers of 1966 batch of O.F.S. who had earlier been shown senior to him. The Government of Orissa carried the matter to Hon'ble Supreme Court but the SLP was dismissed.

2. A new service, to be known as Indian Forest Service (I.F.S.) was constituted in 1966, under it I.F.S. (Cadre) Rules, and I.F.S. (Recruitment) Rules were framed in 1966 and I.F.S. (Regulation of Seniority) Rules were framed in 1968. The applicant was still undergoing training when the new all India Service was constituted.

2.1. The I.F.S. (Recruitment) Rules envisaged the

1.54.1

recruitment to the Service of O.F.S. Officers with 4 and 8 years of service to I.F.S. junior and senior time-scale, respectively. He could not be considered for that recruitment since he had not completed the 4 years of minimum service required by the said Rules. As an initial concession all officers in OFS with less than the prescribed minimum service, including the applicant, were ^{however} permitted to compete with outsiders for direct recruitment to I.F.S. for the next two years, viz., 1967 and 1968. Relaxation of age was also given to all such officers for the purpose. Around 100 direct recruits were taken throughout India in this way. The applicant was not among those selected.

3. It is the first grievance of the applicant that by allowing outsiders to compete for nearly 100 available posts, the chances of nearly 500 State Forest Service Officers, including his own, to better their own service prospects were seriously jeopardised; that the opportunity given to him to compete with outsiders was 'an empty formality'. He also complains that such opportunity, and the accompanying age-relaxation, was given only for two years and not longer.

3.1. The second grievance of the petitioner is that the constitution of a new service (IFS) was

— T. G. J. —

contrary to the service interests and career-expectations of O.F.S. officers like him.

The applicant was, however, himself promoted to I.F.S. in 1987 under the same rules.

3.2. The third grievance of the applicant is that many Class-II Forest Service Officers belonging to other States who were his batchmates, - and in some cases ^{some} _^ officers ^{who} were recruited even later, - had been promoted to I.F.S. junior, senior -, and super-time-scales earlier than him.

4. Rule 8 of the I.F.S. (Recruitment) Rules, 1966, envisages recruitment to the service from three sources : (i) direct recruitment from open market through a competitive examination, (ii) suitable Emergency, and Short service - Commissioned Officers of the armed forces, and (iii) promotion of substantive members of the State Forest Service with requisite seniority and length of service.

4.1. Rule 9 of the same Rules stipulates that $33 \frac{1}{3}$ of the posts in the I.F.S. cadre of any State be reserved for promotion from the State Forest Service Officers and that such promotions shall not exceed $\frac{1}{3}$ of the total posts at any time.

5. The initial cadre-strength of IFS for Orissa was fixed at 53 posts, of which 40 were earmarked for direct recruitment from the open market by competitive examination and the remaining 13 were

1.5/1

left to be filled by promotion from O.F.S.

5.1. In 1980, some of the officers of O.F.S challenged the initial constitution of I.F.S before Hon'ble Supreme Court. In disposing of the application, the Apex Court directed in 1987 that the cases of all officers who were initially left out of consideration should be reconsidered for promotion to I.F.S. In complying with this direction, the Government of India issued a notification on 3rd February, 1989, appointing 16 officers to I.F.S and simultaneously superceding some of the earlier notifications issued in the same regard.

5.2. About a month earlier to it, the State Government issued another gradation list of O.F.S. Class II officers on 4.1.1989. Officers from 1 to 10 in this list were recruited to I.F.S. initially, with effect from 1.10.1966. According to the applicant, Shri K.C.Das (no. 1 in the list) and Shri L.M.Panda (No. 2) and Shri B.N.Sahu (No.15) were no longer in service. Shri A.K.Mohanty (No.11) was not considered fit for promotion to I.F.S. Shri J.K.Mohanty (No.12) and Shri D.C.Panda (No.14) had retired prior to 1973. Shri Makhan Singh (No.13) was overaged. Five others in the list were directly recruited to I.F.S. by competitive examination. The remaining 9 (including the applicant) were promoted to I.F.S. after 1973.

— + 5 J. —

5.3. The strength of State's I.F.S. cadre is required, under regulations, to be reviewed periodically. This was duly done and on 2.2.1974, the total was refixed at 55 by direct recruitment and 17 by way of promotion, making a total of 72 posts. This notification shows that the deputation reserve @ 15% of posts to be filled up by direct recruitment was 5 and adhoc deputation reserve was 2, making a total of 7. The applicant contends that since these posts were being held by officers in the senior time-scale in Orissa, these 7 posts should be added to 52 senior posts calculated and arrived at by the Government of India and the total of such senior posts should be 59. On this basis he argues that the total number of posts in IFS to be filled by promotion from OFS should be 20 as against 17 arrived at by the Central Government. In support of this, the applicant cites some unspecified notifications of the Department of Personnel & Administrative Reforms and the Ministry of Home Affairs without annexing copies thereof, but merely asserts that the total number of senior posts should be 59 as calculated by him and not 52 as fixed by the Government.

5.4. The next contention of the applicant is that as against 11 posts reserved for promotion to senior scale of IFS (it is not clear how this figure was

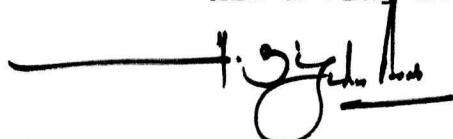
1.5.1.1

arrived at by him) 5 incumbents of such posts had been in any case included in the initial constitution of the IFS. It is his case therefore, that only 6 officers were holding the posts by way of promotion. Here he revertsto his earlier calculation of 20 posts for promotion from OFS to IFS and argues that 14 posts were thus available for promotion to the Senior Scale of IFS from OFS.

5.5. Additionally, one Shri S.K.Prasad was promoted to senior scale of IFS in a retirement vacancy. Since Shri S.K.Prasad was also included in IFS at the initial constitution of the service, this vacancy should also be added to the above 14, making a total of 15 vacancies.

5.6. On the basis of these calculations, the applicant projects his own position as under :

In the seniority list issued in 1974 his name appears at 44. According to him, officers at 40 to 44 have been declared to be junior to him. So he should really move up from 44 to 33. His next contention is that of these officers, 14 had been promoted to IFS, so he should move further from 33 to 19. He next argues that two other officers above him having been promoted in 1969, he should move further to No.17; that 3 more officers above him having been considered for promotion prior to



1974 and found unfit, he should move upto No.14; that 2 more officers were similarly considered and found unfit in 1974, so he should move up to No.12. He avers that there were 15 posts to be filled up in 1974. It is his case that he comes within the consideration zone against one of these 15 posts in 1973.

6. On the basis of such calculations and projections Shri Rath claims retrospective promotion to the senior scale of IFS from 1973 and all consequential benefits against the vacancies of 1974.

7. The Ministry of Environment and Forests, Government of India (Respondent No.1) has filed an elaborate counter-affidavit. After explaining the mode and manner of recruitment to IFS, they explain in detail the background leading to the quashing of the initial selection and promotion of the State Forest Service Officers to IFS ordered in January, 1967, and gives the subsequent developments leading to fresh selections to the Orissa cadre of IFS in 1971, and still later selections to the IFS (Orissa Cadre) as directed by the Apex Court in December, 1988.

7.1. It is next explained how promotions were ordered keeping in view the judicial verdicts resulting in the altered cadre-strength of Orissa cadre of IFS. These, in short, were :

— 1.51.1.1 —

9 from 10.2.1969
2 from 2.7.1973
1 from 30.4.1974
4 from 21.10.1975
5 from 19.11.1977
4 from 29.11.1978
2 from 17.11.1982
1 from 19.12.1983
1 from 13.12.1984
1 from 3.6.1986

30 ... of which 15 were appointed as
initial recruits to I.F.S.

7.2. It is stated that owing to repeated alterations of the IFS cadre-strength of Orissa, and because of promotion of eligible officers against ^{it} no further ^{cadre} promotions could be contemplated from QFS/and the applicant's turn came only much later. The subsequent promotions were based on the records of eligible officials from among the QFS officers placed before the Selection Committee by the State Government.

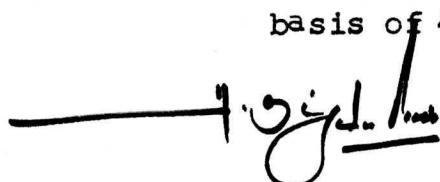
7.3. The Respondent points out that whereas the applicant prays for promotion to IFS from 1973 onwards, the Original Application has been filed only in 1989, with a sixteen-year delay, thus attracting the bar of limitation.

7.4. Some other points made by Respondent No. 1

— 1. 24/10/1990

as
are under:

- i) the applicant was not eligible to be considered for initial recruitment to IFS because by then he had only put in 3 years of service as against the minimum requirement of 4 years of service.
- ii) The initial relaxation of the conditions (relating to age and length of service) to State Forest Service Officers to compete for the IFS during 1967 and 1968 was not an 'empty formality' as alleged by the applicant, but a real and meaningful concession which was availed of by a very large number of such officers throughout the country - including the applicant - and many of them came out successful in the open competition and got duly promoted.
- iii) It is not correct that State Forest Service Officers in some other States junior to him have been promoted to junior-, senior-, and super time-scale of IFS much earlier than him. The position differs from State to State depending on the number of vacancies available in each and the number of eligible and suitable officers to fill them. In fact, in some States, the applicant's batchmates were yet to be promoted to IFS even in 1989 whereas the applicant was so promoted in 1987.
- iv) The promotions to IFS ordered on the basis of Annexure-4 to the Original

A handwritten signature in black ink, appearing to read "T. G. J. M."

Application have taken place and been in position for over 15 years, and the officers so promoted have acquired a vested right on the promotional posts. The applicant, having ^{for long} accepted and ^{long} acquiesced in the promotions so ordered cannot now seek any change that will injure the interests of others who were promoted over 1^{1/2} decades ago.

- v) The 33.3% quota fixed for promotions from S.F.S. to I.F.S. represents only the maximum limit and does not impose any obligation on the respondents to promote a certain number of officers upto the maximum limit regardless of their eligibility and fitness.
- vi) The representations submitted by the applicant were addressed to an authority who was in no way concerned or competent to consider them or to redress his grievance. Thus the applicant can be said to have made no representation at all to the correct or concerned authority.

8. The Secretary, General Administration Department, Government of Orissa (Respondent No.2) in his counter-affidavit states as under :

- a) The Original Application relates to matters prior to 1982, and this Tribunal therefore lacks jurisdiction to entertain it.
- b) The applicant was recruited to State Forest Service on 6.4.1967, and not in April, 1965, as claimed by him.

1.5g/1/1

- c) The strength of Orissa cadre of IFS, the proportionate vacancies for direct recruits and promoted officers, as well as the seniority of QFS officers have all undergone various changes over the years, and the documents on which the applicant places reliance have become obsolete.
- d) The gradation lists of S.P.S. Class I & II were finalised and published on 15.11.1989 and 4.1.1989, respectively, based on several judicial verdicts and these reflect the correct position as regards the seniority, and not Annexure-4 to the Original Application which was only a provisional seniority list.
- e) Zone of consideration is dependent directly on the number of vacancies available to be filled up by way of promotion and there were no vacancies available as on 1.1.1974 for such promotions to be considered or ordered.

The position of vacancies as on 1.1.1974 was :

By Direct Recruitment	55	X	68
By Promotion	13	X	
Initial recruits	57	X	
Direct Recruits		X	68
Officers	5	X	
Promoted Officers	6	X	
Balance		N i l	

The availability of vacancies as stated by the applicant is therefore incorrect.

- f) An officer does not automatically

— *Signature* —

become entitled to consideration for promotion on completion of a certain number of years and cannot automatically walk into the zone of consideration, which is evidently related and restricted to the number of vacancies available at a given point of time.

9. Respondent 19 (Shri J.D.Sharma) and 51 (Shri A.K.Mohapatra) have filed their counter-affidavits. Although the applicant has stated that he has no grievance against the promotions of Respondents 5 to 66 and that he does not claim any relief against any of them, the two counter-affidavits filed by these two officers (Respondents 19 & 51) have been fully taken into consideration for two reasons - firstly, any relief that could possibly be granted to the applicant on the basis of his pleadings shall sooner or later cause injury to the interests of these respondents as well, and, ^{secondly, these contain certain details not in the counters} provided by [^] filed by Respondents 1 & 2. The contents of these two counters (viz., of Respondents 19 & 51) shall be therefore drawn upon to supplement the contentions of Respondents 1 and 2, wherever necessary.

10. The first grievance of the applicant is that -

- i) with the constitution of the Indian

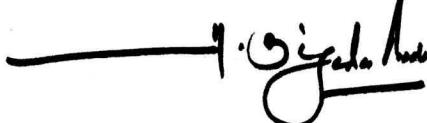
1.5 J.D. 1971

Forest Service, the service prospects of OFS Officers became bleak.

- ii) Although he was permitted to compete along with outsider candidates from the open market for recruitment to the newly-constituted IFS, it was only an empty formality.
- iii) By Opening-up of a limited number of available posts in the new service to outsiders, the scope of recruitment and the field of choice was needlessly and unfairly widened.
- iv) The normal expectations with which he commenced his career in OFS were abruptly foreclosed to his disadvantage with the launching of the new service in 1966.

^{to be}
10.1 It is noted in this context that IFS was lawfully constituted under the provisions of Section 2.A of All India Services Act, 1951. The objects of the new service were noted by none other than Hon'ble Supreme Court in Para 2 of the judgment dated 10.12.1987 in Civil Appeal No.3072 of 1980 as under :

" The members were to be recruited from the intelligent youth of the country by competitive examinations of high standard. They were to be free from political control, contented and having a sense of security. The idea was to build up a bureaucracy consisting of efficient Officers of integrity and impartiality who could man important administrative posts and make possible



the continued governance of the country unaffected by changes in the political set-up in the Centre and various States consequent on quinquennial elections to the various legislatures in the country."

The objectives were thus perfectly rational and do not need any supportive comment. Other All India Services have been constituted both before and after IFS came into being and these in themselves cannot possibly be held to unjustly render the prospects of any member(s) of the existing or future services bleak. In the first two years of the inception of the new Service, all serving officers of OFS were duly permitted to compete in the competitive examinations along with ^{the} outsiders. This was in addition to the absorption of the existing eligible officers of the OFS having a certain minimum service to their credit as initial recruits. These two decisions were reasonable and adequate safeguards for the serving officers and their interests. Furthermore, some age-relaxation seems also to have been extended to such OFS officers; and it is now revealed by Respondent No. 51 that such officers were given a further concession of writing lesser number of papers than the outsider candidates. None of these far-reaching concessions supports the applicant's contention that permitting him to appear at the competitive examination for direct recruitment to IFS was

H. S. J. H.

an "empty formality". In any case he is seen not to have been averse at all to avail of this 'formality'. He duly appeared at the examination along with 11 other similarly situated officers, of whom at least 5 withstood the competition, proved their mettle and came out successful. The applicant did not. Such being the facts, it is not open to the applicant to protest against the new Service launched nearly three decades ago, or the manner or mode of recruitment to it, ^{against} _{incidentally}, none of which ^{can even} _^ remotely be termed arbitrary or iniquitous.

11. As far the normal initial expectations from his service, Respondent No. 19 says, - somewhat tartly, - that the applicant was originally recruited to OFS and his aspirations and expectations have to be oriented and confined to that service and not beyond. While we do not go as far as that, we hold that the normal avenues of advancement of the applicant's career have in no way been jeopardised in an unfair or impermissible manner, because of the mere constitution of a new All India Service.

12. The applicant complains that some of his batchmates have since attained much higher levels of career advancement in some other States. This is an illogical argument. Apart from the fact that the Respondents deny this as ^{factually} _{incorrect,} precisely identical or there cannot be any absolute parity, ^{and} _^ parallel progression of officers belonging to different

— *Signature* —

States Cadres of the Service, since these would depend on various dissimilar factors and would be primarily linked to the cadre strength of each individual State and the availability of eligible candidates against it. There is no merit in this plea.

13. The applicant contends that the 1/3 or 33 1/3 % of the senior duty posts borne on the cadre strength of the State must be filled up by officers like him under Rule 9 of IFS (Recruitment) Rules, 1966.

Respondent No. 1 disputes this and clarifies that no specific quota as such has been laid down in the said rule but only the maximum number of officers who can be so promoted at any given time has been indicated in it. Respondent No. 19 is of the same view and draws attention to the fact that the question had been settled by this Tribunal in its judgment dated 29.1.1988 in T.A. No.90 of 1986 (O.J.C. 345 of 1980) S.P.Nanda Vs.State of Orissa and others. A portion of the relevant para in the said judgment is as under :

"... We have discussed at length about this aspect in regard to a similar rule in IFS (Recruitment) Rules, 1954, in case T.A.75 of 1986 (O.J.C. No.1618 of 1979), Uma Shankar Misra vs. Union of India & Others. We have held therein that there is no quota system prescribed for promotion to the IFS. In another case involving Indian Forest Service Officers, namely T.A. No.143 of 1981, Choudhury Gour hari Misra vs.



Union of India & Others, we have taken similar view and in that case we have quoted a decision of the Hon'ble Supreme Court on a petition filed by the Government of India for decision on this point. The rules for all the All India Services have been made by the Central Government under Section 3 of All India Service Act, 1951. The rule for the Indian Forest Service and that for the Indian Police Service, referred to above, are similar to the rule for the Indian Administrative Service and in this case, we hold the same view, i.e., that there is no quota system for promotion to the Indian Administrative Service."

14. The applicant refers to the judgment dated 10.12.1987 passed by Hon'ble Supreme Court in Civil Appeal No.3072 of 1980 and asserts that the Apex Court had concluded that 'all the officers who were left out like that of the petitioner should be considered at the initial constitution of the cadre'. To this Respondent No.51 submits that the Hon'ble Supreme Court had directed that the case of 82 eligible officers, - and not all the officers, as contended by the applicant, - should be considered afresh and their suitability adjudged; the applicant was not among the 82 officers whose cases were to be considered, and were in fact so considered, with the result that he was not among those and who had been left out initially were included later.

15. A reference has been made by the applicant to some of the cases disposed of by the Hon'ble Supreme Court and Hon'ble High Court of Orissa,

1.5.1.1

like, for example Writ Petition No.17467 of 1984 (Supreme Court), O.J.C. No.588 of 1972 (High Court), Civil Appeal No.3205-52 of 1974 and 3072 of 1980 (Supreme Court). These cases were disposed of by the Courts at different points of time, on different points of fact, in widely-differing contexts and involving different parties. By a mixed, simultaneous or successive reference to all these cases, the real issue has somehow got clouded over. Simultaneously, the applicant has referred to alter^{ed} or altering seniority of various officers on account of various factors, including court verdicts, and to original civil lists and revised gradation lists. All this merely confuses the basic question.

16. The basic question is whether or not the applicant could be promoted to IFS in 1973, or at any subsequent year instead of 1987.

16.1. The initial cadre strength of IFS Ofissa Cadre was fixed at 53. As against this 42 officers were selected on 10.12.1971 to constitute the initial recruits category. 16 more officers were promoted on 3.2.1989 to comply with the Supreme Court directive. The cadre strength was raised to 65 as on 30.6.1968, to 68 as on 31.7.1968, and eventually settling fluctuated between 67 to 69 before back to 68 on 1.1.1974. There were 13 posts to be filled up by

T. S. J. L. B.

promotion on 1.2.1974. It is to be noted that as per Para 23 of the Supreme Court Judgment in Civil Appeal No.3072 of 1980, the posts to be filled up by promotion can become operative only after all officers recruited under Rule 4(1) or (2) are duly adjusted suitably, if necessary, by altering the cadre-strength for the purpose. The calculations provided by the applicant to show (i) how senior posts were available to promote officers from IFS and (ii) how he moves up from 44 to 12 in the zone of consideration, suffer from the defects of ignoring the regulations, misinterpretation of Supreme Court directives and disregarding the ground-realities concerning the number of officers available/to be adjusted vis-a-vis the altered or altering strength of the cadre. Respondent No.1 has explained the position to some extent in and paras 12, 28 of his counter. The position has been analysed in greater detail by Respondent No.2 in paras 9 & 10 of the counter filed by him. Some more light on this aspect is thrown by Ministry of Personnel, etc. Notification No.16016/4/90-AIS (11) dated 1.4.1991 which explains the altering cadre-strength of IFS Orissa Cadre between 1.10.1966 to 1.2.1974 with accompanying alterations in the different adjuncts and components making up the cadre strength. According to these respondents, on 1.1.1974 there were 57 initial recruits, 5

— T. G. J. —

direct recruits and 6 promotee officers, making up the total cadre strength of 68, and there was no vacancy available to accommodate the applicant. It is however, Respondent No.19, who comes up with a plausible and comprehensive account of the whole picture in Para 10 of his counter relating to the initial constitution of the Orissa cadre of the Service, adjustment of the initial recruits, subsequent chronological promotions and the applicant's own position.

It is evident that in the wake of the Supreme Court verdict the entire thrust of the effort of the Central Government was in the direction of adjusting the list of 16 officers who were selected subsequently in the process of complying with the orders of the Apex Court and this process went on well beyond 1974. During the same period, the attention of the State Government appears to have been centred round the question of fixing and refixing the seniority of some of the OFS Officers resulting from the judicial directions in atleast two, or possibly three, cases.

Other points made by the various Respondents are as follows :

Respondent 1: 1) Since according to the applicant, the complaint is about the conditions of his service, the proper course for him was to have represented his grievance to the Government of India under the provisions of All India Services (D & A) Rules. This, the applicant has failed to do and so not availed of the opportunity available under normal service rules. He has not thus exhausted the remedies available to him.

4. G. J. S. H.

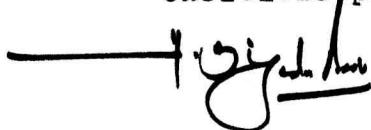
ii) As the grievance of the applicant is about non-promotion to IFS in 1973, the application, filed on 12th April, 1989, was at least sixteen years late. The application is therefore barred by limitation.

iii) The right which has already accrued to other officers cannot be rudely unsettled by accepting his prayers in this case at this belated stage.

Respondent No. 2: i) Since the matters in this application relate to the years from 1966 to 1973, this Tribunal cannot adjudicate the same, bound as it is by the stipulation that no case relating to any event prior to 1982 can be entertained by it.

Respondent No. 19: i) The applicant has no locus standi to agitate any grievance or seek any relief flowing out of the judgment of Hon'ble Supreme Court judgment in December, 1987, since he was not in any way within its scope and the said judgment cannot possibly ^{be} invoked or be construed to cause such long-term chain-reaction among officers who were not parties to the case.

ii) The case bearing OJC 588 of 1972, filed before and decided by Hon'ble High Court of Orissa related to the interpretation of Orissa State Forest Service Rules and its outcome cannot be invoked to affect officers who neither belong to, nor are governed by the rules of, that service, nor were they parties to the said case. The applicant cannot therefore press for any relief based on the said



judgment.

iii) Sub-section 1 A of Section 3 of All India Services Act, 1981, reads as under :

"The power to make rules conferred by this Section shall include the power to give retrospective effect from a date not earlier than the date of commencement of this Act to the rules or any of them but no retrospective effect shall be given to any rules so as to prejudicially affect the interests of any person to whom such rule may be applicable."

The prayers contained in the application, if granted, shall have the effect of conferring retrospective benefit on the applicant to the detriment of his (Respondent 19's) own interest.

Respondent No.51: i) No recruitment can be made to the cadre in any year which has the effect of exceeding the total cadre strength On 1st January, 1973, and 1974, there were 69 and 68 officers borne on the cadre against the same authorised/sanctioned cadre-strength during the relevant year. This precludes the promotion of anyone else, including the applicant, to the cadre during those years.

17. Three issues have cropped up persistently in a number of similar cases wherein OFS officers with eight years' service to their credit were not selected for promotion to IFS. Their grievances in every case have been

— T. S. J. S. I. M.

(i) Sixteen OFS Officers were promoted to IFS by Ministry of Environment and Forests, Government of India vide notification dated 3rd February, 1989. This was in compliance with the directives of the Supreme Court in C.A. 3072/80 disposed of on 10.12.1987. Some of these sixteen Officers had been holding positions in IFS by promotions already. The applicant in this case as well as in other (similar) cases have argued that as some of these officers had in any case already been promoted by virtue of their seniority and earlier selection to IFS, the pertinent posts relating to such Officers should be taken as having been 'vacated' by them and should be transferred and thrown open to other OFS Officers with requisite eligibility down the line awaiting their own promotion. This plea in fact forms a strong plank of all cases of this type. The respondents refute such claims on three counts: firstly, that the Supreme Court verdict itself clarified that any further promotions would be ordered only after all the initial recruits had been adjusted against their respective categories, by altering or refixing the overall cadre-strength for the purpose, if necessary; secondly, that all OFS Officers selected for promotion in two instalments do in fact form the initial cadre regardless of their promotions or seniority and no shifting of posts is therefore permissible to any group, adjunct or sub-stream, before the entire crop of initial recruits is adjusted in keeping with the cadre-strength as fixed in the beginning, or revised subsequently in compliance with Supreme Court's Order in this regard; and finally, that the overall percentage of promoted Officers can at no time or under any circumstances exceed the maximum of 33.3% fixed for them. We cannot, therefore, agree that the vacancies hitherto occupied by any of the initial recruits earlier promoted to senior posts can or need to be added on to the share of promotional posts from OFS, which action could, incidentally, also result in the number of such promotions exceeding 33.3% of the IFS cadre strength.

— 1.5.1. —

(ii) OFS Officers have argued in every case that 1/3rd of the 25% of the Deputation Reserve in respect of the Senior Duty Posts under the State Government should be shifted to the share of OFS Officers in determining the number of posts to be offered to them on promotion. The respondents argue that this is neither envisaged nor permissible under the regulations. They say it was nowhere intended that any part of the State Deputation Reserve of 25% (quantified as 18 in the IFS Cadre schedule published vide GOI Notification No.160161 10/87-A IS-II-A dated 16.10.1987 and No.28062/1/88-A IS-II dated 10.5.1987) are to be added to the share of promotional quota. A look at the schedule does not indeed show that the 25% Deputation Reserve (item 5) was either intended or meant to be split into a third of the figure to be appended to promotional share of posts. We are inclined to agree with this interpretation and do not admit the position that Deputation Reserve, or any portion of it, can accrue to the share of promotional posts for OFS Officers. The plea of the applicant in this case, and those like him in analogous cases, on this score are not found acceptable.

(iii)

The applicants in all these cases have also argued that promotions to the fullest extent upto 33.3% of the total number of vacancies arising during a year should be duly filled up by promoting adequate number of eligible and suitable officers from OFS. The respondents on their part have invariably argued that it is not necessary to do so, that the rules merely specify 33.3% as the upper limit for OFS promotions and that it is only necessary to ensure that the number of posts to be filled up by promotion to IFS from OFS should not at any time exceed 33 1/3% of the total vacancies available at any point. In support of this, the respondents draw attention to the notification of the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel & Training Notification No.14015/6/89-A.13 dated 22.2.1989 amending Rule 9(1) of the IFS (Recruitment) Rules, 1966. The amended rule runs as follows :

— 1.25 —

Rule 9(1) - The number of persons recruited under Rule-8 in any State or Group of States shall not at any time exceed 33 1/3% of the number of posts as are shown against items 1 and 2 of the cadre in relation to that State or Group of States in the Schedule to the Indian Forest Service (Fixation of cadre strength) Regulations, 1966.

17.1. We agree with the Respondents that the proportion of 1:3 earmarked for recruitment to the Service by way of promotions and direct recruitment denotes the maximum number that can be inducted into it by either of the two methods of intake. But we cannot at the same time accept the argument that they are free not to fill up the vacancies upto the full share of promotions reserved for this category. It cannot be conceded that the number of promotions can be simply reduced and promotional posts left unfilled at any particular juncture of time unless there are valid and justifiable reasons for such inadequate promotions. In other words, if there are no overwhelmingly valid reasons for not doing so, promotions to the maximum ceiling of 33 1/3% are indeed required to be made by promotion from O.F.S. to I.F.S.

18. In the present instance there were reasons for not doing so. Right from the initial constitution of the service in 1966, disputes arose as to the inter-se seniority in the OFS, interpretation of SFS Rules, identification of the precise number

T. S. J. M.

of initial recruits and the exclusion or non-consideration of certain officers at the initial constitution of I.F.S. These problems resulted in a series of court verdicts necessitating a succession of revisions of seniority of OFS Officers on the one hand, and the reconsideration of more officers for promotion to IFS^{and} alterations in its cadre-strength on the other. This also led to a situation where 16 more officers who were selected to IFS subsequent to the initial selection having to be duly adjusted within the overall specified strength of Orissa IFS Cadre. It is evident that because of these unanticipated developments, the position was unclear for a few years after 1966-67. To compound the situation, some officers were promoted in anticipation of subsequent regularisation of such promotions, and atleast two officers were promoted provisionally on wrong seniority. All this took a few years before the position could eventually stabilise by refixation of the cadre-strength to the extent necessary by adjusting all the initial recruits. The facts of this case have to be viewed and understood against this background.

18.1. These contributory factors incidentally also explain why the meetings of Selection Committee could not meet between 1987 and 1990, and why vacancies could not be apportioned and considered annually.

1.5.1.1.

during these years. It is also stated by Respondent No.1
 that while it is ^{true} that the Selection Committee
 should normally meet annually, the same cannot be said
 to be a mandatory requirement inasmuch as there also
 exists a provision of age relaxation to the officers
 coming up for consideration before it, in case it
 is not possible to hold annual meetings due to any
 extraordinary circumstances. (para 19 & 20 of
 counter-affidavit by Respondent No.1).

18.2. The narration of facts and arguments contained in the foregoing paras makes the position of this case clear and not much of elucidatory comment is needed to bring out the implications that would flow from the acceptance of the reliefs prayed for by the applicant. We accept the explanation of the respondents regarding the initial constitution of the Service, the initial fixation and the subsequent alterations of the strength of Orissa Cadre of IFS and the process of adjustment of initial recruits and the promotions ordered between the years 1967 and 1987.

19. We do not find the arguments of the applicant (in Paras 5.3 to 5.5 above) as regards the calculation of vacancies and zone of selection acceptable. These are found to be contrary to facts as well as to regulations.

19.1. The applicant was duly provided two chances in 1967 and 1968 to improve his own service prospects and to compete with others to enter the IFS on fair

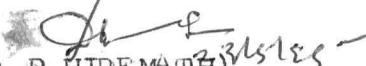
— and —

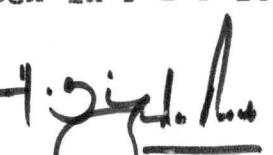
— *Signature* —

and relatively advantageous terms but failed to successfully avail of the same. To that extent, there is no evident injustice done to him.

20. We have also take note of the fact that appointments made in respect of officers selected in earlier years had been in position for nearly fifteen years when this application was filed in 1989 and such long-standing seniority cannot be unsettled after a long lapse of time, specially because the applicant was himself quite tardy in projecting his grievance before this Tribunal. It is also clear that he was not senior enough to be selected for IFS in 1967, or be treated as an initial recruit, nor was he ripe for promotion until 1987, when he was duly promoted in his turn.

20.1. In the light of what has been stated in the proceeding paragraphs and in view of the facts revealed by the record, as well as during the course of hearing, the application is liable to be disallowed and is hereby disallowed for the reasons given in paras 18 and 19 above. No costs.


(D.P. HIREMATH)
VICE-CHAIRMAN


(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

23 MAY 91

B.K.Sahoo//