

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 1050 of 1996

Present : Hon'ble Dr. B.C. Sarma, Administrative Member.

Hon'ble Mr. D. Purkayastha, Judicial Member.

1. Sri Pradyot Kumar Majumdar, son of late Amar Kinkar Majumdar, Divisional Forest Officer, Howrah Social Forestry Division, Corporation Stadium Complex, 1st Floor, Dalmia Park, Howrah, residing at 42/26/1, East End Park, 3rd Floor, Calcutta-700 039.
2. Sri Bimal Kumar Sarkar, son of late Saroj Kumar Sarkar Divisional Forest Officer, Rupnarayan Planning and Survey Division, Rangamati, P.O. Vidyasagar University, Dist. Midnapore, residing at the Bungalow of the Divisional Forest - Officer, Rupnarayan Planning and Survey Division, Rangamati, P.O. Vidyasagar University, District Midnapore.

...Applicants

- v e r s u s -

1. The Union of India, through the Secretary, Ministry of Environment and Forest, Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110 003.
2. The Under Secretary to the Govt. of India, Ministry of Environment and Forest, Paryavaran Bhawan, CGO complex, Lodhi Road, New Delhi-110 003.
3. The Union Public Service Commission, through the Chairman, Dholpur House, Shahjahan Road, New Delhi-110011.
4. The Secretary, Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110 011.
5. The State of West Bengal, through the Chief Secretary, Government of West Bengal, Writers' Buildings, Calcutta-700 001.
6. The Principal Secretary, Department of Forest, Govt. of W.B., Writers' Buildings, Calcutta-700 001.
7. The Principal Chief Conservator of Forest, West Bengal, P-16, India Exchange Place (Extension), New C.I.T. Buildings, 3rd Floor, Calcutta-700 073.
8. The Chief Conservator of Forest, Soil Conservation and Eco Development, West Bengal, P-16, India Exchange Place (Extension), New C.I.T. Buildings, 3rd Floor, Calcutta-700 073.
9. Sri Manicklal Pathak, Divisional Forest Officer, Publicity Division, New Library Building, Block AE 390, Salt Lake City, Calcutta-700 064.
10. Sri Mongal Singh Rai, Divisional Forest Officer, Forest Officer, Forest Village Development Division, Jalpaiguri, P.O. & District Jalpaiguri.
11. Sri Kranti Prakash Rai, Divisional Forest Officer, Darjeeling Social - Forestry Division (Darjeeling Gorkha Hills Council), P.O. & Dist. Darjeeling.

12. Sri Ahindra Nath Pal, Divisional Forest Officer, Soil Conservation - Planning Division, Bikash Bhavan, North Block, 3rd Floor, Salt Lake City - Calcutta-700 091.

...Respondents.

For the applicants : Mr. P.R. Mondal, counsel.
Ms. B. Das, counsel.

For the respondents : Ms. U. Bhattacharya, counsel (Respdts. Nos.1&2)
Mr. Samir Ghosh, counsel (Resptd. No.11)
Mr. S.K. Mitra, counsel (State of W.B.)
Mr. K.P. Banerjee, Id. counsel alongwith Dr. S.Sinha
counsel (Resptd. No.10)
Ms. Kanika Banerjee, counsel (for U.P.S.C.)

Heard on 12.2.98 & 18.2.98

Order on 5.3.98

O R D E R

D. Purkayastha, JM

The dispute arose in this case in regard to the selection list for the year of 1995-96 prepared by the selection committee and approved by the UPSC containing the names of the respondents Nos. 9 to 12 of this application for appointment to the post of Indian Forest Service, who were not selected in the year of 1994-95 and for exclusion of the names of the applicants who were selected and included in the select list prepared for the year of 1994-95 under Regulation 3 of the IFS (Appointment by Promotion) Regulation, 1966.

2. The case of the applicant in short that the applicant was appointed as Deputy Ranger/Forester by the appointment letter dated 31.5.61 and the applicant No.2 Sri Sarkar was appointed as Deputy Ranger/Forester by the appointment letter dated 14.9.62 and during the service period both the applicants have got several awards and prizes during their training both at forest school and forest college for their excellence of work. On 30.7.82 the applicants were appointed and posted to the post of West Bengal Junior Forest Service with effect from the date of assumption of the charges by notification dated 30.7.82 Annexure-A to the application. The W.B. Forest Service (Recruitment) Rules, 1962 and W.B. Forest Service (Conditions of service) Rules, 1962 came into effect from 31.7.62 and both the applicants opted to join the said service. Accordingly the applicants were appointed to the W.B. Forest Service with effect from 31.7.82 alongwith others. And thereafter by an order dated 15.6.92 the applicant No.1 was confirmed in the post of W.B. Forest Service on 1.9.90

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and applicant No.2 was confirmed in the said W.B. Forest Service on 1.2.91 and the applicants were granted scale No.17 of W.B. Services (Revision of Pay and Allowances) Rules, 1990 with effect from 1.2.92 by a letter dated 3.6.94 (Annexure-D to the application). As per provision of Indian Forest Service (Appointment by Promotion) Regulation, 1966 (hereinafter referred to as the said regulation of 1996), the applicants became eligible for consideration for appointment in the Indian Forest Service from the W.B. Forest Service since they had completed 8 years of continuous service in the said Forest Service and they have not attained the age of 54 years. Considering the eligibility and suitability, both the applicants were placed in the fit list for 1994-95 for promotion to the post of Indian Forest Service by the State Govt. in the year 1994-95 alongwith other candidates. In the said fit list Sri Manick Lal Pathak, respondent No.9 was placed in the sl. No.18 as he was junior to the applicant as per Annexure-E to the application. Thereafter the Selection Committee was constituted under the regulation 3 of the Regulation, 1996 and case of the candidates including the names of the applicants were forwarded to the Selection Committee for selection. Accordingly, selection committee prepared a select list for the year 1994-95 of seven officers including the applicants after considering their seniority-cum-merit in the service record. The Union Public Service Commission approved the selection list for 1994-95 and names of the applicants were appearing in Sl.Nos. 6 & 7 in the said list for 1994-95. But out of the seven persons selected by notification dated 3.1.96, 5 (five) persons were appointed to the post of Indian Forest Service against existing vacancy in the Indian Forest Service in the State of W.B., but the applicant could not be appointed as per said selection list due to non-availability of the vacancy.

3. It is also alleged that in the year 1995-96 the State Govt. again prepared a fit list of ten eligible officers for consideration for inclusion in the select list for 1995-96 for promotion to the Indian Forest Service. But it is alleged in the said fit list for 1995-96 prepared by the State Govt. some juniors to the applicants including Sri Pathak, respondent No.9 was placed on the top of the panel of the said fit list and forwarded

to the Selection Committee. The applicants subsequently came to know that these respondents No.9 to 12 were selected for the year of 1995-96 though they were not selected in the year 1994-95 and the said select list for the year of 1995-96 was made without assigning any reason. It is stated that as per regulation 5(3A), and regulation 5(4) the applicants were entitled to be included in the select list for the year 1995-96 on merit cum seniority basis. And it is also alleged that the selection committee has no jurisdiction to exclude the names of the applicants from the select list prepared by them for the year 1995-96 since they were selected by earlier selection committee as per provision of the regulations 5(3A) & 5(4) of the Regulation, 1996.

4. Feeling aggrieved, they made representations for consideration of their case and for review of the selection list for 1995-96 on the basis of the merit of the candidates as per service records but to no effect. Hence, the applicants filed this case before this Tribunal.

5. The respondents Nos. 1 to 5 have jointly filed the reply denying the claim of the applicants and stating inter-alia that the applicants cannot claim seniority over the respondents Nos. 9 to 12 in view of the facts the final select list of 1994-95 was valid upto March 1996. And the fresh select list was prepared on 24.3.96 for the year 1995-96 and that select list for 1995-96 was later approved by the UPSC. The applicants' names alongwith the eligible candidates were sent by the State Govt. to UPSC for the selection. But their names were not included in the select list by the selection committee and the members of the UPSC. Since a fresh selection list was approved by the UPSC, earlier selection list became invalid as per regulation 7 of the Indian Forest Service/Regulation, 1966 (appointment by promotion). It is stated that the seniority list of the W.B. State Forest Service Officers has been revised upon on the basis of the ruling of the Hon'ble High Court in O.A.13014/88 filed by Sri M.L. Pathak and Sri Pathak's seniority was restored in the seniority list of the W.B. Forest Service Officer which is annexed herewith as Annexure-A to the application. It is also stated in the reply that in the process of selection, the respondent Sri M.L. Pathak, Sri M. Rai, Sri K.P. Rai and Sri A.N. Pal were selected by the UPSC by virtue of their seniority-cum-merit for the year 1995-96. So



6. Respondents No. 9,10 & 11 also filed independent written reply in this case denying the claim of the applicants. The applicants filed rejoinder in this case stating inter-alia that assuming but no admitting that respondents Nos. 9 to 12 are senior to the applicants yet on the basis of the seniority alone they cannot be selected for promotion by way of exclusion of the applicants who were already ^{being} selected by selection committee the year of 1994-95. And the State Govt. had admitted that the private respondents were selected by the UPSC by virtue of their merit-cum-seniority. It is also stated that the ACRs of the applicants and the respondent No. 12 were not sent by the State Govt. to the UPSC for selection for the year of 1995-96 which would be evident from the letter dated 22.4.97 issued by the Principal Chief Conservator of Forest, W.B. (as Annexure-A alongwith the counter filed by the applicant). The Union Public Service Commission also filed written statement denying the claim of the applicant.

7. We have heard the ld. counsel for both the parties in this case. During argument the State Govt. produced the ACRs of the ten W.B. Forest Officers as per direction of this Tribunal. Ld. counsel, Mr. Mondal leading Mr. B. Das appearing on behalf of the applicants submits that the entire action of the respondents are wholly arbitrary and illegal for the purpose of non-inclusion of names of the applicants in the select list for the year 1995-96 for appointment in the Indian Forest Service. In view of the provision of Rule 5(3) of the Regulation, 1966, since the applicants were selected for appointment in the Indian Forest Service by selection committee for the year of 1994-95, and they could not be appointed for want of vacancies, their names ought to have been included in the selection list for the year 1995-96. Having not done this, the Govt. respondents acted arbitrarily and without any justification and consequently the applicants were denied promotion arbitrarily and illegally in this case. He further submits that the respondents did not consider the ACRs of the applicants for the year of 1994-95 which would be evident from the letter dated 22.4.97 written to Principal Conservator of Forest, West Bengal and to the other authorities. Hence it is also wrongly stated

by the State of W.B. (Respondent No.5) that the applicants' names alongwith ACRs of the eligible candidates were sent to the U.P.S.C. for selection. So non-consideration of the ACRs for the year of 1994-95 of the applicants as stated above, would render the selection for the year 1995-96 ~~excluding~~ the names of the applicants from the select list for appointment in the Indian Forest Service of 1995-96 is legally arbitrary, illegal and not tenable in law. So the applicants are entitled to get relief in this case as prayed for.

8. Ld. counsel Mrs. Kanika Banerjee appearing on behalf of the UPSC, Mrs. Bhattacharya appearing on behalf of the Union of India and Mr. S.K. Mitra appearing on behalf of the State of W.B. supported the pvt. respondents stating that the selection was rightly done as per rules and ^{was} selection was proper. But the applicant No.1 in the meantime /about to ~~be~~ retired and their case were rightly excluded from the select list for the year 1995-96 according to the seniority-cum-merit. So there is no reason to interfere in this case and to grant relief to the applicants. ^{Id. advocate} The Pvt. respondent No.10 also appeared through/ Mr. K.P. Banerjee and submitted that the applicants cannot claim seniority over the pvt. respondent No.10. So selection was rightly done and the applicants are not entitled to get any relief. Mr. Samir Ghosh, appearing on behalf of the respondent No.11 also supported the case of the respondents Nos.1 to 5 and they jointly submit that the application is devoid of merit and liable to be dismissed.

9. We have considered the submission of the Id. counsel for both the parties and perused the records and rules for the purpose of appreciation of the case of the applicants and the respondents as per statement made in the application as well as in the written reply respectively filed by the ~~map~~.

10. But before entering into the disputed question regarding the non-inclusion of the names of the applicants in the select list for the years of 1995-96 for appointment in the Indian Forest Service, it is material on our part to refer to the relevant provisions of the Indian Forest Service (Appointment by promotion) Regulation, 1966 (hereinafter called, regulations 1966). The Rule 5 has prescribed method for

preparation of a list of suitable officers. The Rule 5(3) of the Regulation 1966 and Rule 5(3A) and Rule 5(4), 5(5)(6) & 7(3)(4) of the said regulation 1966 are relevant for consideration and that have been referred to later on.

11. From the said provisions or Regulations, 1966 & facts stated above, the simple dispute under adjudication in this O.A. is to be considered by us as to whether the respondents were justified for non-inclusion of the names of the applicants in the select list for 1995-96 for appointment on promotion to the Indian Forest Service despite the fact that they were selected for promotion in the Indian Forest Service by the selection committee by preparing a selection list for the year 1994-95.

12. In the case of Nagarajan Vs. State of Mysore A.I.R. 1996 SC 1942, the Hon'ble Apex Court held in a departmental list for appointment to the service under the Govt. or for promotion no legal right is conferred upon the persons included in the select list but the action of the respondents can be challenged, if the action of the Deptt. is found arbitrary in the matter of appointment ~~from~~ the said panel. In the instant case, there is no dispute before us that the applicants were selected by the Selection Committee constituted under the regulation, 1966 for appointment to the Indian Forest Service on promotion for the year 1994-95 and the applicants were placed at sl. nos. 6 & 7 of the said selection list for the year of 1994-95. But unfortunately they could not be appointed due to non-availability of the vacancies in the relevant cadre of the Indian Forest Service and accordingly they could not be appointed in the year 1994-95 from the select list for the year of 1994-95. It also remains undisputed from the side of the parties the next selection committee set for consideration of all the eligible candidates for appointment to the Indian Forest Service on 21.3.96. According to the applicants since they were selected by the Selection Committee in the year 1994-95 thereby their names ought to have been included in the selection list for the year 1995-96 on the basis of the merit. Since the names were not included in the selection list for the year 1995-96 on the basis of the selection list for the year of 1994-95, the action of the respondents is highly arbitrary, illegal and it attracts vice of the Art. 14 of the Constitution.

13. In adverting to the aforesaid final contentions of the applicants & respondents, we have perused the relevant provisions of the rules as mentioned above. On a careful perusal of the Regulation 5(3), mentioned above, it is found that right of consideration, not the right of selection of the applicants on the basis of the selection in the previous year of 1994-95 has been guaranteed. The Regulation 5(3), specifically envisages and indicates that the members of the State Forest Service whose names appeared in the select list in force immediately before the date of the meeting of the committee, shall be considered for inclusion, even if he has in the meantime attained the age of 54 years.

14. So there is no dispute from the side of the applicants that their names had ~~not~~ been forwarded by the respondent No.5 State of W.B. for inclusion in the list of selection for 1995-96. But the grievance of the applicants is that the assessment of the merits of the applicants and respondents ~~were~~ ^{are} not considered for the purpose of selection of the respondents Nos. 9 to 12 and for non-inclusion of the names of the applicants in the said selection list for 1995-96. And it is alleged by the applicants ^{that} the ACRs of the applicants were not placed before the selection committee who prepared the the selection list without considering the material documents viz. ACR for the year 1994-95 of the applicants and respondents. So selection for the year 1994-95 is mechanical, unjustified and unfair and their names ought to have been included in the selection list on the basis of the merit and on the basis of the ACRs for the relevant period of 1993-94-1994-95.

15. So Regulation 5(5) of the said Regulation 1966 as mentioned above clearly envisages that the selection list shall be reviewed or revised every year and it is mandatory. It is an admitted position that the applicants were selected for appointment by selection list for the year 1994-95. But their names were excluded from the selection list for 1995-96. Regulation 5(3) and 5(3A) clearly envisages that the selection committee shall have to classify the eligible officers as 'outstanding', 'very good', 'good' or unfit on the basis of the assessment made from the records of the service. And Rule 6 further emphasises that on receipt of the selection list, the State Govt. shall forward the said select list of member of the Forest Service with relevant records and with observation ^{to the N.P.S.C.} of the State Govt. on the recommendations of the Committee. And

that provision is also found mandatory. By Regulation the Commission was vested with the power to consider the said select list again before finalising the list by making necessary changes if the commission thinks fit and proper. Regulation 7(3) further envisages that the list approved by the UPSC shall be treated as final selection list of the members of the State Forest Service for appointment. And previous list shall be ceased to operate since previous selection list is reviewed and revised by the selection committee and approved by the UPSC.

16. So on a careful perusal of the provision of the regulation 5(3), 5(3A) it remains ~~undisputed~~ ^{no doubt} in our mind, ^{that} the selection must be based ^{Her} by way of assessment & classification of quality & merits on merit and that should be determined by the Selection committee on the basis of the service records produced by the State Govt. In the instant case, the respondents took the stand by making a specific statement that the case of the applicants and respondents were duly considered by the selection committee as forwarded by the State Govt. for consideration and the selection was done in accordance with the rules prescribed by the Regulation. In view of the specific averments made by the respondents in their reply, we have gone through the reply filed by the State Govt. and the Union Public Service Commission. But the Union Public Service Commission and the State Govt. did not produce any document before us to show that ACRs of the applicants for the year 1993-94 and the ACRs of the respondents for the year 1993-94-1994-95 which are relevant for the purpose of classification and selection as required under Regulation 5(3A) of the said regulation of 1966 ~~was~~ forwarded to the Selection Committee. When the applicants rely on the letter dated 22.4.97 issued by the Principal Chief Conservator of Forest where it is specifically stated that the ACRs of the applicant No.1, Sri P.K. Majumdar for the year 1994-95-1995-97 and the ACRs of the respondent No.12, Sri A.N. Pal for the year of 1994-95 and 1996-97 were not available with the Department for the purpose of consideration. On the face of the letter of the Principal Chief Conservator of Forest of W.B., it is the bounden duty of the Union Public Service Commission as well as the State of W.B. (respondent in this case) to satisfy us that the ACRs of the applicants and the respondents were produced before the selection committee and to the Union Public Service Commission at the time of selection as well as at the time of

approval of the selection list by the Union Public Service Commission. It remains undisputed ~~that~~ that the ACRs of the eligible candidates are vital documents for the purpose of classification and selection for appointment in the Indian Forest Service ~~since~~ selection list as per ~~is required~~ Regulation 5(3A) shall be made on the basis of the assessment and classification made by the Selection Committee independently after considering the service records of the eligible officers forwarded by the State Govt. ~~though~~ ~~the~~ rule does not confer any special right upon the applicants for inclusion in the fresh selection list for the year 1995-96 on the basis of the ~~selection for the year 1994-95~~ ~~alone and~~ it cannot be said that the right of consideration for the purpose of assessment and classification on the basis of the merit ~~are~~ guaranteed. So merits cannot be overlooked for the purpose of selection. And that merit can be determined by the selection committee only on the basis of the ACRs and other relevant documents or service records of the applicants. Any absence of the ACRs of the eligible candidates or officers, there can be no proper selection as required under Regulation 5(3A) and Regulation 7 of the Regulation, 1966. Regulation 5(3A) of the Regulation 1966 itself envisages ~~how~~ how the classification of eligible officers as per list forwarded by the State Govt. should be done for the purpose of selection. According to the Regulation 5(3A) the classification of eligible officers should be done as 'outstanding', 'very good' or 'unfit' as the case may be and such assessment shall be made from the service record produced by the recommending State. Regulation 6 further envisages that on receipt of the list prepared by the selection committee, the State Govt. i.e. the respondent No.5 shall forward the records of all the members of the State Forest Service included in the list and also the records of all members of the State Forest Service who are proposed to be superseded by the recommendation made in the list with observation of the State Govt. on the recommendation of the committee. In the reply submitted by the respondents including the State of W.B., respondent No.5 and the Union Public Service Commission, respondent No. 3 did not categorically and specifically state that the service records of all the members of the State Forest Service including the list and records of the members of the State Forest Service who were proposed to be superseded by the recommendation made in the list were considered by

that there is some interval between the date of selection and the date of receipt of the ACRs by the Principal Chief Conservator of Forests for the purpose of consideration. It is found from the said letter dated 22.4.97 the ACRs of Shri P.K. Majumdar, the applicant No.1 for the year 1994-95 and 1996-97 were not available with the Department till 22.4.97. Similarly ACRs of respondent No.12, Sri A.N. Pal for the year 1994-95 and 1996-97 were not available with the Department till 22.4.97.

We like to refer to the contents of the said letter which runs as follows:

" It transpires from our record that Annual Confidential Reports for some years as shown at our enclosed statement against each incumbents are yet to be received. You are requested to kindly send the same to this office urgently."

It is found that the ACRs of the respondent No.12, Sri A.N. Pal and the ACRs of the applicant No.1, Sri P.K. Majumdar for the year 1994-95 and 1995-96 were not available with the Department for the said purpose till 22.4.97. The affidavit dated 19.6.97 filed by the Chairman, UPSC shows that the selection Committee held on 21.3.96 and 24.3.96 for selection of the State Forest Service W.B. for promotion to the Indian Forest Service for the year 1995-96. But the State of W.B., respondent No.5 and the Union Public Service Commission remains silent about the records which were available to them at the time of selection as well as at the time of approval of the selection list by the selection committee as well as by the Union Public Service Commission respectively.

17. The minutes of the meetings of the selection committee dated 24.3.95 and 21.3.96 alongwith the ACRs were produced by the respondent State of W.B. as well as the U.P.S.C. We have perused the minutes alongwith the annexures and the ACRs carefully. From the assessment roll of the minutes for selection which took place on 24.3.95 showed that the applicant No.1, Sri P.K. Majumdar was classified as 'very good' and the applicant No.2 Sri B.K. Sarkar was classified as 'very good' and the respondent No.12 Sri A.N. Pal was classified as 'good' and the respondent No.9, Sri M.L. Pathak was classified as 'good'. From the minutes as well from the assessment roll of the selection committee which took place on 21.3.96 showed that the Pvt. respondent of this application and the applicants Sri P.K. Majumdar and Sri B.K. Sarkar were equally marked 'very good'. But from the ACRs of the applicants for the year 1994-

95, the ACR in respect of Sri A.N. Pal, respondent No.12 for the year 1994-95 (period from 12.9.94 to 31.3.94) was assessed as 'good' and 'average'. Another ACR for the year 1994-95 (period from 1.4.94 to 11.9.94) in respect of Sri Pal was assessed as 'average' and 'good'. On perusal of the ACR of Sri M.L. Pathak for the year 1994-95, it is found that he was assessed as 'good' only whereas on perusal of the A.C.R. of Sri P.K. Majumdar for the year 1994-95 it is found that he was assessed as 'very good'. Similarly on perusal of the ACR of Sri B.K. Sarkar for the year 1994-95 (period from 1.4.94 to 11.9.94) it is found that he was also assessed 'very good'. In view of the aforesaid fact, we are of the view that non-consideration of the ACR of the applicant No.1 by the selection committee as well as by the Union Public Service Commission in view of the letter dated 22.4.97 referred to above vitiates the result of selection made by the selection committee as well as by the Union Public Service Commission. And we find there is a perversity in the matter of classification and assessment in respect of selection of the respondents Nos. 9 to 12 and the non-selection of the respondents Nos. 9 to 12 and the applicant Nos. 1 & 2 in this case. It is also not understood by us how the Selection Committee and the Union Public Service Commission made assessment and classification without obtaining the ACRs of the applicant No.1 and the respondent No. 12 concerned at the time of selection. Ld. advocate of the respondents could not reconcile these facts at the time of hearing before us.

18. In this connection we like to quote the relevant observation of the Hon'ble Apex Court made in regard to the selection reported in National Institute of Mental Health and Neuro Science Vs. Dr. K. Kalyanaraman and Ors. 1992 (2) ATR 563-

"(1) The function of the selection committee is neither judicial nor adjudicatory. It is purely administrative. There is no rule or regulation which requires the selection committee to record reasons. In the absence of any such legal requirements, the selection made without recording reasons cannot be found fault with.

(2) The Administrative authority is under no legal obligation to record reasons in support of its decision. Indeed, even the principle of natural justice do not require an Administrative authority or a selection committee or an examiner to record reasons for the selection or non-selection of a person in the absence of the statutory requirements."

(3) The procedural fairness is the main requirement in the administrative action. The 'fair' or 'fair procedure' in the administrative action ought to be observed. Selection committee cannot be an exception to this rule. It must take a decision reasonably without being guided by extraneous or irrelevant consideration.

(4) The selection committee consisted of expert in the subject of selection and they were man of high status and also unquestionable impartiality. The court should be slow to interfere with the opinion."

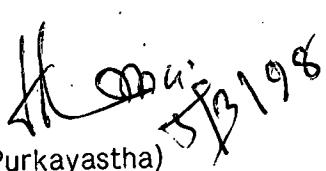
From the aforesaid binding decision of the Hon'ble Apex Court, it is clear that selection committee need not give reason if they reject a candidate after proper assessment as required under Regulation 5(3A) of the regulation. At the same time, it is also clear that the said selection committee must take a decision reasonably and with fairness without being guided by extraneous and irrelevant consideration. In other words, it is clear that if the decision of the selection committee suffers from unfairness, arbitrariness on the facts of the records, the Tribunal or Court can interfere with the selection if it suffers.

19. Keeping the aforesaid view of the Hon'ble Apex Court, we have carefully considered the facts and circumstances of the case and we are of the view that no consideration of the material documents viz. ACRs of the eligible candidates ~~had~~ certainly vitiated the result of the selection made by the selection committee as well as by the Union Public Service Commission. And it has erroneously been done by the selection committee without basing upon the relevant service records as required under Regulation 5(3A) and Regulation 8 of the said regulation 1966. Moreover, it is found that the respondent No.12, Sri A.N. Pal and the respondent No.9, Sri M.L. Pathak were not found fit for selection for the year 1994-95 and thereby we are of the view that the Selection committee as well as Union Public Service Commission mechanically acted upon in the matter of selection and their action in the matter of process of selection are arbitrary and not reasonable. And we are of the view that such selection cannot be said to have been done by the UPSC as well as by the selection committee fairly following the relevant rules as stated above. Thereby we hold that the selection list for the year 1995-96 excluding the names of the applicants are not fair and tenable in view of the judgment of the Hon'ble Apex Court reported in 1992 (2) ATR 563. In view of the aforesaid observation in the light

of the discussion made above, we were given to understand that the aforesaid respondents Nos. 9 to 12 were appointed on the basis of the erroneous selection for the year 1995-96. However, we are not inclined to cancel their appointment at this stage since they have been appointed on the basis of the said selection. But it is mentioned here that their right to continue on promotion to the Indian Forest Service on the basis of erroneous selection for the year of 1995-96 shall be restricted to, till the preparation of the final selection list to be made on the basis of recommendation of review D.P.C. as ordered & their appointment on promotion to the Indian Forest Service would automatically lapse, if the selection list is not finalised on review in three months.

20. Accordingly, we also direct the respondents Nos. 1 to 5 to hold a fresh review D.P.C. to consider the case of the applicants alongwith the eligible candidates who were recommended by the State Govt. for inclusion in the list for the year 1995-96 and finalise it within three months from the date of communication of this order. And it is also ordered that if upon the consideration of the material facts and service records of the applicants and the respondents as per list forwarded by the State Govt., the applicants were found eligible and suitable for selection for appointment on promotion to the Indian Forest Service, they should be given all consequential benefits of promotion with retrospective effect from the date of the persons appointed on the basis of the erroneous selection list for the year 1995-96 as per rules and accordingly we allow the application awarding no costs.

21. Copy of this order be sent to the Chairman, Union Public Service Commission, New Delhi and the Chief Secretary to the Government of West Bengal for necessary action.


(D. Purkayastha)
Member (J)


(B.C. Sarma)
Member (A)