

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO84/2001.

THURSDAY, THIS THE 6th DAY OF FEBRUARY, 2003.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. Nagesh Prabhu
Conservator of Forests (World Bank Project)
Forest Headquarters,
Thiruvananthapuram.
2. Dr. S.K. Khanduri
Conservator of Forests (Special Afforestation)
Forest Headquarters
Thiruvananthapuram. Applicants

By Advocate Mr. N. Nandakumara Menon

Vs.

1. Union of India represented by
the Secretary to Government of India
Ministry of Environment & Forests
Department of Forests and Wildlife
Paryavaran Bhavan
New Delhi.
2. State of Kerala represented by the
Chief Secretary to Government of Kerala
Secretariat, Trivandrum.
3. N. Sasidharan
Divisional Forest Officer
Kottayam
Civil Station, Kottayam.
4. B. Muraleedhran
Deputy Conservator of Forests (Administration)
Forest Headquarters,
Vazhuthacaud, Trivandrum. Respondents

By Advocate Mr. R. Prasanthakumar, ACGSC for R-1
By Advocate Mr. A. Ranjit, GP for R-2

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants two in number aggrieved by the order of
the Government of Kerala No. 67160/Spl. C1/2000/GAD dated
16.11.2000 and Order No. 17013(i)/99-IFS.II dated 20.12.2000

issued by the Government of India, Ministry of Environment and Forests, New Delhi filed this Original Application seeking the following reliefs:-

(i) This Hon'ble Tribunal may kindly be pleased to declare that the grant of year of allotment to respondents 3 and 4 as 1983 in the Indian Forest Service as illegal and void and to quash the Notification Annexure A-17 in so far as it relates to respondents 3 and 4.

(ii) This Hon'ble Tribunal may kindly be pleased to set aside Annexure A-15 order as illegal and void.

(iii) This Hon'ble Tribunal may kindly be pleased to declare that the applicants are entitled to be appointed in the senior time scale of pay with effect from 1.4.1988 and to direct the respondents 1 and 2 to promote the applicants notionally to the senior time scale in the Indian Forest Service with effect from 1.4.1988 and to grant to the applicants all the consequential service benefits including the monetary benefits.

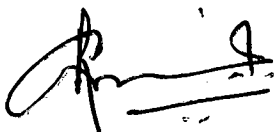
(iv) This Hon'ble Tribunal may issue such other appropriate order or direction which this Hon'ble Tribunal may deem fit and proper to issue in the interest of justice and

(v) To award to the applicants their costs in these proceedings.

2. According to the averments of the applicants in the O.A. they were appointed to Indian Forest Service after having passed the Indian Forest Service Examination conducted by the UPSC in the year 1983 and they joined service on 4.6.1984 and 25.1.1984 respectively as Probationers in the Indian Forest College and underwent the prescribed probation for a period of three years as contemplated under the Indian Forest Service Probation Rules. They were allotted to the Kerala Cadre. After successful completion of the in-service training they joined as Junior Time Scale Officers in the Kerala Forest Department. They passed all the departmental tests as required under Rule 6A of the Indian Forest Service (Recruitment) Rules as clarified by the Government of India vide Circular No. 20014-22/87/Indian Forest Service-II dated 27.4.87 and in accordance with the Special Rules for the Kerala Forest Service. They passed all the departmental



tests required for the award of Senior Time Scale before completing 4 years of service. They submitted A1 representation dated 2.3.98 and A2 representation dated 1.3.98 respectively before the State Government bringing to their notice that they were eligible and entitled for Senior Time Scale with effect from 1.4.1988 onwards. They claimed that as on 1.1.1988 and 1.4.1988 three cadre posts in the Senior Time Scale in the Indian Forest Service were vacant in the Kerala Forest Department and they were fully qualified and eligible to be appointed in the Senior Time Scale against those posts as on 1.4.1988 as per Rule 6(A) of the Indian Forest Service Recruitment Rules and the Government of India Circular dated 27.4.1987. The State Government appointed three officers of the State Forest Service viz. Sri C.K. Antony, Sri V. John Thomas and Sri V. Gopinathan to the then existing three vacancies in the Senior Time Scale of posts as per G.O. (Ms) 169/88/GAD dated 12.4.1988. The above appointment of the 3 State Service Officers to the Senior Time Scale posts was made by the State Government ignoring the legitimate claim of the applicants for appointment to the Senior Time Scale. The said appointment given to the 3 State Service Officers was opposed to Rule 8 and 9 of the Indian Forest Service (Cadre) Rules which laid down that no non-cadre officer's were to be appointed to the Senior Time Scale ignoring the legitimate claim of the applicants. When the three non-cadre officers were appointed applicants submitted A3 and A4 representations dated 15.4.98 and 10.5.98 respectively bringing to the notice of the State Government that the appointment of the said three officers ignoring their rights to the Senior Time Scale was illegal and requesting them to appoint them in the Senior Time Scale with effect from 1.4.1988. The Chief Conservator of Forests gave A-5 reply to A4 representation submitted by the second



applicant stating that the appointment of the above State Forest Service Officers was against the promotion quota vacancies only (A5). They claimed that the said A5 could not be sustained under law for the reason that there was no quota for appointment of non-cadre service officers to the cadre posts under the provisions of the Indian Forest Service (Recruitment) Rules 1966 Rule 9 of the Indian Forest Service (Recruitment) Rules 1966, only spoke about the maximum number of posts to be filled up by State Forest Service Officers under Rule 8 of the rules which was prescribed as 33 1/3% of the number of senior posts borne on the cadre of the State. The Ministry of Environment and Forests issued A-6 Circular dated 7.3.1994 stating that in view of the proviso to Rule 3(1) of the Indian Forest Service (Pay) Rules 1968, subject to the provisions of Sub Rule (2) of Rule 6A of India Forest Service (Recruitment) Rules 1966 a direct recruit officer was to be considered for appointment to Senior Scale on completion of 4 years of service. This was followed by A-7 circular dated 12.1.1995. Applicants were promoted to the Senior Time Scale of Pay on 3.11.88. By A8 notification NO. 17013/29/89-IFS II dt. 29.6.2000 respondents 3 and 4 were appointed to the Indian Forest Service under Rule 8 (1) of the Indian Forest Service (Recruitment) Rules read with Regulation 9(1) of the Indian Forests Service (Appointment by Promotion) Regulations 1966 w.e.f. 26.5.1988. The said respondents 3 and 4 were originally appointed to Indian Forest Service on 28.2.1995 and 18.1.1999 respectively. Apprehending that since respondents 3 and 4 had been given retrospective appointment to the Indian Forest Service from 26.5.1988 and they would be considered for fixing year of allotment above the applicants since they (the applicants) were appointed in the Senior Time Scale at a subsequent date to the revised dates of notional appointment given to



respondents 3 and 4 in the Indian Forest Service, they submitted A-9 (first applicant), A-10, A-11 and A-12(second applicant) representations to the respondents 1 & 2 bringing to their notice their grievances. The second applicant received A-15 reply from the State Government. On receipt of the said reply the second applicant submitted A-16 representation to the State Government dated 18.11.2000. In the meanwhile Ministry of Environment and Forests, Government of India issued A-17 orders declaring the year of allotment of respondents 3 and 4 as 1983. Alleging that A-15 did not contain any cogent reasons for denying to the applicant Senior Time Scale from 1.4.1988 and A-17 notification as arbitrary and unreasonable and unsustainable in law and claiming that the grant of seniority to the respondents 3 and 4 over the applicants in spite of the fact that as on 1.4.1988 they were fully qualified and eligible to be promoted as on that date in the Senior Time scale, the applicants filed this Original Application seeking the above reliefs.

3. Respondent No.1 filed reply statement submitting that the seniority of the four officers mentioned in Annexure A-17 was determined in accordance with the provisions of rule 3(2)(c) of the Indian Forest Service Service (Regulation of Seniority) Rules 1968 applicable in their case. It was further submitted that the subject matter of promotion in the cadre of Indian Forest Service to Senior Time Scale fell within the purview of the State Government and therefore while determining the year of allotment of promotee officers, the Central Government had to rely upon the information furnished by the State Government in regard to officiation of the juniormost direct recruit officer on a Senior scale post. As per the information furnished by the Government of Kerala



Sri Jupudi Prasad a direct recruit had been officiating in a senior post on the date of appointment of Sri N. Sasidharan and B. Muraleedharan to the IFS on 26.5.1988. Thus the year of allotment of respondents 3 and 4 has been fixed strictly in accordance with the rule 3(2)(c) of the IFS (Regulation of Seniority) Rules, 1968. So far as the grant of Senior Time Scale to a direct recruit in the IFS is concerned Rule 3(1) of the IFS(Pay) Rules 1968 provided that an IFS Officer would be appointed to the Senior Time Scale on his completing 4 years of service subject to the provisions of sub-rule (2) of Rule 6A of the IFS (Recruitment) Rules.

4. Respondent No. 2 filed reply statement resisisting the claim of that the applicants. It was submitted that the Senior Time Scale posts were functional posts i.e. the officer would be entitled to the benefits of promotion only on assumption of charge of a particular post in that grade. According to the guidelines in force at the relevant time the Chief Conservator of Forests (i.e. Head of the Department) should evaluate the performance of the Junior Scale Officers on completion of 4 years of service and make suitable recommendations to the Government for promotion to Senior time scale provided the officers had passed the ~~xxx~~ departmental tests and fit for confirmation. The date of eligibility for promotion to senior time scale as followed at the relevant time was first April of the year in which the officers completed 4 years of service. However, promotion to a post was not automatic but subject to the availability of vacancies and on completion of the procedure of assessment of the suitability of the officer concerned. In the case of 1984 batch officers the Principal Chief Conservator of Forests made recommendations on 15.9.1988 to promote the officers after evaluation of their performance. The number



of cadre posts in the Senior Time Scale at that time was 34. However, 35 cadre officers were in position at the relevant time. Hence there was no vacancy for the Senior Time Scale as on 1.4.1998. The State Forest Officers represented that the cadre officers were occupying posts in excess of their quota. In the reply given to the applicants by the Principal Chief Conservator of Forests letter dated 1.9.88 it was informed that their cases would be taken up as and when vacancy arose in the Senior Time Scale and made it clear that appointment of State Forest Service Officers were against promotion quota vacancies. There was no undue delay in effecting the promotion of the applicants. As per G.O.(MS)NO. 169/88/GAD dated 12.4.88 three State Forest Service Officers were appointed to Indian Forest Service. Their appointment was notified by Government of India Notification No. 17013-9/88 IFS.II dated 26.5.88. These officers were appointed against promotion quota vacancies. They were appointed from 1987 select list. The promotee officers were appointed on the senior scale of IFS whereas initial recruitees became eligible for senior scale of IFS only after completion of 4 years of service. The applicants had been subsequently promoted to the junior administrative grade/selection grade/Conservator of Forests. They had taken up the issue after 12 years from the date of promotion in Senior Time Scale which was a belated one. It was submitted that in compliance with the order of the Hon'ble High Court of Kerala in W.A.No. 1029/98 from O.P.No. 1296/96 the Review Selection Committee for promotion to IFS was convened and based on the recommendations of the Review Committee appointments of the officers included in the select list were notified by the Government of India. Accordingly the third and fourth respondents were appointed to IFS with effect from 26.5.1988. The juniormost regular recruitee officer



officiating in senior scale of post as on that date was Sri Jupudi Prasad IFS of 1983 batch. Hence the year of allotment in respect of respondents 3 and 4 was fixed as 1983. The year of allotment in respect of promotee officers were fixed in accordance with the rules after considering the representation put in by the applicants. The O.A. deserved no consideration and the same was liable to be dismissed with costs to the respondent.

5. Applicants filed rejoinder

6. Heard learned counsel for the parties.

7. The learned counsel for the applicants took us through the factual aspects as contained in the Original Application. He submitted that the direct recruit officers like the applicants were entitled for promotion to Senior Time Scale on completion of 4 years of service viz. on 1.4.88 as per Rule 6(4) of the Indian Forest Service (Recruitment) Rules as clarified by GOI circular NO. 20014-22/87/IFS-II dated 27.4.1987 and also Rule 3(1) of the Indian Forest Service (Pay) Rules, 1968. Their legitimate right to be appointed in the Senior Time Scale in the year 1988 was denied to them arbitrarily. When the applicants had brought this fact to the notice of Central and State Governments, the said Governments should have appreciated the same. By giving the respondents 3 and 4, 26.5.98 as the date of appointment to the Indian Forest Service the applicants were affected adversely. Further the applicants were not parties to the litigation before the Hon'ble High Court of Kerala in O.P. No. 1296/96 hence the judgment of the Hon'ble High Court was not binding on the applicants and the same could not be made applicable to them to their detriment.



Applicants submitted representations to the State and Central Governments to give the benefit to them on the same principles as was applied in the case of the 3rd and 4th respondents on notional basis. The Central Government did not consider these facts nor they referred the matter to the State Government for clarification. It was submitted that the first respondent being the cadre controlling authority had the responsibility of guiding the States Government in All India Service matters. While considering the question of year of allotment of the party respondents the Central Government should have kept these points in view. Referring to Rule 10 of the Indian Forest Service (Recruitment) Rules it was submitted that the Central Government had the responsibility of interpretation of rules and hence it had the responsibility to set right the irregularities brought to their notice. The first respondent had failed to do so. The learned counsel relied on the order of the Guwahati Bench of this Tribunal in O.A. 164/89 dated 25.7.1989 and submitted that when through the said order this Tribunal had held that the stand taken by the State Government in that O.A. of appointing certain State Forest Service Officers into Indian Forest Service ignoring eligible direct recruits, the 1st respondent Central government should have directed the State Governments to set right such irregularities if any which had taken place in those States. Respondents 3 & 4 had not actually officiated in Senior Scale on 26.5.1988. It was a notional date decided by the respondents as per the judgment of the Hon'ble High Court. Similar is the case of the applicants in that they should have been promoted to Senior Time Scale with effect from 1.4.1988 even though were actually promoted later. Had respondents 3 & 4 been promoted actually in 1988, the applicants would have pursued the matter at that time. As they had been given notional benefit



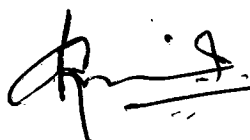
from 26.5.1988 now, this OA is filed now. He also cited the judgment of the Hon'ble Supreme Court in Syed Khalid Rizvi and Others Vs. Union of India and Others (1993 Suppl (3) SCC 575) and submitted that none of the conditions laid down therein for filling up the cadre vacancies was there in this case when three State Forest Service Officers were posted in 1988.

8. The learned counsel for the respondents 1 & 2 Shri Prasanth Kumar and Renjit respectively took us through the reply statements and reiterated the points made therein.

9. Even though notice was issued to respondents 3 & 4 none appeared for them nor any reply statement was filed by them.

10. We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and have also perused the documents connected therewith.

11. It is not in dispute that the applicants were actually promoted to Senior Time Scale on and with effect from 3.11.1988. Their claim is that they should have been promoted w.e.f. 1.4.1988. According to the second respondent if they were aggrieved by their promotion w.e.f. 3.11.1988 and they had a claim for promotion from 1.4.1988 they should have approached this Tribunal at that time and this OA at present was belated. According to the applicants they are aggrieved by the notional date of allotment of 26.5.88 to the third and fourth respondents and the O.A. is not belated. We find that in 1988 three State Forest Service Officers were posted in the cadre posts and the applicants

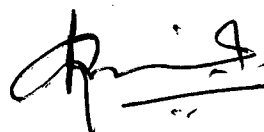


were promoted to Senior Scale only in November, 1988. Even though they submitted representations for promotion from 1.4.88 on getting A5 reply they had not pursued the matter. From A-9 and A-10 representations we find that the applicants did not pursue the matter for the reason that the three State Service Officers posted earlier than them to Senior Scale would not affect their career prospects as they were aged. We find that their cases is that with the deemed date of posting of respondents 3 and 4 to IFS from 26.5.88, their career prospects would get affected and hence this OA could not be treated as belated. We find force in the submission. We are of the view that the cause of action had arisen for the applicants when the deemed date of appointment i.e. 26.5.1988 was decided for respondents 3 & 4. Accordingly we reject the plea of the respondents that the OA is belated.

12. According to the second respondent, Government of Kerala, at the relevant time the number of cadre posts in the State Forest Service were 33 against which 35 cadre officers were in position and hence their action posting of 3rd and 4th respondents to the cadre posts of the Indian Forest Service could not be faulted. We find that Government of India had issued a circular letter No. 20014-22/87/IFS-II dated 27.4.87. We find from paras 2 & 3 of the said letter reproduced below that completion of 4 years of service would be reckoned with reference to the year of allotment and first April of the year concerned.

Paragraphs 2 and 3 of Government of India circular NO. 20014-22/87/IFS.II dated 27.4.1987

"2. According to the proviso to sub-rule (1) of rule 3 of the Indian Forest Service (Pay) Rules, 1968, as amended in this Departments notification dated 13th March, '87, a member of the service shall be appointed to the senior time scale on competing 4 years of service subject to the provisions of sub-rule (2) of Rule 6A of the Indian Forest Service (Recruitment) Rules, 1966.. Similarly, he shall be



appointed to the Junior Administrative Grade on completing 9 years of service. Further, under the proviso to sub-rule (3) of Rule 3, no member of the service shall be eligible for appointment to the Selection Grade unless he has entered the 14th year of service. For the purpose of these appointments completion of 4 years, 9 years and 13 years of [service are to be calculated from the year of allotment.

3. A question has been raised with regard to the method of completion of years of service under these rules. It has been noted that the probationary training of direct recruits commences in the month of April/May and therefore, they will be completing 4 years, 9 years or 13 years of service as the case may be in the month of April/May. However, some of the officers might join later, creating a situation where the seniors become eligible for promotion later than their juniors in service. In order to remove such anomalies, it has been decided that the 1st day of April of the relevant year shall be reckoned for the purpose of computing the requisite number of years of service under the rules."

13. We find Sub Rule (1) of Rule 3 of Indian Forest Service (Pay) Rules 1968 reads as follows:

3. Time scale of pay :-(1) The scales of pay admissible to a member of the services and the dates with effect from which the pay scales shall be as deemed to have come into force, shall be as follows:

Junior Scale: Rs.. 2600-75-2800-EB-100-4000 with effect from the 1st day of January, 1986.,

Senior scale-

(i) Time scale Rs. 3000-100-3500-125-4500 with effect from 1st January, 1986.

(ii) Junior Administrative Grade Rs. 3700-125-4700-150-5000 (nonfunctional) with effect from 1st January, 1986.

X X X X X X

Provided that a member of the service shall be appointed to the senior scale on his completing four years of service, subject to the provisions of sub-rule (2) of Rule 6-A of the Indian Forest Service (Recruitment) Rules, 1966 and to the Junior Administrative grade on completing nine years of service.

Note:- The four years and nine years of service in this rule shall be calculated from the year of allotment assigned to him under Regulation 3 of the Indian Forest Service (Regulation of Seniority) Rules, 1968.

x x x x x x x



14. Rule 6(A) of the Indian Forest Service (Recruitment)

Rules 1966 Reads as follows:

6-A-Appointment of officers in the junior time scale of pay to posts in the senior time scale of pay (1) Appointments of officers recruited to the service under clause (a) or clause (a) of sub rule (2) of Rule 4 to posts in the senior time scale of pay shall be made by the State Government concerned.

(2) An officer, referred to in sub rule (1) shall be appointed to a post in the senior time-scale of pay if, having regard to his length of service and experience, the State Government is satisfied that he is suitable for appointment to a post in the senior time scale of pay:

Provided that, if he is under suspension or disciplinary proceedings are instituted against him, he shall not be appointed to a post in the senior time-scale of pay, until he is reinstated in the Service, or the disciplinary proceedings, are concluded and final orders are passed thereon, as the case may be:

Provided further that on the conclusion of the disciplinary proceedings:

(a)if he is exonerated fully and the period of suspension, if any, is treated as duty for all purposes, he shall be appointed to the senior time scale of pay from the date on which he would have been so appointed, had the disciplinary proceedings not been instituted against him, and paid accordingly, and

(b)if he is not exonerated fully and if the state Government, after considering his case on merits, proposes not to appoint him to the senior time-scale of pay from the date on which he would have been to appointed had the disciplinary proceeding not been instituted against him, he shall be given an opportunity to show cause against such action.

3. Notwithstanding anything contained in sub-rule (2) the State Government may-

(a)withhold the appointment of an officer referred to in sub-rule (1) to a post in the senior time-scale of pay-

(i) till he is confirmed in the Service, or

(ii) till he passes the prescribed departmental examination or examinations, and appoint, to such a post, an office junior to him

(b)appoint an officer, referred to in sub-rule (1), at anytime to a post in the senior time scale of pay as a purely temporary or local arrangement.



15. Rule 7, 8 & 9 of the Indian Forest Service (Cadre) Rules 1966 reads as under:

7. Posting- All appointments to cadre posts shall be made-

(a) in the case of a State Cadre, by the State

(b) in the case of a Joint Cadre by the State Government concerned:

Provided that for the purpose of filling leave vacancies or for making temporary arrangements for a period not exceeding three months, the State Government may delegate to Heads of Departments, its powers of making appointments to cadre posts

8. Cadre posts to be filled by cadre officers-(1) Save as otherwise provided in these rules every cadre post shall be filled by a cadre officer

(2) A cadre officer shall not hold an ex-cadre posts in excess of the number specified for the concerned State under Item 5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulation, 1966.

3. The State Government may, with the prior approval of the Central Government, appoint a cadre officer to hold an ex-cadre post in excess of the number specified for the concerned State in Item 5 of the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 and for so on as the approval of the Central government remains in force, the said ex-cadre post shall be deemed to be an addition to the number specified in Item 5 of the said Schedule.

9. Temporary appointment of non-cadre officer to cadre posts- (1) A cadre post in a State may be filled by a person who is not a cadre officer if the State Government "or any its Head of Department to whom the State Government may delegate its powers of making appointments to cadre posts is satisfied-

(a) at that the vacancy is not likely to last for more than three months or

(b) that there is no suitable cadre officer available to filling the vacancy:

Provided that where a cadre post is filled by a non-select list officer, or a select list officer who is not next in order in the select list, under this sub rule the State Government together with the reasons therefore.

(2) Where in any State a person other than a cadre officer is appointed to cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment.



Provided that a non-select list officer, or a select list officer who is not next in order in the select list, shall be appointed to a cadre post only with the prior concurrence of the Central Government.

(3) On receipt of a report under sub-rule (2) or otherwise, the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction is so issued, the State Government shall accordingly give effect thereto.

(4) Where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the Union Public Service Commission with the reason for holding that no suitable officer is available for filling the post and may in the light of the advice given by the Union Public Service Commission give suitable direction to the State Government concerned.

16. On a careful reading of the above we are of the opinion that (i) they mandate that all cadre posts are to be filled up by cadre officers. (ii) A direct recruit IFS officer is eligible for promotion to senior scale on completion of 4 years of service. (iii) The four years of service would be counted from the year of allotment and the first day of April of the relevant year.

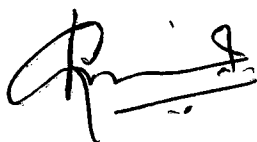
17. In the case of the applicants here there is no dispute that the applicants having joined the Indian Forest Service in 1984 became eligible for promotion to Senior Scale on 1.4.88. We find from the pleadings that the respondents have treated that the applicants had passed all the departmental tests required for award of Senior Time Scale. Rule 6(A) also provides as to under what circumstances the grant of Senior Time Scale to a direct recruit officer could be denied. These are enumerated under Sub Rule 3(a)(i) and (ii). The respondents do not have a case that the applicants were not confirmed or had not passed the required departmental examinations. They have also no case as given in sub rule 2 that they were under suspension or disciplinary proceedings were initiated against them. Under such



circumstances we hold that the appointment of the three State Forest Service Officers to the vacant cadre posts on 12.4.88 ignoring the applicants is against the statutory rules. The averments of the respondents that the State Forest Service Officers had been posted against the cadre post as they were promotional quota vacancies is made without producing any material in support. Moreover the respondents admitted that the three State Forest Officers had been appointed to the Indian Forest Service only on 12.4.1988 by order dated 26.5.88 of the Government of India. When they had been appointed only on 12.4.88 it has to be taken that they had become cadre officers only on 12.4.88. However, the applicants who were a cadre officers and who became eligible for Senior Time Scale with effect from 1.4.88 were available for posting against these cadre posts. Thus the action of the respondents in not promoting the applicants to Senior Scale and promoting in preference non-cadre officers cannot be sustained.

18. The Gauhati Bench of this Tribunal in O.A. No. 128/88 and 164/88 while dealing with similar claim made by the Indian Forest Service Officers of the Assam and Meghalaya cadre, held as follows:

"8. Mrs. M. Das appeared for the State of Assam on 19.7.89. Respondent No. 8 have taken the stand that the officer will be promoted when vacancies are available, that the instances of the IFS officer mentioned in the petitions were officers who were promoted to the Sr. Scale by the Government of Meghalaya without consulting the Government of Assam, that in the case of the two State Forest Service Officers mentioned in applicant O.A. 128/88, they were promoted to the rank of deputy Conservator of Forest at their promotion to that rank was overdue by dint of their length of service and practical experience. However, it was not explained whether they were promoted to posts which are cadre posts of the Senior Time Scale of I.F.S.



9. After hearing on 30.6.89 another bench of this Tribunal directed the State Government to file an affidavit giving factual position regarding the vacancies in the Senior Time Scale of IFS cadre that existed at the relevant lines of these petitions. They were also to inform us whether, at any time, before the petitioner completed four years of service they were told of any reason including failure to pass prescribed departmental examination which made the cadre authority consider them unsuitable for appointment to Sr. Time Scale. In their second affidavit the State Government have given specific replies to these questions. From this it is clear that at the relevant times, that is, between 1.4.87 to 31.5.87 in the case O.A. No. 128/88, six vacancies existed in the Sr. Time Scale of IFS of the Assam. The State Government also did not decide to withhold the promotions of these officers on ground of unsuitability including failure to pass departmental examination. It is, therefore, impossible to find any justification for denying or delaying the due promotion of the petitioners in both the cases. We find that the delay of about one and half years in appointing the petitioner of O.A. No. 128/88 and the failure to appoint of Senior Time Scale of four petitioners in O.A. 164/88 so far have not been justified by the State of Assam. We are therefore, inclined to allow both the petitions.

10. In the result we direct the respondent NO. 3 that the petitioners of these two cases be deemed to have been promoted to Senior Time Scale of IFS w.e.f. 1.4.1987 in the case of Shri Akhtar Hussain Khan (Petitioner of 128/88) and w.e.f. 1.4.1988 in the case of Shri Chandra Mohan, R.D.S. Thanvar, D.M. Prasad and Anilkumar Singh (Petitioners of O.A. NO. 164/88). The cadre authorities are further directed to issue orders of their promotion one placement within 5 days of receipt of this order. Their pay shall be refixed in consequence of this order and all arrears of pay and allowances shall be paid to them within 90 days of the receipt of this order. This common judgment and order will govern both O.A. 128/88 and O.A. 164/88. The parties will bear their costs.

19. In the case of applicants herein the respondents have no case that they were unsuitable for promotion to Senior Time Scale on 1.4.1988. We also find substance in the applicants' plea that the dictum laid by the Gauhati Bench of this Tribunal as reproduced above with which we totally agree would squarely apply in the case of the applicants herein.

A handwritten signature in black ink, appearing to be a stylized 'R' followed by a horizontal line and a small flourish.

20. The three State Forest Service Officers~~xxxxx~~ who were appointed in 1988 are no longer in service. Hon'ble High Court of Kerala and later the Hon'ble Supreme Court held that instead of the said three State Forest Service Officers who were posted against the vacancies in 1988 respondents 3 & 4 were eligible for consideration for appointment by promotion to the Indian Forest Service as they were senior to them rectifying the error committed by the State Government. At the same time these two respondents had not been actually working against the senior Scale cadre posts. They had been given notional posting w.e.f. 26.5.88. The applicants also had not been working in Senior Time Scale from 1.4.88 but as already found by us the applicants would be entitled for promotion to Senior Time Scale in preference to the State Forest Service Officers who were not cadre officers. In accordance with rule 3(2)(c) of IFS (Regulation of Seniority) Rules, 1968, an officer promoted from the State Forest Service to the IFS is to be placed below the juniormost direct recruit who had been officiating continuously in a Senior Time Scale post. Respondents had decided the year of allotment of third and fourth respondents taking Jupudi Prasad, a direct recruit of 1983 as the juniormost officer officiating in Senior Time Scale. The Hon'ble High Court of Kerala directed the State of Kerala to conduct review DPC to consider the case of appointment of third and fourth respondents to IFS on the dates due to them vis-a-vis the irregularly appointed State Forest Service Officers. The Hon'ble High Court had not given any directions regarding the year of allotment. The same is to be done as per Statutory Rules. We find that these aspects were brought out by the applicants in their representations but they had not been considered by the the Central Government. The Hon'ble



Supreme Court in Syed Khalid Rizvi V. Union of India and other connected cases (1993 Supp. (3) SCC 575) held as follows:-

" 13. Rule 3 of the Cadre Rules adumbrates constitution of the cadre and under Rule 3(2) the cadre so constituted shall be 'State cadre' or joint cadre, as the case may be. Rule 4 prescribes the strength of the cadre, the details whereof are not material. Rule 5 empowers the Central Government, in consultation with the State Government concerned, to allocate the cadre officers. Rule 7 provides the method of posting the officers to fill in the cadre posts. All appointments to cadre posts shall be made (a) in the case of a State cadre, by the State Government and (b) in the case of a joint cadre, by the State Governments concerned. Rule 8 provides that, save as otherwise provided in these rules, "every cadre post shall be filled by a cadre officer." Marginal note of Rule 9 opens up lits vistesas to "temporary appointment of non-cadre officer to cadre post" and thereby forebode the field of operation of Regulation 8 of Promotion Regulations. Regulation 9 which is material for the purpose of this case reads thus (1) A cadre post in a State may be filled by a person who is not a cadre officer, if the State Government or any of its Heads of Department to whom the State Government may delegate its powers of making appointment to cadre posts, is satisfied) that the vacancy is not likely to last for more than three months and (b) that no suitable cadre officer is available for filling the vacancy, provided that where cadre post is filled by a non select-list officer, or a select list officer who is not next in order in the select-list, the State Government shall forthwith report the fact to the Central Government together with the reasons therefore. (2) Where in any State a person other than a cadre officer is appointed to a cadre post for a period exceeding three months, the State Government shall forthwith report the fact to the Central Government together with the reasons for making the appointment. Provided that a non select list officer or a select list officer who is not next in the select list shall be appointed to a cadre post only with the prior concurrence of the Central Government (3) On receipt of the report under sub-rule (2) or "Otherwise", (3) On receipt of the report under sub rule (2) or otherwise" the Central Government may direct that the State Government shall terminate the appointment of such person and appoint thereto a cadre officer, and where any direction was so issued, the State Government shall accordingly give effect thereto. Under sub-rule (4) where a cadre post is likely to be filled by a person who is not a cadre officer for a period exceeding six months, the Central Government shall report the full facts to the UPSC with the reasons for holding that no suitable cadre officer is available for filling the post and may in the light of the advice given by the UPSC give suitable direction to the State Government concerned



From the above it is clear that Central Government has certain responsibilities statutorily regarding the IFS officers. They cannot simply abdicate their responsibilities on the plea that State Government had furnished certain information. They have to look into the matter in depth. We are of the view that in this case the Central Government had not acted in that way before deciding the year of allotment of respondents 3 and 4.

21. Further, the respondents cannot argue that there were no vacancies in 1988 for promotion of the applicants, because if there were no vacancies the three non-cadre State Forest Service Officers would not have been promoted on 12.4.1988.

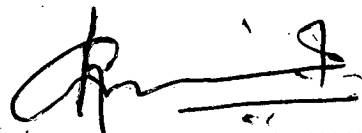
22. In the result this O.A. succeeds. We declare that the grant of year of allotment to Respondents 3 and 4 as 1983 is illegal and void and quash the notification A-17 in so far as it related to respondents 3 and 4. We also set aside and quash A-15. We direct the respondents to treat the applicants as having been promoted to the Senior Time Scale post w.e.f. 1.4.88 and refix the year of allotment of the respondents 3 & 4 accordingly. The monetary benefits arising out of the above direction if any shall be granted to the applicants from a date of one year prior the date of filing of this O.A. on 22.1.2001.

23. The Original Application stands allowed as indicated above. In the circumstances the parties shall bear their respective costs.

Dated the 6 th February, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER