

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

THIS THE 14th DAY OF August, 1995.

HON'BLE MR.JUSTICE S.C.MATHUR, CHAIRMAN
HON'BLE MR.V.K.SETH, MEMBER(A)

(1) OA No.288/92

1. The Uttar Pradesh Forest Service Association through its Vice President R.N.Pandey
S/o Sri K.P.Pandey
R/o Lucknow Zoo, Complex Lucknow,
2. Vinod Kumar
S/o Sri Ram Autar
R/o 1/23, Vikas Khand,
Gomti Nagar,
Lucknow ...

Applicants

(By Advocates Sh.S.S.L.Srivastava)

vs

The Union of India;
through Secretary
Environment & Forest;
Paryavaran Bhawan,
New Delhi.

The State of U.P.through
Secretary,
Forest, U.P.Lucknow. ...

Respondents

(By Advocates Sh.A.Kumar & Sh.A.R.Masoodi &
Sh.A.K.Chaturvedi.

(2) OA No.320/94

1. Indian Forest Service Association
U.P.Branch, through its Secretary
Sri R.P.Tewari,
R/o 17, Ran Pratap Marg,
Lucknow
2. Sameer Sinha
S/o Rajendra Prasad
presently posted
as Assistant Conservator
of Forests, Forest Division,
Kedar Nath.
3. Dhananjai Mohan,
S/o Sri S.S.Rajput
presently posted as D.C.F.,
Nanda Devi National Park,
Joshimath,
District Chamoli.
4. K.Pravin Rao
S/o Sri K.Gopal Rao,
presently posted as D.C.S/D.F.O., Kaimur
Sanctuary Project
Mirzapur (U.P.)
5. Shashi Kumar Datta
S/o R.K.Datta, presently posted
as D.F.O./Deputy Director,
World Food Programme, Lucknow ...

Applicants

(By Advocate Sh.A.R.Masoodi.)

vs.

1. Union of India through Secretary, Forest & Environment, New Delhi.
2. State of U.P. through Secretary, Forests, U.P.Civil Secretariat, Lucknow.
3. Sh.A.K.Jain
S/o Shri P.C.Jain
presently working as Dy.Chief Wild Life Warden, U.P. ...

Respondents

(Respondents 2 & 1 through Sh.V.C.Verma & Sh.A.K.Chaturvedi; Respondent No.3 present in person).

ORDER

JUSTICE S.C.MATHUR:

Somewhat conflicting claims have been made in these two OAs, one filed by members of the U.P.State Forest Service and the other by direct recruits assigned to the U.P.Cadre of the Indian Forest Service(IFS). Both claim encroachment by the other on posts belonging to their quota. Since conflicting claims have been made, it will be convenient and appropriate to decide the two applications by a common order.

2. For a better understanding of the grievance raised in the two applications, it will be desirable first to examine the composition of the IFS and the Rules and Regulations governing appointment to the posts comprised in the service. IFS is an All India Service covered by the All India Services Act 1951(LXI of 1951), for Short, Act. Section 3(1) of the Act confers power upon the Central Government to frame Regulations for recruitment to an All India Service. In exercise of this power, the Central Government has framed Indian Forest Service(Recruitment)Rules, 1966(for short Recruitment Rules). Rule 3 mentions about the constitution of the Service . It states that the service shall consist of - (a) members of the State Forest Service recruited to the service as its initial constitution in accordance

with the provisions of sub-rule(1) of Rule 4; and (b) persons recruited to this service in accordance with the provisions of sub-rules(2) to (4) of Rule 4. From this it would appear that initial recruitment to the service was made by appointment of suitable officers of the Forest Service of various States. For providing a method of selection of the officers of the State service, Rule 4(1) conferred power upon the Central Government to frame Regulations. In exercise of this power, the Central Government framed Indian Forest Service(Initial Recruitment) Regulations 1966(for short IR Regulations). For recruitment to this service after its initial constitution, provision is contained in Rule 4(2). Under this provision, there are three sources of recruitment-

- (i) by competitive examination;
- (ii) by selection of persons from amongst the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union who were commissioned after the 1st November, 1962, but before the 10th January, 1968 and who are released in the manner specified in sub-rule(1) of Rule 7-A; and
- (iii) by promotion of substantive members of the State Forest Service.

Rule 7(1) provides that the competitive examination shall be held at such intervals as the Central Government may, in consultation with the Commission, from time to time, determine. Sub-rule(2) empowers the Central Government to make Regulations, in consultation with the Union Public Service Commission(Commission), for the conduct of competitive examination. In exercise of this power, the Central Government has framed Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967(for short DR Regulations). Rule 8 deals with recruitment by promotion from amongst the substantive members of the State Forest Service. Under this provision, the appointment is made by the Central Government on the

recommendations of the State Government concerned and in consultation with the Commission. Under sub-rule(1) the Central Government is empowered to make Regulations in this behalf. In exercise of this power, the Central Government has made Indian Forest Service(Appointment by Promotion) Regulations, 1966(for short Promotion Regulations).

3. In exercise of the power conferred under Section 3(1) of the Act, the Central Government has, after consultation with the Governments of the concerned States, made the Indian Forest Service(Cadre) Rules,1966(for short Cadre Rules). Rule 2 contains definitions of the various terms used in the Rules. 'Cadre Officer' is defined to mean a member of the IFS. Again, 'Cadre Post' is defined to mean "any of the posts specified under item 1 of each cadre in the Schedule to the IFS (Fixation of Cadre Strength)Regulations,1966". Rule 3 provides "there shall be constituted for each State or group of States an Indian Forest Service Cadre." The strength of IFS Cadre in each State or group of States is to be determined by the Central Government in consultation with the State Governments through Regulations framed under Rule 4(1). Under sub-rule(2), the Central Government is required to re-examine the strength at intervals of normally three years and,if necessary, re-fix the strength. Under Rule 7 appointment to the cadre posts is made by the concerned State Government. Rule 8(1) lays down that every cadre post shall be filled by a cadre officer. Sub-rule(2) provides that a cadre officer shall not hold an ex cadre post 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) Regulations, 1966(for short Strength Fixation Regulations). Rule 3 is an exception to sub-rule(2).

It enables the State Government to appoint a cadre officer to ex cadre post to hold an ex-cadre post in excess of the numbers mentioned hereinbefore. This, however, can be done only with the prior approval of the Central Government. It is also provided in the sub-rule that so long 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 Schedule. Under Rule 9(1) a cadre post cannot be filled by an ex cadre officer, except when a suitable cadre officer is not available or when the vacancy against which the appointment is made is not likely to last for more than three months. When continuance of an ex cadre officer on a cadre post beyond three months becomes necessary, State Government has to obtain prior approval of the Central Government. Sub-rule(2) prescribes the principles on which a non-cadre officer may be appointed to a cadre post.

4. Simultaneously with the above Rules, the Central Government has, in pursuance of Rule 4(1), made the Strength Fixation Regulations prescribing the strength and composition of the IFS Cadre in each State. The composition and the strength are mentioned in the Schedule to the Regulations. From time to time, the Schedule has been amended so as to reflect the revision of strength carried out under Rule 4(2).

5. From the above position of Rules and Regulations, it would appear that the IFS Cadre in a State may comprise direct recruits recruited in accordance with DR Regulations and promotees promoted from the State Forest Service in accordance with Promotion Regulations. The Central Government fixes the total strength of the cadre in a State.

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6. With the above position of Rules and Regulations, we may first examine the grievance of officers of the State Forest Service. They point out that the cadre strength was fixed by notification dated 8.9.1986 whereunder the total authorised strength was mentioned as 194 out of which 148 were direct recruitment posts and 46 were promotion posts. They then state that right from the year 1987 upto 1990 direct recruits have been posted in the State of U.P in excess of the strength fixed for them. According to them, this excess posting is on posts reserved for the members of the State Forest Service whose claims for promotion are thereby postponed. This is the crux of their grievance. Their grievance may be illustrated by the following chart which has been prepared on the basis of the averments made in paragraphs 26 to 28 of the application-

1)	Authorised strength of the IFS cadre in U.P.	..	194
2)	Number of posts available for posting of direct recruits	..	148
3)	Number of posts available for posting by promotion of State officers	..	46

July Year	Number of direct recruits in position	Number of available vacancies	Number of direct recruits posted.	Excess in direct posting.
1987	137	11	19	8
1988	155	nil	16	24(8+16)
1989	166	nil	5	29(24+5)
1990	170	nil	79	108(29+79)

After pointing out the above excess postings, the applicants assert that even though there was no vacancy in the direct recruitment quota, through notification dated 20.3.1992, Annexure 5, seven more direct recruits were posted in the State of U.P. resulting in further

postponement of chances of promotion of the officers of the State Forest Service. The applicants describe this notification as illegal.

7. It is stated in paragraph 4.33 that since 1984 no officer of the State service has been promoted to the IFS U.P. Cadre and vacancies in the promotion quota are still existing and promotions are not being made which is arbitrary.

8. In paragraphs 4.32 and 4.34, it is stated that applicant No.2 has completed more than 11 years continuous service in the U.P. Forest Service and has the right to be posted to the cadre post of Deputy Conservator of Forests under Rule 9 of the Cadre Rules but he has not been so posted.

9. In paragraph 4.36, it is asserted that the strength of the promotion quota has been further increased through notification dated 31.8.1990.

10. In paragraph 4.30 reference is made to the order dated June 16/17, 1992, Annexure 6, whereby IFS probationers who have not completed 5 years' service were posted as Deputy Conservator of Forests. This posting is described as illegal.

11. On the above facts and grounds, the applicants have prayed for the following reliefs-

- (1) quashing of the notification dated 20.3.1992, Annexure 5 so far as it posts IFS probationers of 1990-92 batch mentioned at serial numbers 52 to 56;
- (2) quashing of Order No.E-48/3/2-2 dated June 16/17, 1992 issued by the Principal Chief Conservator of Forests, U.P. Lucknow posting IFS probationers with less than 5 years service as Deputy Conservator of Forests;

- (3) an order to restrain the Central Government from sending left over IFS probationers of 1989-91 batch who have undergone training with 1990-92 batch;
- (4) direction to the Central Government to take back IFS probationers of 1987-89, 1988-90, and 1989-91 batch who were posted in the State of U.P. in excess of the quota fixed under the Strength Fixation Regulations; and
- (5) direction to the State of U.P. to post officers of the State service as Deputy Conservator of Forests, which is a senior duty post, under Rule 9 of the Cadre Rules.

12. There are two respondents in the application viz. the Union of India and the State of Uttar Pradesh. The application has been contested on behalf of both. They have filed separate counter replies. The defence of both the respondents is almost identical and the same is thus:-

- (A) The applicants have not impleaded the persons who may be affected by the quashing of the orders dated 20.3.1992 and June 16/17, 1992 and by granting the relief of direction to the Central Government to recall officers of 1987-89, 1988-90 and 1989-91 batches from the State of U.P. and, therefore, the application is liable to be dismissed on the ground of non-joinder of necessary parties;
- (B) The applicants have projected that they have a quota for promotion to the IFS. In fact, there is no promotion quota as such for the State Service Officers. What has been provided in the notification fixing the strength of the cadre is the maximum number

of posts which may be filled by promotion of officers of the State service. When it is decided to fill up posts by promotion, the Central Government cannot go beyond the maximum limit prescribed in the notification. So far as direct recruitment is concerned, there is no limit and the Government can fill all the cadre posts in a State through direct recruitment alone. As such, the applicants have raised a misconceived grievance;

(C) In the State of U.P., the posting of directly recruited officers has never exceeded the cadre strength fixed for the State. In fact, it has never exceeded the number mentioned for the posting of directly recruited officers. The applicants are relying upon old notification fixing the cadre strength. The cadre strength was re-fixed first by notification dated 10.5.1988 and then by notification dated 31.8.1990. By the former notification the strength of the cadre was fixed as 202 out of which 156 were for directly recruited posts and 46 for promotion and by later notification, the respective figures were fixed as 289, 223 and 66. The figures given by the applicants of directly recruited officers posted in the State in 1987, 1988, 1989 and 1990 are wrong. The correct figures are as follows-

(1) Upto July 1987	...	118
(2) Upto July 1988	...	133
(3) Upto July 1989	...	140
(4) Upto July 1990	...	147

(D) Applicants claim for appointment against the cadre post of Deputy Conservator of Forests under Rule 9 of the Cadre Rules is misconceived for the reasons-(i) In view of Rule 9(a) a non-cadre officer can be appointed to a cadre post under Rule 9(1) only when no suitable cadre officer is available for filling the vacancy; applicants' own case is that cadre officers are not only available, but available in excess and, therefore, a non-cadre officer like applicant No.2 cannot be posted; and (ii) In view of Rule 9(1)(b) appointment can be made only if the vacancy is not likely to last for more than three months and if it is likely to last for more than three months, the State Government has to obtain prior approval of the Central Government. The State Government has not sought any approval; and

(E) Applicants' plea that the respondents are arbitrarily not promoting any State service officer since 1984 is incorrect. On the basis of the selection held in 1984, two officers of the State service, namely, C.P. Naithani and B.S.Rawat were promoted through notification dated 27.11.1987. Further, the officers of the State service are in litigation before the Supreme Court over their seniority. Until the dispute of their seniority is settled, no selection can be held.

13. Against the counter-reply of the State of U.P., rejoinder-affidavit has been filed on behalf of the applicants in which the pleas raised in the OA have been reiterated. Existence of notification dated 10.5.1988 has been specifically challenged, although revision of cadre strength through notification dated 31.8.1990 has not been challenged. In fact, reference to notification dated 31.8.1990 has been made in the OA also and it has been asserted that the strength fixed thereunder will be relevant to the competitive examinations held after the issue of that notification.

14. At the time of hearing, the learned counsel for the Central Government raised certain technical pleas which had not been raised in the counter-reply. These pleas relate to-(1) limitation;(2) exhaustion of alternative remedies; and (3) locus standi of the applicants to file the OA.

15. In view of the pleadings of the parties and the arguments raised, the following points arise for determination-

- (1) Whether the applicants are not aggrieved persons within the meaning of Section 19(1) of the Administrative Tribunals Act, 1985(AT Act) and have, therefore, no locus standi to maintain the application; ?
- (2) Whether the application is barred under Section 20(1) of the AT Act on account of applicants' failure to exhaust the remedies available to them under the relevant service rules? ..

(3) Whether the application is bad for non-joinder of necessary parties ?

(4) Whether the application is barred by the limitation of time prescribed in Section 21 of the AT Act ?

(5) What was the cadre strength in July 1987, July 1988, July 1989 and July 1990 ?

(6) Whether notification No. 28062/1/88-AIS(II) dated 10.5.1988 purporting to have been issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training filed by the learned counsel for the Central Government along with MP No.1075/95 is a concocted and forged document ?

(7) Whether the number of direct recruits to IFS posted in the State of U.P. in July 1987, 1988, 1989 and 1990 exceeded the number fixed for them in the notification fixing cadre strength for the State ?

(8) Whether the officers of the State Forest Service have a reservation of posts(quota) for promotion to the IFS ?

(9) Whether the applicants have a right to be posted to a cadre post under Rule 9 of the Cadre Rules ?

(10) Whether the respondents are guilty of acting arbitrarily by not holding selection for promotion since 1984 ?

16. Instead of giving priority to the technical pleas, we will take up the pleas on merit first.

Points 5,6 &7

The applicants have calculated the excess posting

of direct recruits on the basis of the cadre strength prevailing prior to 10.5.1988. According to the respondents, this cadre strength had been revised by notification dated 10.5.1988. The applicants are very emphatic in their denial of this notification. Their plea is that it has never been issued. In para 11 of the rejoinder, it is stated:-

" It is further submitted that the assertion of the opposite party no.2 to the effect that a notification was issued on 10/5/88 whereby the cadre strength of Indian Forest Service Cadre of U.P. was increased from 194 to 202 is wrong and perverse, as there exist no any notification of dated 10/5/88 as stated by the O.P.No.2..... the authorities have shown the cadre strength 202 as amended on 10/5/88 while notification of 10/5/88 as alleged was no where in existence as it has never been issued in as much as the same has not been enclosed with the counter affidavit. The opposite party no.2 nor any other authority have ever referred the notification dated 10/5/88 in any later correspondence."

Support for the denial of notification dated 10.5.1988 is sought from two factors-

- (1) A copy of the notification has not been filed alongwith the counter-affidavit; and
- (2) It has not been referred to in any later document.

17. When the respondents filed a copy of the notification alongwith MP No.1075/95, the applicants' denial of notification dated 10.5.1988 became more emphatic. In para 6 of the reply to the Misc.Petition it is stated " it is a concocted and forged document." The responsibility for making this statement has been taken upon himself by the learned counsel for the applicants as the reply is signed by him alone and not by either of the two applicants. Some of the grounds on which the notification

is alleged to be concocted or forged are:-

- (1) It does not contain GSR No.; the place where this number should have been mentioned is blank;
- (2) It contains the heading " To be published" in Part II Section 3(1) of Gazette of India; this shows that it is not copy of the published notification ;
- (3) It is mentioned in paragraph 1(2) that it "shall come into force on the date of their publication in the official gazette"; in the absence of date of publication in the official gazette, it cannot be said to have come into operation; and
- (4) In the forwarding note dated 10.3.1988 of the Desk Officer it is mentioned that three spare copies are sent to the State Governments, but the State of U.P. does not claim to have received any copy.

18. It is true that the copy of the notification dated 10.5.1988 filed on behalf of the Central Government does not contain GSR No. It is unfortunate that the Central Government has chosen to file such a copy. However, there is ample evidence on record to establish that the notification was actually published. There is also evidence available that the applicants were aware of the existence of this notification. At the time of filing the OA, they deliberately suppressed it. In the OA, the applicants have admitted revision of the cadre strength by notification dated 31.8.1990. A copy of this notification has been filed alongwith MP No.1075/95. To the notification is attached a Note containing particulars of the various notifications

published from time to time regarding fixation of cadre strength.' Notification dated 10.5.1988 is mentioned at S1.No.80. It gives the notification No. as 28062/1/88-AIS(II) -A and GSR No. as 404 and date of publication as 21.5.1988. Photocopy of the notification dated 10.5.1988 filed on behalf of the Central Government is not very clear. We cannot, therefore, say for definite whether the alphabet 'A' which is mentioned in the description of the notification No. given in the Note is there or not. There is, however, sufficient identity available to connect the notification dated 10.5.1988 with the notification of that date mentioned in the Note.

19. At this stage, we may refer to the unethical conduct of the applicants. The entire notification dated 31.8.1990 alongwith the Note and the endorsement runs into 6 pages. Notification dated 10.5.1988 is referred to at page 5. The applicants have filed copy of the notification dated 10.5.1988 as Annexure A-2 to the OA but they have discreetly omitted therefrom pages 5 and 6. Once notification dated 31.8.1990 comes to the notice of the applicants, it is not possible for them to say that the notification dated 10.5.1988 was not referred to in "any later correspondence" as they have chosen to do in paragraph 11 of the rejoinder-affidavit.

20. On account of lack of GSR No. in the copy of notification filed on behalf of the Central Government, the applicants described the notification as forged and concocted. The condition of the copies of the notifications filed alongwith the OA is no better. Alongwith the OA, the applicants have filed notifications dated 20.3.1992 and 8.9.1986, Annexure 5 & 1 respectively. Serial No.of the GSR is not mentioned in either. Further on the top of both of them, it is mentioned "to be published

in the Gazette of India Part II ". If the copies filed by the applicants are genuine, we see no reason to hold that the copy of the notification dated 10.5.1988 filed on behalf of the Central Government is a forged and concocted document.

21. In view of the above, the applicants are guilty of suppressing material facts. This alone is sufficient to dismiss the OA. However, we proceed to examine the case on merits.

22. The years in question before us are 1987, 1988, 1989 and 1990. In 1987, notification dated 8.9.1986 was operative. Under this notification the total authorised strength was 194 out of which 148 were direct recruitment posts and 46 were promotion posts. According to the applicants' chart the direct recruits in position in July 1987 were 137. Thus upto July 1987 there was no excess posting; rather there was deficiency of 11.

23. Before July 1988, the authorised strength had been raised to 202 through notification dated 10.5.1988. Under this notification the direct recruitment posts were 156 and promotion posts were 47. According to the applicants' chart, direct appointees in position were 155. Thus there is no excess posting even in this year; on the contrary there is deficiency of 1.

24. In 1989, the strength remains as above. According to the applicants, 166 direct appointees were in position in July 1989. This position is disputed in para 23 of the State's counter-affidavit wherein the counter figure of 140 is given. Reply to this paragraph is contained

in paragraph 20 of the rejoinder-affidavit wherein it is stated:

" That the contents of para 23,24 and 25 of the counter affidavit as stated are misconceived perverse and false hence not admitted. In reply the contents of para 4(26) to 4(30) and 4(31-A) to 4(31-B) of the O.A are reiterated. It is further submitted that regarding allocation of cadre to the I.F.S. Officers, the State Govt. is not competent to provide details, it is only the Union of India who is the Cadre controlling authority to furnish the details."

The figure given by the State Government is not admitted on the ground that the State Government is not the Cadre Controlling Authority and is, therefore, not competent to give the figures. The plea is misconceived. The Central Government allocates officers to the State and thereafter they are dealt with by the State Government. Obviously, the State Government is bound to have the figures of direct appointees and promotees. The applicants themselves have given no evidence in support of the figure of 166. We, therefore, see no reason to disbelieve the figure given by the State Government. Therefore, upto the year 1989 also there is no excess posting.

25. There appears to be no change in the cadre strength by July 1990. Therefore, the posts available to direct appointees were 156. Against this, those in position by that time were 147 as stated in paragraph 23 of the counter-affidavit. Thus by July 1990 also there is no excess posting.

26. During the course of arguments, there was some debate on the question whether the officers who were inducted into the IFS at the time of initial constitution of the service could be counted as direct recruits or otherwise. The submission of the applicants' counsel was that since they have not been promoted from the State service in accordance with the Promotion Regulations, they could not be said to be promotee officers and they could only be treated as direct appointees. On this

basis, he submitted that the number of direct recruits in the State would exceed the number fixed under the Strength Fixation Regulations.

27. The learned counsel for the respondents do not dispute that in counting the number of direct recruits posted in the State, they have excluded the officers posted at the time of initial constitution of the service. Their contention is that those officers are to be counted neither alongwith the promotees nor alongwith the direct recruits as they constitute an entirely separate class which forms the substratum on which the edifice of the service stands. According to them, recruitment made subsequent to initial constitution of the service alone is relevant for counting the number of officers posted from the direct stream and from the promotion stream.

28. We find substance in the submission of the learned counsel for the respondents. Rule 3(a) of the Recruitment Rules deals with initial constitution of the IFS. The manner of initial constitution is provided in Rule 4(1). It is by recruitment from amongst the members of the State Forest Service adjudged suitable in accordance with the such Regulations as the Central Government may make in consultation with the Commission. All those who were thus inducted in the IFS at the time of initial constitution were serving in one or the other State. Their induction was regulated by the regulations framed by the Central Government viz. IR Regulations. The procedure prescribed in the IR Regulations is entirely different from the procedure prescribed in the DR Regulations. Under the DR Regulations, there has to be a competitive examination conducted by the Commission. Under the IR Regulations, the selection is made by a Special Selection Board constituted under Regulation 3. The board constituted for making selection for the State Cadre comprises:

(i) Chairman of the Commission or his nominee;

- (iii) Inspector General of Forests of the Government of India or such other officer as may be nominated by the Central Government in this behalf;
- (iii) an officer of the Government of India not below the rank of Joint Secretary;
- (iv) the Chief Secretary to the State concerned or a Secretary to that State Government nominated by him and the Secretary to that State Government dealing with Forests or the Chief Conservator of Forests of the State Government.

Under Regulation 5, the Selection Board prepares the select list in order of preference. The list so prepared is then forwarded to the Commission for advice by the Central Government alongwith-

- (a) the records of all officers of the State Forest Service included in the list;
- (b) the records of all other eligible officers of the State Forest Service who are not adjudged suitable for inclusion in the list, together with the reasons recorded by the Board for their non-inclusion in the list; and
- (c) the observations, if any, of the Central Government on the recommendations of the Board.

The list and the documents received therewith are examined by the Commission who thereafter sends its recommendations to the Central Government under clause (3). Appointment is made by the Central Government on available vacancies under Regulation 6. These regulations do not contemplate holding of any competitive examination.

29. As against the above procedure, direct recruitment under the DR Regulations is held through competitive

examination conducted by the Commission. The selection is thus made from much wider field and the candidates have to go through a stiffer test. Accordingly, it is not possible to equate those inducted in the IFS under the IR Regulations with those inducted thereto under DR Regulations.

30. Promotion Regulations also contain their own procedure for selecting candidates of the State service for induction into the IFS. Anyone who is not selected through that procedure cannot be described to be a promotee officer. Accordingly, those inducted under the IR Regulations who were not inducted in accordance with the procedure prescribed in the Promotion Regulations cannot be counted as promotee officers.

31. In view of the above, those inducted at the time of initial constitution of the service cannot be treated either as direct recruits or as promotees. We are, therefore, unable to accept applicants' plea that those inducted in IFS at the time of its initial constitution should be counted alongwith the direct recruits.

32. From the above discussion, it would follow that the applicants' plea of excess posting of direct recruits in the State of U.P. has not been established. This disposes of points 5,6 &7. We now take up point No.8.

Point No.8

The applicants claim that in the notifications fixing the cadre strength a definite number of vacancies have been earmarked to be filled by promotion and these vacancies can be filled only by promotion of officers of the State service and no direct recruit can be posted against these vacancies.

33. The applicants' claim is contested on behalf of both the respondents. Their plea is that under the scheme of the Rules and the Regulations there is no reservation of vacancies in favour of State Service officers and that what is provided in the notifications fixing the cadre strength is the maximum number of cadre posts which may be filled by promotion of officers of the State service. It is pressed that it is open to the Central Government to fill up all the vacancies in cadre posts by direct recruitment only; it is only when the Central Government decides to fill up vacancies by promotion of State officers that the restriction of numbers mentioned in the notifications comes into play.

34. In view of the contentions of the parties an examination of the scheme reflected in the Rules, Regulations and the notifications is called for.

35. As noticed earlier, Rule 3 of the Recruitment Rules deals with constitution of the service. Clause (a) deals with initial constitution and clause (b) with recruitment thereafter. The method of initial constitution is prescribed in sub-rule (1) of Rule 4 and the method of recruitment thereafter is prescribed in sub-rules (2) to (4). Under sub-rule (1) State Forest officers are to be inducted into the IFS on the basis of suitability. For adjudging suitability the Central Government is competent to make regulations in consultation with the State Governments and the Commission. After the initial constitution of the cadre, subsequent recruitment to the service is by three methods - (1) by competitive examination, (2) by selection of persons discharged from the Defence Forces, and (3) by promotion of substantive members of the

State Forest Service. Sub-rule (3) which is material for the purposes of the present controversy reads as follows :-

"(3) Subject to the provisions of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the service as may be required to be filled during any particular period of recruitment, and number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with the Commission :

Provided....." (emphasis supplied).

From the above it would appear that the method of filling the vacancies and the number of vacancies to be filled by each method are decided when it is proposed to hold recruitment. From this it would follow that there is no reservation of vacancies to be filled by any of the three methods. Any vacancy may be filled by any of the three methods. Sub-rule (3) is subject to the other provisions of the Rules. We will, therefore, proceed to examine whether there is anything to the contrary prescribed in the other clauses of the Rules. Rule 6 (1) provides that no appointment to the service shall be made except after recruitment by one of the methods specified in Rule 4. Other clauses of this Rule are not relevant. Rule 7 (1) mentions that a competitive examination for recruitment to the service shall be held at such intervals as the Central Government may in consultation with the Commission, from time to time, determine. Thus, there is no obligation to hold competitive examination annually or at any other fixed or stated intervals. Under sub-rule (2) the Central Government is to make regulations in accordance with which the Commission has to conduct the competitive examinations. These regulations may be framed in consultation with the

Commission and the State Governments. Rule 7-A (1) which deals with recruitment of de-mobilised defence services personnel reads as follows :-

"(1) Till the 28th January, 1971, 20 per cent of the permanent vacancies in the Indian Forest Service to be filled by direct recruitment in any year shall be reserved for being filled by the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union who were commissioned after the 1st November, 1962; and who -

....."

This provision does make reservation of vacancies. The reservation is against the vacancies to be filled by direct recruitment in any year. The reservation is confined to de-mobilised defence personnel. As provided in sub-rule (2) the selection for recruitment by this method has to be made in accordance with such regulations as may be made by the Central Government, from time to time, in consultation with the Commission and the State Governments. Sub-rule (5) provides that if sufficient number of de-mobilised officers of requisite calibre is not available for filling up the vacancies reserved for them, the unfilled vacancies shall be treated as unreserved and shall be filled on the result of the competitive examination but a corresponding number of vacancies shall be carried forward to the next succeeding year or years. Sub-rule (6) puts a ceiling on reservation. Other sub-rules of this Rule are not material for the purposes of the present case.

36. Rule 8 deals with filling up of vacancies by promotion. Sub-rules (1) and (2) which alone are material for the purposes of the present controversy read as follows :-

"(1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in

accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make, recruit to the Service persons by promotion from amongst the substantive members of the State Forest Service.

(2) Where a vacancy occurs in a State Cadre which is to be filled under the provision of this rule the vacancy shall be filled by promotion of a member of the State Forest Service.

(3)....."

Under the above sub-rules the appointment by promotion is made by the Central Government on the recommendation of the State Government concerned and in consultation with the Commission. The selection is made in accordance with the regulations made by the Central Government from time to time, in consultation with the State Governments and the Commission. Rule 9 (1) is material for the purposes of the present controversy and it reads thus :-

"(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 per cent of the posts as are shown against item 1 and 2 of the cadre in relation to that State or the Group of States, in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966."

The language of this sub-rule is materially different from the language of Rule 7-A(1). Unlike Rule 7-A(1), Rule 9 (1) does not reserve any percentage of vacancies in favour of State Forest Service officers. It only prescribes a ceiling up to which State officers may be inducted into the IFS, the ceiling being 33-1/3 per cent of the number of posts as shown against items 1 and 2 of the cadre in relation to the concerned State in the Schedule to the Strength Fixation Regulations. In the Schedule promulgated through notification dated 22.9.1990, the number of posts against item No.1 (Senior Duty Posts under the State

Government) is 165, and against item No.2 (Central Deputation Reserve) is 33. Therefore, the ceiling is to be arrived at on the total of the figures of 165 and 33. The point to be noted is that there is no fixation of the vacancies which must necessarily be filled by promotion. If the Parliament intended to reserve a certain percentage of vacancies in favour of the State officers it would have used a language similar to the one used in Rule 7-A. Failure to do so can lead to only one conclusion and that is, the Parliament did not intend to reserve vacancies for State Forest officers; it intended to leave the matter to the discretion of the Central Government. At each recruitment it is for the Central Government to decide whether the vacancies shall be filled by direct recruitment or by promotion. When it decides to fill vacancies by direct recruitment as well as by promotion, it shall have to reserve vacancies in favour of the de-mobilised defence personnel. Reservation of vacancies for de-mobilised officers is a statutory obligation. In the case of State officers the obligation is different. It is not to reserve any number of vacancies in their favour. The obligation is to keep the number of promotions in check and see that promotions do not go beyond the figure of 33-1/3 per cent. This interpretation has the support of sub-rule (3) of Rule 4 whereunder it is specifically provided that the method by which vacancies have to be filled and the number of vacancies to be filled by each method have to be decided by the Central Government.

37. Under Rule 4 of the Cadre Rules the the strength of each cadre is to be determined by the Central Government and notified through regulations. In the regulations

framed in exercise of this power, the authorised strength of the cadre is mentioned and also the number of 'direct recruitment posts' and 'promotion posts.' The applicants treat the figure mentioned against the heading 'promotion posts' as vacancies reserved to be filled only by promotion. These figures can be so treated only if they are referable to any substantive provision authorising the Central Government to reserve vacancies in favour of States officers. This power cannot be read in sub-rule (3) of Rule 4 as it comes into play at the time of each recruitment only.

38. Once it is held that there is no reservation of vacancies in favour of officers of the State Forest Service, the applicants' grievance of encroachment on their quota by direct recruits vanishes. This disposes of point No.8. In view of this finding there is no question of quashing notifications dated 20.3.1992 and 16/17.6.1992, annexures 5 and 6 respectively. There is also no question of directing the Central Government to forbear from posting the left-over IFS probationers of 1989-91 batch who underwent training with 1990-92 batch or to recall the IFS probationers of 1987-89, 1988-90 and 1989-91 batches.

Point No.9

Rule 9 (1) of the Cadre Rules under which the applicants seek posting to the cadre post of Dy. Conservator of Forest reads as follows :-

"(1) A cadre post in a State shall not be filled by a person who is not a cadre officer except in the following cases; namely :-
(a) if there is no suitable cadre officer available for filling the vacancy;
Provided....
(b) if the vacancy is not likely to last for more than three months;
Provided..."

Sub-rule (2) lays down the principles governing posting of non-cadre officer to a cadre post.

From the above, it is apparent that the normal rule is that a cadre post should be held by a cadre officer. In the absence of a suitable cadre officer, the vacancy may be filled up by a non-cadre officer after fulfilling the requirements of the rules. One of the requirements is to obtain approval of the Central Government. Rule 9 does not necessarily require the State Government to fill up a vacancy by a non-cadre officer when a suitable officer is not available. It only enables the State Government to fill the vacancy in the eventualities mentioned in the rule by a non-cadre officer. In other words, the provision regarding posting of non-cadre officer to a cadre post is discretionary. On the basis of such a discretionary provision, no direction of the nature prayed for by the applicants can be issued.

Point No.10

The applicants accuse the respondents of arbitrariness as despite existence of vacancies in the promotion quota no selection has been held after the year 1984.

39. The respondents have not disputed that after 1984 no selection has been held for making promotion to the IFS U.P. cadre but they deny the charge of arbitrariness. They point out that on the basis of the selection held in December, 1984 appointments were made in the year 1987. The officers of the State service are litigating over their seniority and their litigation is pending before the apex court. It is pointed out that until the dispute of seniority is settled no promotion can be held to the IFS. The fact that litigation is pending in the Supreme Court is not in dispute. We do not find any arbitrariness in the action of the respondents. It is true that before a

selection by promotion is held there should be available a correct seniority list. If seniority is under dispute before a court of law, obviously it is difficult to hold selection for promotion. Apart from this, the applicants, as held hereinabove, have no right to claim promotion. For this reason also, the respondents cannot be accused of arbitrariness.

40. In view of the above, we are unable to uphold the applicants' charge of arbitrariness against either the Central or the State Government.

41. Having discussed the applicants' pleas on merits, we may now pass on to consider the technical pleas raised on behalf of the respondents.

Point No.1

This point relates to locus standi. In both the applications, applicant No.1 is an association of officers. Therefore, the question of locus standi will be dealt with after dealing with O.A. No. 320/94 on merits.

Point No.2

Section 20 (1) of the Administrative Tribunals Act, 1985 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant service rules as to redressal of grievances. The respondents have not invited our attention to any service rules whereunder the applicants were entitled to remedies of the nature claimed by them. It needs to be pointed out that the bar prescribed under Section 20 will operate only when the remedy is provided under relevant service rules and not otherwise.

42. In view of the above, we are unable to uphold this technical objection.

Point No.3

It is settled principle of law that persons who are likely to be affected by the order passed in a judicial proceeding should be impleaded in the case. The applicants have impleaded only the Union of India and the State of U.P. as respondents. They have not impleaded the officers of the IFS whom they want to be removed from their assignment in the State of U.P. In case the notifications dated 20.3.1992 and 16/17.6.1992 are quashed to the extent prayed for, obviously the concerned officers will be prejudiced. These officers were, therefore, necessary parties to the application.

42. Apart from seeking quashing of the aforesaid notifications, the applicants have also sought a direction to the Central Government to recall the IFS probationers of 1987-89, 1988-90 and 1989-91 batches. If this relief is granted, officers who are already working in the State of U.P. will be adversely affected. These officers were also, therefore, necessary parties to the application but they were not impleaded.

43. In view of the above, the respondents are correct in pointing out that the application is bad for non-joinder of necessary parties. Normally, an opportunity is provided to the applicant to implead the necessary parties who have not been impleaded, but in the present case, we are not providing this opportunity as we are rejecting the application primarily on merit and not on the ground of non-joinder of necessary parties.

Point No.4

Taking a broad view of Section 21 of the Administrative Tribunals Act, it would appear that an application under Section 19 (1) of the Act can be filed only within one year from the date of accrual of cause of action and it can be filed beyond that period only if the applicant satisfies the Tribunal that there was sufficient cause for not approaching the Tribunal within the prescribed period of limitation.

44. The applicants have claimed a number of reliefs, some of which are obviously barred by time. However, not all the reliefs claimed are barred by limitation. The application in the Tribunal was filed in the year 1992. Notifications dated 20.3.1992 and 16/17.6.1992 were filed within the period of one year mentioned in Section 21 (1). Accordingly, the application cannot be said to be beyond time in respect of these two reliefs. Similarly, the threat of posting all the IFS probationers of 1989-91 batch who had their training along with the batch of 1990-92 came only in the year 1992. Accordingly, the relief to restrain the Central Government from sending the left-over IFS probationers of 1989-91 batch also cannot be said to be beyond time. The relief of direction to the State of U.P. to post officers of the State service as Deputy Conservator of Forests has been claimed in futuro and not retrospectively. This relief also cannot be said to be beyond limitation. The relief for a direction to the Central Government to recall the IFS probationers of 1987-89 and 1988-91 does appear to be beyond limitation. However, the finding on this point is only of academic interest as even otherwise the application is being dismissed on merit.

45. In view of the above discussion, the application is within time in respect of some of the reliefs but it is beyond time in respect of others.

Conclusion

The net result of the above discussion is that the Original Application is liable to be rejected.

O.A. No. 320/1994

This application is by and on behalf of the direct recruits to the Indian Forest Service. There are five applicants. Applicant No.1 is association of directly recruited IFS officers, and applicant Nos. 2 to 5 are officers of the IFS borne on the cadre of the U.P. State. Respondents in the application are - (1) Union of India through Secretary, Forest & Environment, and (2) State of U.P. through Secretary, Forests.

46. The reliefs claimed in the application are - (1) direction to the respondents to post applicants 2 to 5 and officers similarly situated against cadre posts of IFS, particularly against the posts occupied by non-cadre/non-select list officers of the State Forest Service; direction to the respondents to refrain from filling up any cadre post in the IFS U.P. cadre except in accordance with law, and not by invoking Rule 9 of the Cadre Rules; and (3) direction to remove non-cadre officers from the cadre posts of IFS held by them.

47. In the application it is stated that applicant No.1 is an association of IFS officers borne on the U.P. cadre and one of the objectives of the association is, "to safeguard and promote common interests of the Association."

48. Applicant No.2, Sameer Sinha, is stated to be a direct recruit of 1990 batch. He has completed three years' period of probation and is a 'cadre officer' within the meaning of the rules governing IFS and he is, therefore, entitled to be posted against a post borne on the U.P. cadre of the IFS, but instead of being so posted, he has been posted as Assistant Conservator of Forests which is a post borne on the cadre of the U.P. State Forest Service. This posting, it is asserted, is illegal as it is violative of the Cadre Rules. He claims to have preferred representation on 31.3.1994 to the U.P. Government which evoked no response.

49. Applicant No.3, Dhananjai Mohan, belongs to 1988 batch and is a senior time scale officer. Instead of being posted to a cadre post he is posted as Deputy Conservator of Forests, Nanda Devi National Park, Joshimath, Distt. Chamoli, which is not a cadre post. He claims to have preferred representation on 4.4.1994 which again evoked no response.

50. Applicant No.4, K. Pravin Rao, belongs to 1987 batch and he is also in the senior time scale of pay. He is posted as Deputy Director, Kairmur Sanctuary Project, Mirzapur, which is a non-cadre post. He represented against this posting through representation dated 17.11.1993 to which there was no reply.

51. Applicant No.5, Shashi Kumar Datta, is 1984 batch officer. He was posted from time to time on cadre posts but at the time of filing of the present application he was posted on a non-cadre post since long. He was in the junior administrative grade. He does not claim to have preferred any representation.

52. With the above bio data of applicants 2 to 5, the application goes on to state that the cadre strength of IFS in each State or Group of States has been fixed through Strength Fixation Regulations dated 31.8.1990 under which for the State of U.P. the lowest cadre post is Deputy Conservator of Forest, also known as Divisional Forest Officer (for short DFO) and the highest is Principal Chief Conservator of Forests. In between, there are designations of as many as 41 posts. Against each designation is mentioned the number of posts sanctioned for the post carrying that designation. The total number of posts thus sanctioned is mentioned as 165. These posts are described as 'Senior Duty Posts under the State Government'. Then there is strength fixed for 'Central Deputation Reserve' and 'Deputation Reserve'. The figure given against the former is 33 and against the latter 41. Further, there is strength fixed for 'Junior Posts, Leave Reserve and Training Posts'; the figure fixed is 50. The total authorised strength is mentioned as 289 out of which 223 are to be filled by direct recruitment and 66 by promotion.

53. The applicants state that the post of DFO and other posts higher thereto mentioned in the Regulations are cadre posts and appointment to these posts can be made of cadre officers only as provided in Rule 8 of the Cadre Rules and it is only in the eventualities mentioned in Rule 9 of the said Rules that a non-cadre officer may be appointed to the said posts, but contrary to these statutory provisions the State Government has been appointing non-cadre officers to cadre posts and cadre officers to non-cadre posts. In paragraph 4.L names of 24 officers of the State Forest Service, who are not cadre officers, have been mentioned,

who are alleged to be holding cadre posts and in paragraph 4.N names have been mentioned of 18 officers of the IFS who are cadre officers and have been posted to non-cadre posts. According to the applicants, the former appointments have been made despite availability of cadre officers. It is pointed out that earlier officers of the State service had filed writ petition No. 3583 (SS) of 1992 in the Lucknow Bench of the Allahabad High Court seeking continuance on the cadre posts and interim order had been passed in their favour. In this writ petition the State Government had filed counter affidavit in which it was stated that cadre officers have become available and, therefore, the petitioners were not entitled to continue on the cadre posts. This writ petition was dismissed on 2.5.1994 and the interim order stood vacated. It is pressed that after the dismissal of the writ petition, there is no justification for the State Government to continue non-cadre officers on cadre posts. In paragraph 4.R reference is made to an order passed by a Bench of the Tribunal in O.A. No. 145/94 in which a direction was issued to appoint cadre officers only against cadre posts.

54. It is on the above facts that reliefs mentioned hereinabove were claimed in the original application. It may be pointed out that in the application as originally filed, the applicants had not impleaded any non-cadre officer who was allegedly holding cadre post, not even the persons mentioned in paragraph 4.L. Subsequently, Rajiv Asthana and N. P. Sachan, officers of the State Forest Service sought impleadment in the O.A. By order dated 30.6.1994 they were allowed only to intervene and file written submissions. They were not allowed to be impleaded. They have taken advantage of this order and

filed their written submissions. Similar application for impleadment was made by Shri A. K. Jain, another officer of the State Forest Service who was posted as Deputy Chief Wildlife Warden (M.P. No. 1403/94). By order dated 8.9.1994 he was also allowed to intervene only. On 30.9.1994, on a concession made by the learned counsel for the applicants, order dated 8.9.1994 was recalled and A. K. Jain was directed to be formally impleaded. Despite this order, the memorandum of the O.A. has not yet been amended and the name of Shri A. K. Jain has not been incorporated therein. However, Shri A. K. Jain has filed his counter affidavit.

55. In the O.A. apart from the main prayers referred to hereinabove, the applicants have prayed for interim relief also. An interim relief prayed for was to direct the respondents to post applicants 2 to 5 and other cadre officers to cadre posts borne on the U.P. State cadre of IFS. The application came up for admission on 16.5.1994 when, without admission, notice was directed to be issued to the respondents for 30.5.1994 on admission and interim matter. On 30.5.1994, again without admission, interim order was passed to the effect that the State Government will fill cadre posts of IFS (U.P. cadre) strictly in accordance with Rule 9 of the Cadre Rules. The case was directed to be listed on 30.6.1994.

56. The applicants filed M.P. No. 929/94 to bring on record supplementary pleading. Through the supplementary pleading the applicants have brought to the notice of the Tribunal certain posting orders passed by the State Government subsequent to the passing of the interim order. Asserting that the posting orders were violative of the Tribunal's interim order as well as the final judgment in

O.A. No. 145/94, the applicants have prayed that these posting orders be set aside and the officers posted be restrained from functioning on the post to which they have been posted. The additional pleadings were taken on record by order dated 30.6.1994 but no further interim order was passed.

57. The Union of India has filed a reply in which it has supported the applicants' case that a non-cadre officer cannot be posted on a cadre post. The factual averments made by the applicants have been left to be replied by the State Government. Thus, on the legal aspects, the Union of India is supporting the applicants. The contest, therefore, is between the applicants on the one side and the State Government and its officers on the other. The officers of the State Government may be stated to be represented by S/Shri Rajiv Asthana, N. P. Sachan and A. K. Jain.

58. On 24.1.1995 M.P. No. 207/95 was filed on behalf of the State Government seeking permission to file supplementary counter reply. In the counter reply accompanying the application it has been asserted that by order dated 16.1.1995, applicants 3 and 5 have been posted on IFS cadre posts. A photo copy of the order has been annexed as annexure CA-6. In paragraph 3 it is stated that with this posting there is no person now in the O.A. as an applicant who can be described as aggrieved person and, therefore, in view of Rule 4 (5) of the Central Administrative Tribunal (Procedure) Rules, 1987, the O.A. is liable to be dismissed. Thereafter, Kesava Raju Muralidhara Rao and V. K. Chopra filed M.P. No. 361/95 through the learned counsel for the applicants for their impleadment as applicants No. 6 and 7 in the O.A. On

behalf of the State Government, objections have been filed through Shri A. K. Pandey, Section Officer, Forest-I, U.P. Secretariat, Lucknow. The order dated 17.4.1995 shows that V. K. Chopra has withdrawn from the application and the application for impleadment is now pressed on behalf of Murlidhara Rao only.

59. In the objections filed on behalf of the State it is stated that the applicants belonged to 1990 batch and applicant Rao had not passed the departmental examination prescribed by notification No. 3283/14-I-31(I)/93 dated 30.8.1993. It has further been stated that applicant Rao has not been allowed senior scale of IFS cadre under Rule 6 of the IFS (Recruitment) Rules, 1966. On these facts it is stated that applicant Rao is not entitled to posting against a cadre post. The claim of V. K. Chopra has also been contested but since he has withdrawn from the application, it is not necessary to mention about the averments made in respect of him. The application for impleadment is still pending.

60. We may now proceed to examine the defence of the State Government. The defence runs thus :

(a) The application is not maintainable at the instance of applicant No.1 as no list of members has been filed nor any certificate indicating its recognition and entitlement to represent the members; no resolution has been filed to show that the association has been authorised to file the present O.A. on behalf of the members; applicant No.1 cannot be said to be aggrieved person; there is also nothing to indicate that the entire IFS cadre was aggrieved by the actions of the State Government;

- (b) Applicant No.2 has been posted as Personal Assistant to the Chief Conservator of Forests (Uttrakhand) Nainital vide order dated 11.8.1994 and as such he also is not an aggrieved person;
- (c) Applicant No.3 was posted as DFO, Nanda Devi, Joshimath vide order dated 16.6.1992 and he did not protest against this posting; as such, he is not entitled to make grievance at this late stage;
- (d) Applicant No.4 has already been posted to a cadre post vide order dated 24.6.1994 and thus he cannot be said to be an aggrieved person;
- (e) Applicant No.5 was posted to the post held by him at the time of filing of the O.A. on 5.9.1993; he did not raise any grievance earlier and he is, therefore, debarred from raising grievance at this late stage;
- (f) The application is barred by limitation;
- (g) Only 33 IFS cadre officers have been posted to non-cadre posts; under the Rules/Regulations 41 cadre officers can be posted to non-cadre posts; thus the posting is within the permissible limit; the Rules do not absolutely prohibit posting of cadre officers to ex cadre/non cadre posts; the Regulations only prescribe a ceiling; therefore, the action of the State Government in posting cadre officers to non cadre/ex cadre posts is not illegal; Rule 8 of the Cadre Rules has to be read along with Rule 9;
- (h) Applicants 2 and 4 had been posted on cadre posts and applicants 3 and 5 were holding non cadre posts under Rule 8(3) of the cadre Rules;

(i) The applicants' plea that all the 24 officers mentioned in paragraph 4.L are State Forest Service officers and are holding IFS cadre posts, is incorrect; the person mentioned at sl. No.1 is not working on a cadre post and the person mentioned at sl. No.4 is an IFS cadre officer; the person mentioned at sl. No.19 has retired and the person mentioned at sl. No.21 is also not working on cadre post;

(j) Applicants' averment in paragraph 4.N to the effect that applicants 2 to 5 and a large number of IFS cadre officers are posted on non cadre posts is incorrect; after making this statement, no specific averment has been made in respect of the 18 persons mentioned by the applicants in paragraph 4.N.

61. The sum and substance of the above defence on merit is that under the rules there is no absolute bar against posting of cadre officers on non cadre posts and of non cadre officers on cadre posts. These postings are governed by Rules 8 and 9 of the Cadre Rules. The postings made by the State Government are in accordance with these Rules. Therefore, no illegality has been committed by the State Government.

62. In the rejoinder statement filed on behalf of the applicants, the entitlement of the applicants to file the O.A. has been reiterated by pointing out that applicant No.1 is a registered body; its registration number under Act 21 of 1860 being 9821/7-B. The association, it is claimed, has framed rules known as IFS (Association) Rules. The U.P. branch of the association is alleged to have received recognition on 25.2.1991; a copy of the recognition has been filed as annexure RA-2. In paragraph

6 it is asserted that the association at its various meetings resolved that the executive committee should take up the matter of non posting of cadre officers against cadre posts with the State Government and in pursuance thereof the secretary of the association, Shri R. P. Tiwari, held meetings with the officers of the U.P. Government. In paragraph 8 it has been admitted that applicants 2 to 4 have been posted to cadre posts during the pendency of the application.

Defence of Rajiv Asthana and N. P. Scahan

63. In their written statement, the intervenors have stated that it is wrong to say that applicant No.2 was not posted on a cadre post. It is asserted that he belonged to 1990 batch and was posted on a post covered under item No.6 of the Strength Fixation Regulations. It is further asserted that the post of Deputy Conservator of Forests/DFO exists in the IFS cadre as also in the U.P. Forest Service cadre under the U.P. Forest Service Rules, 1952 (for short U.P. Rules) framed under proviso to Article 309. The Cadre Rules do not contain an absolute embargo on the posting of a non-cadre officer on a cadre post. In the eventualities mentioned in Rule 9 a non cadre officer can be posted to a cadre post. One of the eventualities is non-availability of 'suitable cadre officer' and not just a 'cadre officer'. According to the intervenors, the State Government did not commit any violation of the rules.

Defence of A. K. Jain

Jain also points out that the post of DFO exists in the IFS cadre as well as in the U.P. Forest Service cadre. He has mentioned the sanctioned strength of the U.P. Forest service cadre as on 1.8.1966 as follows :-

Permanent cadre

1) Chief Conservator of Forests	...	1
2) Conservator of Forests	...	8
3) Deputy Chief Conservator of Forests	...	45
4) Assistant Conservator of Forests	...	45
	Total	99

Temporary cadre

1) Chief Conservator of Forests	...	2
2) Conservator of Forests	...	2
3) Deputy Conservator of Forests	...	21
4) Assistant Conservator of Forests	...	63
	Total	88

Subsequently, it is claimed, the posts in the temporary cadre were transferred to the permanent cadre and additional posts were also created from time to time.

64. It is next pointed out that under Rule 4(1) of the Cadre Rules the power to fix strength of the IFS cadre does vest in the Central Government but under the second proviso to sub-rule (2) the State Government can, subject to the conditions mentioned therein, create posts carrying duties and responsibilities of cadre posts. Of course, the life of these posts is limited to one year extendable to two years with the approval of the Central Government.

65. It is asserted that the State Government has the power to create any number of ex cadre posts in the State to be manned exclusively by members of the State Service. It can also appoint on such posts IFS officers on deputation basis. On this basis justification is sought for the appointment of cadre officers on non cadre posts.

66. Jain's counter affidavit without the annexures runs into 42 pages. He goes to the extent of challenging even

the right of the Central Government to create posts which had already been created by the U.P. Government under the U.P. Rules. We do not propose to go to that extent. We will confine ourselves to the examination of the Rules and Regulations and to finding out whether there has been breach thereof.

Discussion

Three major questions arise for determination - (1) what is a cadre and what is a cadre post? (2) whether a cadre officer can be posted on a non cadre post? and (3) Whether a non cadre officer can be posted on a cadre post?

67. The term 'cadre' is not defined in the Cadre Rules. It is defined in F.R. 9 (4) as follows :-

"(4) Cadre means the strength of a service or a part of a service sanctioned as a separate unit." (emphasised).

From the emphasised word it would appear that cadre has nothing to do with nomenclature but with number. Cadre posts, therefore, would mean the number posts comprised within the sanctioned strength of a service or posts. Posts beyond that strength may be either ex cadre or non cadre and they may be filled by appointment of non cadre officers. Rules do not appear to contain any bar against such appointment. They only contain conditions for making such appointments. This interpretation gets support from Rule 8 (2) of the Cadre Rules which provides that a cadre officer shall not hold an ex cadre post in excess of the number specified in the schedule to the Strength Fixation Regulations. Under sub-rule (3) the State Government has to obtain sanction of the Central Government for appointing a cadre officer to an ex cadre post in excess of the number specified in the schedule.

68. The term 'cadre post' is defined in Cadre Rules to mean 'any of the posts specified under item 1 of each cadre in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.' By this definition the interpretation of the term 'cadre post' given above is not altered. It is significant to note that even in this definition the word 'cadre' has been used. This is because under item No.1 as many as 43 posts have been mentioned and the strength of each post has also been indicated. Thus, apart from mentioning the cadre of the entire IFS, the schedule fixes also the cadre of each post. Amongst the posts mentioned under item No.1 is the post of Deputy Conservator of Forests. The number of posts sanctioned is 45. Thus for establishing violation of rules with reference to appointment to the post, the applicants will have to show that less than 45, say 40, IFS officers have been appointed as Deputy Conservator of Forests and on the remaining five posts State Forest officers have been posted. In respect of none of the 43 posts allegation has been made in this manner.

69. The applicants appear to confuse the term 'cadre' with nomenclature of posts. It is perhaps for this reason that while alleging encroachment on their posts by officers of the State service the applicants have nowhere disclosed the number of cadre posts encroached upon by the officers of the State service nor have they stated that IFS officers

are not occupying posts to the extent mentioned in the strength Fixation Regulations. The whole argument of the learned counsel for the applicants was that the post of DFO is mentioned in the strength Fixation Regulations and, therefore, on this post only IFS officers could be appointed and officers of the State service

appointed only when IFS officers were not available. This argument has reference to nomenclature and not number. In the absence of the figures mentioned hereinbefore the applicants' plea that non cadre officers are encroaching upon their posts will have to be rejected.

70. In view of the above, the questions whether a cadre officer can be posted to a non cadre post and whether non cadre officer can be posted to a cadre post are only of academic interest. However, we may not leave the questions unexamined.

71. The answer to the above questions is contained in Rules 6, 8 and 9 of the Cadre Rules. A portion of Rule 9 has been reproduced hereinabove. However, it may be appropriate to reproduce all the three rules at one place. Accordingly, the said rules, 6, 8 and 9 are reproduced below :-

"6. Deputation of cadre officers.- (1) A cadre officer may, with the concurrence of the State Government or the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government.

(2) A cadre officer may also be deputed for service under,-

(i) a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by a State Government, a municipal corporation or a local body, by the State Government on whose cadre he is borne; and

(ii) an autonomous body not controlled by the Government or an international organisation, by the Central Government in consultation with the State Government on whose cadre he is borne:

Provided that no cadre officer shall be deputed to any organisation or body of the type referred to in item (ii), except with his consent:

Provided further that no cadre officer shall be deputed under sub-rule (1) or sub-rule (2) to a post carrying a prescribed pay which is less than, or a pay scale, the maximum of which is less than, the basis pay he would have drawn in the cadre post but for his deputation."

"8. Cadre and ex-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 post 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) Regulations, 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 long 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 officers to cadre posts.-

(1) A cadre post in a State shall not be filled by a person who is not a cadre officer except in the following cases; namely :-

(a) if there is no suitable cadre officer available for filling the vacancy;

Provided that when a suitable cadre officer becomes available, the person who is not a cadre officer, shall be replaced by the cadre officer:

Provided further that if it is proposed to continue the person, who is not a cadre officer, beyond a period of three months, the State Government shall obtain the prior approval of the Central Government for such continuance;

(b) if the vacancy is not likely to last for more than three months;

Provided that if the vacancy is likely to exceed a period of three months, the State Government shall obtain the prior approval of the Central Government for continuing the person who is not a cadre officer beyond the period of three months.

(2) A cadre post shall not be filled by a person who is not a cadre officer except in accordance with the following principles, namely:-

(a) if there is a Select List in force, the appointment or appointments shall be made in the order of names of the officers in the Select List;

(b) if it is proposed to depart from the order of names appearing in the Select List, the State Government shall forthwith make a proposal to that effect to the Central Government 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."

Under sub-rule (1) of Rule 6 a cadre officer can be deputed for service under the Central Government or another State

or under a company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government. Clause (i) of sub-rule (2) deals with posting of a cadre officer under a corporation within the State to which the IFS officer is assigned. The posting order in this case will be passed by the State Government. Clause (ii) deals with posting under an autonomous body not controlled by the Government or an international organisation. This posting is to be made by the Central Government in consultation with the State Government on whose cadre the officer is borne. The provisos deal with certain formalities which are required to be observed while making the posting orders. At this stage, we are not concerned with the compliance of those formalities. The point to be made out is that under this provision cadre officers can be posted to ex cadre or non cadre posts. Sub-rule (1) of Rule 8 and sub-rule (1) of Rule 9 contain a positive command and also give hint at its dilution. The positive command is that 'every cadre post shall be filled by a cadre officer' and 'a cadre post in a State shall not be filled by a person who is not a cadre officer.' The dilution of this positive command is contained in the words, 'Save as otherwise provided in these rules' and 'except in the following cases'. The 'otherwise' and excepting provisions are contained in Rule 9 which enables posting of non cadre officers to cadre posts. Of course, the power to make such posting is hedged in with conditions, but the power is there. Since the conditions under which the power may be exercised are prescribed in the rule itself, there is no scope for arbitrary exercise of the power. For the purposes of the present controversy it is not necessary to mention the conditions and, therefore, we are omitting them from discussion.

68. The term 'cadre post' is defined in Cadre Rules to mean 'any of the posts specified under item 1 of each cadre in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.' By this definition the interpretation of the term 'cadre post' given above is not altered. It is significant to note that even in this definition the word 'cadre' has been used. This is because under item No.1 as many as 43 posts have been mentioned and the strength of each post has also been indicated. Thus, apart from mentioning the cadre of the entire IFS, the schedule fixes also the cadre of each post. Amongst the posts mentioned under item No.1 is the post of Deputy Conservator of Forests. The number of posts sanctioned is 45. Thus for establishing violation of rules with reference to appointment to the post, the applicants will have to show that less than 45, say 40, IFS officers have been appointed as Deputy Conservator of Forests and on the remaining five posts State Forest officers have been posted. In respect of none of the 43 posts allegation has been made in this manner.

69. The applicants appear to confuse the term 'cadre' with nomenclature of posts. It is perhaps for this reason that while alleging encroachment on their posts by officers of the State service the applicants have nowhere disclosed the number of cadre posts encroached upon by the officers of the State service nor have they stated that IFS officers are not occupying posts to the extent mentioned in the Strength Fixation Regulations. The whole argument of the learned counsel for the applicants was that the post of DFO is mentioned in the Strength Fixation Regulations and, therefore, on this post only IFS officers could be appointed and officers of the State service could be

72. The strength of the cadre posts has been fixed in the Schedule to the Strength Fixation Regulations. Rule 8 (2) mandates that cadre officers shall not hold posts in excess of that number. Dilution of this mandate is contained in sub-rule (3). If the State Government chooses to post a cadre officer in excess of the number (that is to a ex cadre post) it has, in view of sub-rule (3), to obtain prior approval of the Central Government. Once the Central Government grants the approval, the number of posts in respect of which approval is granted shall be deemed to be added to the number mentioned in the Schedule and this position will continue so long as the sanction of the Central Government continues.

73. In view of the above discussion, we are of the opinion that there is no absolute bar to the posting of a cadre officer to an ex cadre or non cadre post or to the posting of non cadre officer to a cadre post. Both these postings are exceptions to the normal rule and the exceptions may be resorted to only on fulfilment of the prescribed conditions. In the case on hand, the applicants have failed to make out a case of violation of these rules.

74. The applicants assert that the State Government has itself admitted posting of non cadre officers to cadre posts in violation of rules. For this admission reliance is placed on the affidavit filed by Shri Pitamber Bhatt, Under Secretary, Forest Department, U.P. Government, in writ petition No. 5583/92 filed by Mahender Singh, a copy of which has been filed as Annexure SA-4 to the applicants' supplementary pleadings - M.P. No. 929/94. The writ petition in which counter affidavit was filed had been filed by an officer of the U.P. Forest Service. He sought continuance on the post on which he was working which, it

the right of the Central Government to create posts which had already been created by the U.P. Government under the U.P. Rules. We do not propose to go to that extent. We will confine ourselves to the examination of the Rules and Regulations and to finding out whether there has been breach thereof.

Discussion

Three major questions arise for determination - (1) what is a cadre and what is a cadre post? (2) whether a cadre officer can be posted on a non cadre post? and (3) Whether a non cadre officer can be posted on a cadre post?

67. The term 'cadre' is not defined in the Cadre Rules. It is defined in F.R. 9 (4) as follows :-

"(4) Cadre means the strength of a service or a part of a service sanctioned as a separate unit." (emphasised).

From the emphasised word it would appear that cadre has nothing to do with nomenclature but with number. Cadre posts, therefore, would mean the number posts comprised within the sanctioned strength of a service or posts. Posts beyond that strength may be either ex cadre or non cadre and they may be filled by appointment of non cadre officers. Rules do not appear to contain any bar against such appointment. They only contain conditions for making such appointments. This interpretation gets support from Rule 8 (2) of the Cadre Rules which provides that a cadre officer shall not hold an ex cadre post in excess of the number specified in the schedule to the Strength Fixation Regulations. Under sub-rule (3) the State Government has to obtain sanction of the Central Government for appointing a cadre officer to an ex cadre post in excess of the number specified in the schedule.

appears, was a cadre post. Rebutting the applicants' claim Shri Bhatt stated in paragraph 13 of the counter affidavit thus -

"That the petitioner who is a State Forest Service Officer which is separate cadre was only posted against the cadre post of Indian Forest Service to look after the charge of the Division. It is further stated that the Indian Forest Service Officers are now available but due to the Hon'ble Court's order they cannot be posted on the cadre posts."

The above averment is relied upon for two purposes - (1) non cadre officers had been posted to cadre posts, and (2) cadre officers had become available and, therefore, even according to the State Government, the non-cadre officers cannot continue on cadre posts.

75. An admission of a party cannot be read divorced from the context in which it has been made. The State Government in its counter affidavit did not accept that non cadre officers had been posted to cadre posts. The stand of the State Government was that they had merely been asked to look after the charge of the Division which was otherwise to be looked after by a cadre officer. There is material difference between posting and looking after. When a person merely looks after the work of some other officer, he is neither given the designation of that officer nor the salary attaching to that post. In our opinion, therefore, the averments made in the State's counter affidavit cannot be relied upon for holding that non cadre officers had been posted to cadre posts in the sense of encroachment of cadre posts by non cadre officers.

76. In paragraph 4.L of the O.A. the applicants have indeed stated, "a large number of officers who are members of the U.P. State Forerst Service and holding their lien on the post of Assistant Conservator of Forests are occupying

the posts of Deputy Conservator of Forests/Divisional Forest Officer in violation of law. The said officers of the State Forest Service are neither in the select list for promotion to the IFS nor they are members of the IFS, nor their appointment and assumption on the cadre posts have ever been approved by the Union of India and the Union Public Service Commission." After making this assertion the names of the officers of the State Forest Service who were holding the post of DFO have been mentioned.

24. The reply to this paragraph is contained in paragraph 16 of the State's counter wherein it is stated, "That the contents of para 4 (L) of the O.A. are denied as stated; it is stated that sl. No.1 is not working on a cadre post. Sl. No.4 is a cadre officer of IFS cadre. Sl. No.19 has been retired. Sl. No.20 is not working on cadre post." Reply has not been given on behalf of the State in respect of all the 24 persons mentioned by the applicants. Since the reply is vague we may assume that the averments made in the O.A. are correct. By making this assumption, we can only hold that the applicants are making the allegation of non cadre officers holding cadre posts not on the basis of the strength fixed in the Strength Fixation Regulations but merely on the basis of the nomenclature of the posts held by the officers of the State service. Nomenclature, we have held hereinabove, is irrelevant. Accordingly, the applicants' own pleadings do not establish that officers of the State service are encroaching upon the strength sanctioned for cadre officers.

77. In support of the submission that the nomenclature of the posts has relevance, our attention has been drawn to the decision of a Division Bench of the Patna High Court in Civil Writ Jurisdiction Case No. 6557 of 1989 connected

with Civil Writ Jurisdiction Case No. 6712 of 1989 - Bharat Jyoti vs. the State of Bihar & Ors. and Shashi Nand Keelyar & Ors. vs. the State of Bihar & Ors., decided on 14.2.1990. In paragraph 16 of the copy placed before us, it is observed as follows :-

"16. The training of the petitioners was completed on 30th June, 1989. Thereafter they have been posted as "attached officers". That has been done only because there are no cadre posts available although as they have been usurped by non-cadre officers of the Bihar Forest Service. I have not the least hesitation in holding that there is no legal bar to cadre officers being posted as Divisional Forest Officer or any of the posts mentioned in the regulations quoted at paragraph 13 of the judgment while drawing salary in the junior scale of pay. The scale of pay should not be confused with posting of cadre officers to cadre posts. The cadre officer can certainly be posted as Divisional Forest Officer but only in the junior scale of pay. They will draw their salary in the senior scale of pay retaining the posting after they have put in four years of satisfactory service."

From the above, it appears that the distinction between 'post' and 'cadre' was not brought to the notice of the Bench and, therefore, the Bench was of the opinion that a cadre officer instead of being posted as an attached officer, was entitled to hold the post of DFO which is the lowest post mentioned in the Strength Fixation Regulations. With utmost respect to the learned Members of the Bench, we are unable to subscribe to the view taken by them.

78. In respect of applicant No.2, Sameer Sinha, grievance has been made that although he is a cadre officer, he has not been posted to the lowest post of that cadre, namely, DFO but has instead been posted as Assistant Conservator of Forest which is a post comprised in the cadre of U.P. Forest Service. This grievance again is based on nomenclature and not strength. It needs to be pointed out that Rule 6 (2) of the Recruitment Rules itself provides that a person appointed under Rule 4 (2) has to be

initially appointed to the junior time scale of pay. In the Strength Fixation REGulations the post of Deputy Conservator of Forest has been shown under the heading 'Senior Duty Post under the State Government'. In the same Regulations at item No.6 is mentioned 'Junior Post, Leave Reserve and Training Reserve'. The pay scales of members of the IFS have been prescribed in the IFS (Pay) Rules, 1968 framed in exercise of the power conferred under Section 3 (1) of the All India Services Act. Rule 3 mentions the time scale of pay. The time scale is divided into two heads - (1) junior scale and (2) senior scale. Against junior scale is mentioned Rs.2200-75-2800-EB-100-4000, and against senior scale are mentioned two scales: (1) time scale Rs.3000-100-3500-125-4500 and (2) junior administrative grade Rs.3700-125-4700-150-5000.

79. In view of the above provision the first appointment of applicant No.2 had to be in the junior time scale and he could neither claim appointment to any of the senior duty posts mentioned at sl.No.1 nor he could claim salary of any of the said posts. Deputy Conservator of Forest is a senior duty post and is not a junior post referred to at sl.No.6. Accordingly, the applicants' claim that applicant No.2 was entitled to be posted as DFO is misconcieved. More or less similar grievance has been made in respect of applicant No.5, Shashi Kumar Datta. He was placed in the junior administrative grade which is covered by Rule 3 of the Pay Rules. From this it appears that he had crossed the stages of Rs.2200-4000 and Rs.3000-4500.

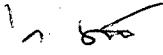
80. In view of the above, the applicants have failed to establish that there is any encroachment by the officers of the State service upon the strength of the cadre fixed under the Strength Fixation Regulations. Accordingly, O.A. No. 320/1994 is also liable to be rejected.

81. Since we have come to the conclusion that both the Original Applications are without merit, it would be a mere waste of time to embark upon an enquiry on the locus standi of the applicants to maintain the O.A.s. We are, therefore, not recording any finding on that question. We may only mention the authorities which were cited at the Bar in support of the claim that the applicants did not have locus standi and against the claim. These authorities are -

- (1) O.A. No. 263/91 (L) - Indian Administrative Service (SCS) Association & Anr. vs. Union of India & Ors.
- (2) (1991) 16 ATC 3 (CAT-Bangalore) - Wheel & Axle Plant Karmikara Sangh (Regd.) Bangalore & Anr. vs. Management of Wheel & Axle Plant (Indian Railway), Bangalore & Anr.
- (3) AIR 1984 Alld. 46 (FB) - Umesh Chand Vinod Kumar vs. Krishi Utpadan Samiti.

Order

In view of the above, both the Original Applications are dismissed but without any order as to costs. Interim order, if any operating in any of the cases, shall stand discharged. M.P. No.361 of 1995 is also rejected.


(V. K. Seth)
Member (A)

SNS/as/


(S. C. Mathur)
Chairman

14.8.95