

(18)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING 6
BOMBAY 400001.

Original Application No. 189/88

Jwala Prasad & two others. ... Applicants,

V/s.

Union of India & 45 others. ... Respondents.

CORAM: Hon'ble Shri Justice U.C. Srivastava, Vice Chairman
Hon'ble Shri P.S. Chaudhuri, Member (A).

Appearances:

Shri K.H. Deshpande, advocate
for the applicant.

Shri V.S. Masurkar, advocate
for respondent No.1

Shri G.Neelkanth, advocate
for respondent No.2.

Shri P.M.Pradhan, advocate
for Private respondents.

JUDGEMENT

Dated: 30.8.1991

(Per Shri U.C. Srivastava, Vice Chairman)

The applicants, direct recruits to the Indian Forest Service in Maharashtra cadre, by means of instant application before this Tribunal have made a number of prayers. They have prayed for quashing of order dated 13.5.1985 granting promotion to respondent No. 4, later on numbered as respondent No.3, Shri V.B. Joshi to the Super Time Scale in the Indian Forest Cadre Post and also for directing the respondent No.1 to restrict recruitment of officers to the Indian Forest Service as per the dictates of Rule 8(1) of Recruitment Rules by limiting promotees to 33-1 / 3% of posts available against items 1 and 2 of Cadre Schedule to be filled under Rule 7, 7A and 8 of the Recruitment Rules. Prayer has also been made to direct the respondent Government to review the previous recruitment effected under Rule 8(1) of the Recruitment Rules and to recast the past promotions in the light of vacancies available against items 1 & 2

of the Cadre Schedule and to fix the seniority giving notional benefits of officiation to the direct recruits available to them in terms of Rule 6(A) of the Recruitment Rules with all consequential benefits inclusive of seniority, arrears of pay and allowances, further consequential promotions, etc. The applicant has made a prayer that this application be treated to be in representative capacity under Order I, Rule 8 of the Code of Civil Procedure on behalf of direct recruits to India Forest Service (hereinafter known as I.F.S.) .

2. Under All India Services Act, 1951 the All India Forest Service was constituted for the first time in the year 1966. Thereafter, I.F.S. (Recruitment) Rules 1966; the IFS (Cadre) Rules 1966; IFS (Probation) Rules 1968; IFS (Pay) Rules, 1968 and ~~and, under the Rules,~~ IFS (Regulation of Seniority) Rules 1968 [I.F.S. (Fixation of Cadre Strength) Regulations 1966 were also framed. Prior to framing of rules every State Forest Service had its own rules and also elsewhere in Maharashtra the State Forest Service Group 1 & 2 existed. The various rules and regulations to the Indian Forest Service Act framed thereunder are in pari- materia with rules and regulations framed in regard to Indian Administrative Service (I.A.S.) and Indian Police Service (I.P.S.) but for slight difference regarding the Recruitment rules which provides for yet another mode of recruitment viz initial recruitment and certain amendments arising as a result in respect thereof in the recruitment rules and Regulations. The recruitment rules provide three methods of recruitment. The initial recruitment (IR) which is from amongst eligible State Forest Service Officers. This mode was made applicable only at the time of initial constitution of service, from among those officers who fulfil eligibility criteria and have completed prescribed years of service; the second

method is that of direct recruitment (D) through competitive examination and the third method being by way of promotion of nominees from amongst members of State Forest Service in accordance with the rules which is done by a Selection Committee constituted for the said purpose (P). Provision for recruitment from amongst the demobilised Ex-Serviceman has also been made. In the State of Maharashtra and the Indian Forest Service the examination for direct recruitment took place in the year 1968 followed by 1969 onwards. But prior to that as no examination took place there was no direct appointment. The appointment from amongst direct recruit is said to have been made ~~on~~ the basis of availability of vacancies in the ratio of 67:33 % with effect from 1966. Under the Rules the strength of promotee officers to I.A.S. can go to the extent of $33\frac{1}{3}$ % but cannot exceed it.

3. In the State of Maharashtra the Forest Service cadre strength under the cadre rules was fixed at 90 of which 45 posts were substantive. The creation of fixed strength of 90 posts under rule (3) of the Indian Forest Service Rules 1966 was w.e.f. 1.10.1966, 68 of these were filled by direct recruitment and 22 remaining posts were to be filled by way of promotion which was not to exceed $33\frac{1}{3}$ % from amongst the State Forest Service Officers who are eligible for promotion to Indian Forest Service. Out of 68 posts 45 were substantive and 23 reserved. 57 out of 116 S.F.S. Officers eligible for being recruited to IFS upon initial constitution were found to be suitable and therefore, they were taken over in Service as promotee in 1967 with effect from 1.10.1966. In Jammu & Kashmir similar appointments as well as the validity of the rules was challenged and the High Court

had held the appointments as ab initio void in 1970 on the ground of principles of Natural Justice ⁱⁿ A.K. Kraipak's case (AIR 1970 SC page 150). Thereafter a fresh selection board again met in 1971 for making selection, as provided under the rules, for initial recruitment for making selection for Maharashtra State and selected 66 officers who after approval by UPSC were appointed, though with retrospective date viz. 1.10.1966. This selection was challenged by aggrieved persons in Bombay High Court and it went upto Supreme Court which sent it back to High Court after setting aside its judgment to dispose it on merit and to consider all the 116 Officers of State Forest Service including those who had retired and fill all the available 90 vacancies. The Bombay High Court thereafter vide its judgment, dated 7.8.1981 quashed the said initial recruitment on certain non-observance of rules. The judgment of the Bombay High Court was challenged before the Supreme Court by the direct recruits which was rejected by the Supreme Court and upheld the Bombay High Court Judgment and confirmed the appointments of some persons with effect from 1.10.1986. The said case is reported in AIR 1988 SC 535 (K. Prasad & Others v. Union of India and others). In the mean time the Selection Board was constituted afresh and on the basis of list prepared by them, 82 State Forest Service Officers were appointed to Indian Forest Service as initial recruits with effect from 1.10.1986, out of 116 eligible officers, after approval by the UPSC. The third selection was on 31.1.83 and 44 officers were selected for IFS cadre and effect was given from different dates viz., 12 w.e.f. 25.9.1968; 10 w.e.f. 3.4.1974; 2 w.e.f. 11.4.1974; 4 w.e.f. 15.5.1974; 10 w.e.f. 30.10.1979; 1 w.e.f. 24.7.1980 and 5 w.e.f. 18.6.1981. These 44 officers included some of those officers who were found not to be

suitable in first and second round of selection. It also included 13 officers who had already been appointed to IFS by promotion on various dates, their earlier appointment as initial recruits having already been cancelled earlier. As a matter of fact it was not 13 officers but in fact 9 officers were selected because their selection was cancelled but they were selected second time. Under Rule 4(2)(a) i.e. of Recruitment Rules., selection by direct appointment by means of competitive examination started in 1968 and up to the year 1980, 51 direct recruits were taken into service. Between 1969 to 1973 only 13 direct recruits were recruited. Thus the sanctioned strength of Maharashtra State was utilised but on 2.4.77 the sanctioned strength was raised to 120 in order to cover it up and when it was raised to 120, 21 vacancies were existing but it was decided to fill in only 14 vacancies taking into account the number of initial recruits in Maharashtra Cadre. 82 initial recruits were from the sanction of 90 posts and 8 persons were taken by way of promotion. Initial recruitment had more than 67 persons in the substantive posts. As a result of Supreme Court judgment $33 \frac{1}{3} \%$ of substantive vacancies are said to have been filled by promotion and 15 of the 33 vacancies have been shown as adjuncts, as a result of which 82 posts have been filled in. The 8 vacancies referred to were to be filled in by direct recruitment. Upto April 1983, 8 of the initial recruits have retired. Thus upto 1974 substantive posts were held by 62 initial recruits. This was so because cadre strength was raised to 120 in April 1973 whereby the number increased from 23 to 31.

4. Recruitment by promotion provided under rule 4(2)(b) of Indian Forest Service Rules 1969 when 12 persons were taken on 25.9.68. Thereafter 16 persons were promoted in 1964; 10 in 1970. Some of the promotees find place in 1971 and 1983, referred to above. After excluding such persons who were designated as Initial ^{promotees} Recruits in 1983, were 1968 - 8; 1974 - 12; and 1979 - 7;.

5. The present position is from the year 1968, according to the applicants, the promotees exceed the quota of $33 \frac{1}{3} \%$ and the promotees were wrongly appointed against the posts which are meant for Direct Recruits and as such some of the promotees ^{should} make room for direct recruits. Even the seniority list needs to be changed by virtue of their appointment by readjusting it by 2:1 i.e. Direct Recruits Vs. Promotees.

6. The Central Government apart from taking usual plea of limitation has disputed various averments made by the applicant and have pleaded that the plea raised by applicants are not correct and the bases of relief is factually and legally incorrect. After raising of strength of cadre to 120 from 90 post, 'Senior duty O posts' which were 67 were raised to 89. The department could have appointed 22 person through promotion and similarly when senior duty post were increased to 89, the department could fill up by promotion only 29 posts against the sanctioned strength and the department has exactly followed the same principle and the promotees' quota has not exceeded $33 \frac{1}{3} \%$. Regarding applicants it has been stated that he was recruited to the Indian Forest Service in the year 1974 and it is not open for him to challenge the promotion of the promotees which was made in 1968 and thereafter. He cannot challenge the seniority of such persons who are promoted before his appointment including that of Shri V.B. Joshi who was promoted to

higher grade and post also. The said Joshi was appointed to Maharashtra State Forest Service in 1962 and was inducted into the IFS in the year 1974. The result of competitive examination of EC/SSC officers for IFS was made effective from 1969, and 12 persons from Maharashtra State Service were appointed to IFS with effect from 27.2.1969, but were given effective promotion dated as 25th September 1968. The appointments were made two decades ago and hence it is no longer open for the applicant to challenge the same. Even if the applicant's contentions are accepted to some effect, but in view of the observations made by the Supreme Court in the case of K. Prasad v. Union of India the appointments made under rule 4(2) would not be invalid. These promotees from the State Forest Service who were not eligible for initial recruitment and appeared in the examination conducted for direct recruitment during 1967 and 1968 for IFS. Those eligible were already appointed by virtue of the method of initial recruitment. The Government vehemently denied the contention of the applicants in respect of direct recruits/cadre posts with regard to junior time scale of pay. In respect of the judgments of the Central Administrative Tribunal referred to by the applicant in his application, it has been stated that the subsequent judgment of the CAT Gauhati Bench or Madras Bench have not been relied and followed the judgment in the case G.C.779/1984 and in these later judgments the Tribunal held in unequivocal terms that the appointment of officers in the junior scale to the senior time scale of pay is subject to the State Government being satisfied as to their suitability or such appointments with reference, inter-alia, to the length of service rendered in the service. In the earlier decision of the Gauhati Bench in case No. 779 of 1984 it was observed that the direct

recruits are to be appointed to senior time scale subject to the availability of vacancies as a matter of right without even assessment of their suitability, stands superimposed by the later decisions of the Tribunals. With reference to Supreme Court decision in State Bank of India v. Md Mynuddin (AIR 1987 SC 1889) it is stated that the courts are not competent to order to promote a particular officer, but they have right to order the authorities to consider promotion of officers.

7. One of the promoted officers Mr. Patki and one A.R. Bapat have filed their reply. In the reply given by Shri Patki it has been stated that the Union of India has not yet given any year of allotment to any promotees junior to Shri V.B. Joshi and fixing of interse seniority is yet pending in Maharashtra Cadre. So far as Mr. V.B. Joshi is concerned it has been stated that he was promoted on 13.5.85 and the challenge made to it in the year 1988 and it is belated one and cannot be considered. It has further been stated that at no point of time the Union of India &/or State Government listed out the posts meant for Junior Time Scale of the cadre. The Union of India has made excess recruitment to the Junior Time Scale of the IFS many a time by over-riding the strength fixed by themselves for appointment to the Junior Time Scale of the IFS. The State of Maharashtra have posted illegally IFS officers on the posts which are meant for Superior Forest Service Officers and names of six such officers so appointed were given. In reality Union of India have not fully filled in the promotional posts and direct recruits have been benefited because of said laxity. According to his plea $\frac{1}{3}$ percent of Senior duty posts are always reserved for Senior State Forest Service officers by way of promotion.

According to him there were 22 vacancies for promotion of State Forest Service officers in the I.F.S. cadre on 1.1.1974 but only 12 vacancies were utilised for promotee officer leaving aside 10 more such vacancies. According to [redacted] respondent Shri Bapat Cadre rules were flouted years after year in favour of Direct Recruits and not promotees.

8. The applicant in his rejoinder affidavit has reiterated his stand and stated that the applicant does not seek to undo any of the past appointments to IFS Cadre of Maharashtra, and his claim is that of proper fixation of seniority in view of the Supreme Court in K. Prasad's case dated 10.12.1987. According to the applicants 10 of the officers appointed to IFS cadre of Maharashtra have been confirmed year of allotment out of which 8 officers have retired from service as on 31.1.1989. The 9th officer viz. Shri V.B. Joshi was promoted in 1974 and has been given further promotion to the grade of Conservator of Forests in May 1985 and he is the only party who is likely to be affected as the 10th one Shri S.N. Bhonsale was allotted the year of 1969 to IFS cadre and he has not been given any further promotions in service and as such it will not affect his position if the application is decided in applicants' favour. According to him ^{had} the 82 initial recruits been taken in the service in the first instance itself, the direct recruits would have got their entry into the service in the respective years because of their presence in the cadre, from time to time, within the permissible limits. Most of the promotees would not have been able to find entry into the service, at least at the time when they were actually promoted, as their promotion was done in the past in big lots and the availability of posts for them would have shrunk appreciably in that case and some of them would not have [redacted] found entry even upto this stage.

9.

It will be appropriate to make reference to some of the relevant rules:

(i)

The IFS (Cadre) Rules 1966

Rule 3 provides that there shall be constituted for each State or group of States an Indian Forest Service Cadre. The cadre constituted for a State is called a 'State Cadre' and a cadre constituted for a group of States, a 'Joint Cadre'. Rule 4 is important and can be extracted:

" 4. Strength of Cadres : - (1) The Strength and composition of each of the cadres constituted under rule 3 shall be as determined by regulations made by the Central Government in consultation with the State Government in this behalf.

2. The Central Government shall, at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit:

Provided that nothing in this sub-rule shall be deemed to affect the power of the Central Government to alter the strength and composition of any cadre at any time:

Provided further that the State Government concerned may add for a period not exceeding one year, and with the approval of the Central Government for a further period not exceeding two years, to a State or Joint Cadre one or more posts carrying duties or responsibilities of a like nature to cadre posts."

Rule 7 empowers the State Government to make the appointments to the State cadre and one of the 'concerned' State Governments to a Joint cadre. Under rule 8, every cadre post has to be filled by cadre officer. Rule 9 envisages temporary appointments of non cadre officers to cadre posts. Under rule 10, cadre posts are not to be kept vacant or held in abeyance for a period exceeding six months without approval of a Central Government. Under rule 11, temporary arrangements or leave arrangements could be made enabling a single cadre officer to look after two cadre posts but such arrangements cannot extend beyond 12 months.

(ii)

The IFS (Recruitment) Rules 1966

Rule 3 Constitution of the Service : - The Service shall consist of the following persons, namely : -

(a) Members of the State Forest Service recruited to the service at its initial constitution in accordance with the provision of sub-rule (1) of rule 4 : and

(b) persons recruited to the service in accordance with the provisions of sub-rules (2) to (4) of rule 4.

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4. Method of recruitment to the Service

(1) As soon as may be after the commencement of these rules, the Central Government may recruit to the Service any person from amongst the members of the State Forest Service adjudged suitable in accordance with such regulations as the Central Government may make in consultation with the State Governments and the Union Public Service Commission (U.P.S.C.)

(2) After the recruitment under sub-rule (1), subsequent recruitment to the Service shall be by the following methods namely : -

(a) by a competitive examination

(aa) 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, 1961, and who are released in the manner specified in sub-rule (1) of rule 7 A.

(b) by promotion of substantive members of the State Forest Service.

(iii) The I.F.S. (Regulation of Seniority) Rules 1968

" 2 (g) ' Senior post' means -

a post included and specified under item 1 of the cadre of each State in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966.

and includes :

a post included in the number of posts specified in items 2 and 5 of the said cadre when held on senior scale of pay, by an officer recruited to the Service in accordance with sub-rule (1) of rule 4 or rule 7 of the Recruitment Rules."

Rule 3 : Assignment of year of allotment. -

(1) Every officer shall be assigned a year of allotment in accordance with provisions hereinafter contained in this rule.

(2) The year of allotment of an officer appointed to the Service shall be -

(a) Where an officer is appointed to the Service on the results of a competitive examination, the year following the year in which such examination was held:

(b)

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In

Provided

Provided

Provided

(c) where an officer is appointed to the Service by promotion in accordance with rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 7 or if no such officer is available the year of allotment of the junior-most among the officers recruited to the Service in accordance with rule 4(1) of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former :

Provided

Explanation 1 - In respect of an officer appointed to the Service by promotion in accordance with sub-rule (1) of rule 8 of the Recruitment Rules, the period of his continuous officiation in a senior post shall, for the purposes of determination of his seniority, count only from the date of inclusion of his name in the Select List, or from the date of his officiating appointment to such senior post, whichever is later :

Provided

Explanation 2 - An officer shall be deemed to have officiated continuously in a senior post from a certain date if during the period from that date to the date of his confirmation in the senior grade he continues to hold without any break or reversion a senior post otherwise than as a purely temporary or local arrangement.

Explanation 3 - An officer shall be treated as having officiated in a senior post during any period in respect of which the State Government concerned certifies that he would have so officiated but for his absence on leave or training.

Explanation 4 -

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(iv)

The IFS (Cadre Strength Regulation) Rules

6(a) : The Fixation of Cadre Strength Regulations were framed in exercise of the powers conferred by rule 4(1) of the Cadre Rules. These regulations were first issued by the notification of the Government of India dated 31.10.1966 and were deemed to have come into force with effect from 1st October, 1966. There is only one substantive clause in this regulation, which reads thus:

"2 , Strength and Composition of Cadres

The posts borne on, and the strength and composition of the cadre of the Indian Forest Service in each of the States, shall be as specified in the Schedule to these regulations."

10. Sub-Rule 4(1) of the Recruitment Rules provides for initial recruitment to service as on 1.10.1966 on its initial constitution as per the provisions of Initial Recruitment Regulations. After the initial recruitment subsequent recruitment to the service is to be done by direct recruitment to the service is to be done by direct recruitment Sub-Rule 4(2) (a), (aa) and 4 2(4) respectively. Rules 8 provides for recruitment by promotion while Rule 9 provides that promotion shall not exceed $33\frac{1}{3}\%$ of the senior duty posts borne on the cadre. Sub-rule 4(3) lays down that after initial recruitment under Sub-Rule 4(1) is over, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the service that may be require to be filled during any particular period of recruitment and the number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with Union Public Service Commission.

11. In K.Prasad's case (Supra) which led the applicant to file this application praying for grant of relief on its basis, Hon'ble Supreme Court laid down in the said case that initial recruitment being a distinct mode of recruitment cannot be clubbed with either the Direct Recruitment or recruitment by promotion and the initial recruits are entitled to occupy all the available vacancies in the cadre at the time of initial constitution of service. After initial recruitments are over the vacancies available for other methods viz direct and promotion are limited to the difference between the total authorised cadre strength and the number of initial recruits occupying various vacancies in accordance with the rules but the number of promotees cannot exceed $33\frac{1}{3}\%$ of the remaining substantive posts available. The officers of State Forest Service appointed to service as initial recruits will rank senior to all the officers subsequently recruited under Rule 4(2). It was further laid down that Cadre Regulations read with Cadre Rules leave no doubt that the strength and composition referred to or prescribed therein is to the entire cadre of service in the State concerned and is not restricted to the recruitments made after initial recruit/

The harmonious interpretation of the Cadre referred to against item no 3 and 4 will only be relevant at the stage when all the initial recruits having retired or ceased to be in service ^{and} the cadre comprises exclusively of the persons Recruited under Rule 4(2). Regarding Junior and Senior posts it was held that reference to Junior and Senior posts in the Cadre should not be considered to be so ^{an} rigid or integral part of the cadre composition as to affect the validity of appointment made in excess of a particular manner. A conjoint reading of relevant rules in this behalf shows that an officer being in the Junior or Senior Scale or on a Junior post depends upon various eventualities and it is not possible to pin down any post as Senior or Junior or any officer as on one of the time scale. In the end the court ~~Opined~~ that the appointment of any of the officers recruited under Rule 4(1) or 4(2) shall be considered invalid. All the officers selected will have to be adjusted if necessary by amending the cadre Regulations. The only result of our findings will be the readjustment of their seniority with necessary and consequential affect on their promotions in the service.

12. This being the position the initial recruits who cannot be included in promotees quota and are a class by themselves, the dispute now boils down to the seniority and in the manner the same is to be determined in respect of substantive post remaining after appointment of all the initial recruits including those who were in the list. The posts did not remain stationery also for the reason that there was increase in Cadre strength also. The Seniority is to be fixed in the ratio of 2:1 as has been derived earlier, that is 2 direct recruits and one promotee. The year of allotment has much to say in the matter of

seniority and it is strange that the Maharashtra Government has not yet been able to decide the same or is delaying it for some reason or the other which should not be done and the same cannot be legally justified.

13. Rule 3 of the I.F.S.C. Regulation of seniority, Rules 1968 provides for the assignment of year of allotment for initial recruits a formula is given but the same is not relevant here. For Direct Recruits it provides that it will be the following year in which such examination is held and ~~u~~ Rule 3(c) provides for year of allotment of a promotee officer it would be the year of allotment of the junior most among the officers recruited as direct recruit and if no such officer is available then the year of allotment of junior most among the officers recruited to the service in accordance with Rule 4(1) of the Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former. For a promotee officer the period of continuous officiation in a senior post for determination of his seniority will count from the date of inclusion of his name in the seniority list or from the date of his officiating appointment to such senior post whichever is later. The Rules also provide for counting the period of continuous officiation prior to inclusion of name in the first select list if such officiation is approved by the Central Government in consultation with the commission. Even benefit of continuous officiation on a non cadre post will be available towards seniority if requisite certificate within a particular period is granted by State Government in consultation with Central Government. But purely temporary or local arrangement will not count for the purpose of continuous officiation. The question of continuous officiation has been discussed and decided by

this Tribunal but it is not necessary to refer to those cases as still there appears to be no such dispute nor has been raised any in this case may it be because stage for the same has not arisen except referring to the Supreme Court cases one in respect of I.P.S. and other I.A.S.

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A.I.R. 1986 SC page 348

G.N. Tewari.

On behalf of applicant it has been contended that some of the promotees have been wrongly promoted earlier and their promotion exceeds $33 \frac{1}{3} \%$, an assertion seriously disputed. While according to the promotees $33 \frac{1}{3} \%$ officers were to be promoted and this was also the contention of the Government but although it is said to be $33 \frac{1}{3} \%$ by official respondents also yet it is short of it and direct recruits have been benefited at their cost. We have already noticed that for allotment of year period of continuous officiation on a cadre post is to be seen though benefit of same may under certain circumstance be available for working for some time on non cadre post or even to those also whose name is subsequently included in selection list or without name in select list were posted on a cadre post or equivalent post. In the case of R.P. Khanna v S.A.F. Abbas and others 1973(3) SCR 548 a case under I.A.S. certain posts in State Services were required to be declared as Senior Cadre posts in All India Service but before such declaration could be made some of the promotee officers officiated in the senior cadre post. The Court observed " the promotee could not get the benefit of officiation unless the post was declared as equivalent to a senior cadre post before the promotee was appointed to officiate

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him would defeat the policy of the Government and held that they are entitled to the benefit of retrospective declaration' in the absence of things practical as well as reasonable'. If the contention of the applicant is correct that promotees have occupied the vacancies which in fact were in the quota of direct recruit who were appointed subsequently the promotees will have to be pushed down they having no right to seniority because of the occupation of posts which were not in their quota. In the cases of V.B. Badami etc v. State of Mysore 1987 supp. Scc 207 and Gonal Bhimappa v State of Karnataka 1985 supp Scc 243 the promotees occupied the quota of direct recruits as direct recruits were not available to fill up the quota meant for them. It was held that direct recruits who were appointed within their quota subsequently were entitled to the vacancies within their quota which had not been filled up and they would be come senior to the promotees. The promotees would be pushed down to later years when their appointment could be regularised as a result of absorption in their lawful quota of those years. The promotees cannot hold the promotional post unless the vacancies fall in their quota. Practically the same view was taken in an earlier case wherein dispute was regarding the senior amongst Executive Engineers viz. A.K. Subraman and others v Union of India and others 1975 (1) Scc 319. It was observed 'Once the Assistant Engineers are regularly appointed to officiate as Executive Engineer within their quota they will be entitled to consideration in their own right as Class I officers to further promotion.' Their 'birth marks' in their service will be of no relevance one they are regularly officiating in the grade of Executive Engineer within their quota" In the case of K.C. Joshi & others v. Union of India and others 1990 (2) scale 951. which was a case under

U.P. Forest Rules regarding the two sources of recruitment to the post of Assistant Conservator of Forest, the promotees claimed seniority from the date of their initial promotion. The Supreme Court held :

" When promotion was out side the quota the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service ~~fortuitous~~. The previous promotion would be regular only from the date of vacancy within the quota and seniority shall be counted from ^{that date and not from} the date of his earlier promotion or subsequent confirmation. In order to justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory ~~one~~ must be strictly implemented and it is impermissible for the authorities concerned to deviate from ^{the} rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force ~~of~~ statutory rules and would offend Articles 14 and 16(1). Therefore, ^{the} rules must be carefully applied in such a manner as not to violate the rules of equality assured under Article 14 of the Constitution. This Court interpreted that equity is an integral part of Article 14. So every attempt would be made to minimise, as far as possible, inequity. Disparity is inherent in the system of working out integration of employees drawn from different services, who have legitimate aspiration to reach higher echelons of service. A feeling of hardship to one, or heart burning to either would be avoided. At the same time equality is accorded to all the employees."

Thus this being the legal position if the promotees have by virtue of earlier or subsequent appointment been promoted against a vacancies or vacancy falling into the quota of direct recruits, their services would not be terminated but in the seniority list they will be pushed down and the position hitherto occupied by them would go to the direct recruits or recruit in accordance with seniority. Similarly, if $33\frac{1}{3}\%$ quota of promotees which according to the Government is completely full is not so and the vacancies in their quota are occupied by the direct recruits, promotees would be given more seats withholding the direct recruits who would be placed in their due place in the seniority list on the basis of the ratio of 2:1 as mentioned above. This $33\frac{1}{3}\%$ quota of the vacancies in the promotees quota is to be in 'senior posts' as held in K.Prasad's case (Supra).

14. The phrase 'senior post' has been defined in I.F.S. (Regulation of Seniority)Rules, 1968. In Rule 2(g) which has been extracted above 'senior post' has been defined to mean a post included and specified in item 1 of the cadre of each State cadre to I.F.S. (Fixation of Cadre) Regulations (for short, Cadre Regulation). It also includes a post included in items 2 and 5 of said cadre and a post temporarily added to a cadre under second proviso to rule 4 to I.A.S. (Cadre)Rules when held on a Senior Scale of pay by an officer recruited to service in accordance with rule 7 (Competitive examination) of Recruitment Rules. Item 2 and 5 are regarding Central Deputation Reserve and the deputation Reserve (State)posts.

15. Under the I.F.S. cadre Rules 'Cadre Post' has been defined as meaning any of the post specified under item 1 of each cadre in the scheduled to Cadre Regulation. 'Cadre Officer' has been defined to a

person who is member of service. Cadre rules also provide temporary addition to State or joint both by Central Government and State Government to form a period not exceeding 2 years and one year respectively in the manner provided. The Rules and the Regulations read together makes it clear that every cadre post is a 'Senior Post' but every Senior post would not be a Cadre post as the schedule⁰ includes other posts like Central deputation reserve. But for direct recruits the post temporarily added to Cadre would be a senior post though there is no such rule adding its benefit to promotees also. But Rule 9(2) of Cadre Rules provides for appointment to a cadre post and the time and the manner including concurrence of Central Government reporting to Union Public Service Commission is provided therein including the appointment of a non cadre officer to a cadre post. If no direction is given by Central Government within a particular period to terminate such appointment or if it is ~~not~~ given effect to ~~it~~ the incumbent may become entitled to count the said period towards continuous officiation if other conditions are also fulfilled even vacancies were not there as was observed in G.N. Tiwari's Case (Supra) by Hon'ble Supreme Court while dealing with similar provisions in I.A.S. Rules and regulations. The following observations made by Madhya Pradesh High Court in K.L. Sharma's case were approved in the said case. " It is also not the case of Central Government never directed the State Government to terminate the petitioner's appointment. It is also not the case that the U.P.S.C. tendered any advice to the Central Government that the appointment be terminated. It is true that there is no specific approval of the Central Government to the appointment of the petitioner. But that is not a

condition precedent for a valid appointment under Rule 9 and the petitioner's officiation in a cadre post from ----- cannot be ignored as the ground that the appointment was not specifically approved by the Central Government ----- on the ground that there was no vacancy during this period in the promotion quota - "

16. As has been noticed earlier that State Government has power to make temporary addition to cadre (Rule 4 of cadre Rules) and can appoint a non-cadre officer against it whether his name is included in the select list or not he will be holder of a cadre post and holding by him of the said post would not make cadre post to be non cadre post as such the holder of the said post could be deemed to be holding a senior post if circumstances do not warrant otherwise. The period of 'Continuous Officiation' within the meaning of Rule 3 (3) (4) of the seniority Rules is interlinked under Rule 3(c) providing for fixation of year of allotment of a promotee. It is not necessary to repeat the rule which is quite clear. Explanation I to Rule 3 (3) (4) provides that period of continuous officiation in a senior post for purposes of determination of seniority would count from the date of inclusion of name in the select list or from the date of officiating appointment to such senior post whichever is later. The later of the two is the determinative point for determining seniority. It is to be noted that in Explanation I the starting point is "the date of officiating appointment" while in the proviso to Rule 3(3)(4) the material date is the date on which direct recruit started officiating meaning thereby that the date of appointment would not be starting point but the date on which officer started officiating will be starting point for the purposes of its

determination. In G.N. Tiwari's Case (Supra) the court laid down

- (i) that the continuous officiation in the cadre post from the date of commencement of such officiation in pursuant to the appointment by State Government to cadre post is in accordance with Rule 9 of the cadre Rules and the same would enure to their benefit for reckoning seniority under Rule 3(3)(4) of the Seniority Rule.
- (ii) Such appointees are also entitled by reasons of legal fiction contained in Explanation 2 to the Rule 3(3)(6) of the Seniority Rules to have the entire period of their continuous officiation without a break in Senior post from the date of their appointment into the service counted for purposes of their year of allotment under Rule 3(3) (6) of the Seniority Rules.
- (iii) There is no provision in the cadre Rules empowering the Central Government to direct curtailment of period of officiation of a non-cadre officer on a cadre post for purposes of reckoning his year of allotment under Rule 3 (3) (6) of the Seniority Rules.

17. What has been laid down in the above case applies in the case of I.F.S. regarding year of allotment and continuous officiation for the purposes of determining seniority. Obviously in the promotees quota as observed earlier that there cannot be encroachment in one quota by the members belonging to other quota and consequences thereof.

18. Coming to the plea of limitation raised by respondent Shri V.B. Joshi, it is to be seen that his allotment and even subsequent promotion to high post by the applicants was not challenged and there was no protest or representation by them against it, the applicants rather submitted to it or were in a doubt regarding his position or were reluctant to challenge his promotion or placement in cadre. The judgment in K. Prasad Case (Supra) cannot be taken as a fresh starting point of limitation. In the absence of any other explanation no case for condonation of delay regarding Shri V.B. Joshi having been made out the delay cannot be condoned. As such the settled position cannot be unsettled and so far the said Joshi is concerned he cannot be disturbed and prayer against him is rejected. The other plea of respondents that the promotees who may ultimately be affected have not been impleaded as a party as such application is to be dismissed and the applicants are not entitled to any relief which may affect them has no legs to stand. The applicant's grievance is against the Government for violating rules or not faithfully and correctly giving effect to the same. If these pleas are right consequences would follow as such it was not necessary or obligatory to implead all such persons as party to the proceedings. This plea of respondents is thus rejected.

19. In view of what has been said above the application disposed of finally with following directions:

(i) Respondents 1 and 2 are directed to fix the year of allotment of members of Maharashtra cadre within a period of 2 months from the date of communication of this order in accordance with law in the light of observations made in this judgment if not already done and if done then revise the same in the manner indicated above within this period.

(ii) To draw a seniority list, all the members of I.F.S. of Maharashtra cadre in accordance with law and in the light of observations made above within another two months after fixing the allotment year as indicated above.

(iii) In case position of Shri V.B.Joshi goes down he will not be reverted from his post and his year of allotment too will not be changed.

(iv) There will be no order as to costs.



(P.S. CHAUDHURI)
MEMBER (A)



(U.C. SRIVASTAVA)
VICE CHAIRMAN

30.8.1991