

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.**

**O.A. No. 821 of 2005 with
O.A. No. 318 of 2006**

Date of order : 30.1.2009.

C O R A M

**Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Mr. Amit Kushari, Member(A)**

I. O.A. No. 821 of 2005

1. Dr. Suresh Prasad, Son of Late Baldeo Prasad, Resident of Mohalla Mithapur, P.S.- Jakanpur, District- Patna. Presently posted as Divisional Forest Officer, Gopalganj, District- Gopalganj.
2. Kaushlendra Kumar Akela, aged about 43 years, Son of Shri Deo Nandan Prasad Sinha, Resident of Hanuman Bigha, P.S.- Kashichak, District- Nawada, Presently posted as Divisional Forest Officer, Saharsa.
3. Ram Kishore Ram, aged about 46 years, Son of Shri Ram Swaroop Ram, Resident of Village- Jaidpur Naya Tola, P.O.- Jaijpur, Barbigha, P.S.- Daudpur, District- Chapra, Presently posted as Divisional Forest Officer, Motihari.
4. Radha Kant Kumar, Aged about 46 years, Son of Shri Ram Chandra Paswan, attached officer, office of the Conservator of Forest, Purne Circle, Purnea.

..... Applicants.

By Advocates: Shri S.Ranjan with Shri A.N. Jha

- Versus -

1. The Union of India through the Secretary, Ministry of Environment and Forest, Government of India, New Delhi.
2. The Cabinet Secretary, Government of India, New Delhi.
3. The Ministry of Environment and Forest, Paryavaran Bhawan, C.G.O. Complex, Lodi Road, New Delhi through its Under Secretary.
4. The Union Public Service Commission through its Secretary, New Delhi.
5. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
6. The Forest Secretary, Government of Bihar, Patna.

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7. The Government of Jharkhand through the Chief Secretary, Ranchi.
8. The Forest Secretary, State of Jharkhand, Ranchi.
9. Shri S.N. Pandey, Divisional Forest Officer, Darbhanga.
10. Shri Raj Vansh Singh, Divisional Forest Officer, Purnea.

..... Respondents.

- By Advocates: Shri A.R. Pandey, Sr. SC for U.O.I.

Shri Dhruba Mukherjee, SC for State of Jharkhand.

Shri R.K. Choubey, ASC for the UPSC.

Shri R.K. Singh with Shri M.P. Dixit and Shri S.K. Dixit for respondents no. 9 and 10.

Shri J.K. Karn with Shri H.K. Karn for respondents 11 to 16.

II. O.A. No. 318 of 2006

1. Mihir Kumar Jha, aged about 44 years Son of Sri Bhawanand Jha Resident of Village Behhahi P.S. Pandaul, District- Madhubani. Presently posted as Divisional Forest Officer Begusarai, District- Begusarai.
2. Sunil Kumar Sinha, aged about 46 years, Son of Late Sri Jadu Nandan Prasad Resident of Village- Nandan Bigha P.S.- Islampur, District- Nalanda presently posted as Assistant Conservator of Forest Officer of Principal Chief Conservator of Forest, Bihar, Patna.
3. Patanjali Kumar Choudhary, aged about 45 years Son of Late Sri Rabindra Choudhary, Resident of Village- Shaibani P.S.- Bakhtiyarpur, District- Patna. Presently posted as Assistant Conservator of Forest Officer of Principal Chief Conservator of Forest, Bihar, Patna.
4. Deepak Sinha, aged about 46 years, Son of Late Sri Chandreshwar Prasad, Resident of Boring Road, Patna, District- Patna, Presently posted as Assistant Conservator of Forest Officer of Principal Chief Conservator of Forest, Bihar, Patna.

..... Applicants.

By Advocate: Shri A.K. Sinha

- Versus -

1. The Union of India through the Secretary, Ministry of Environment and Forest, Government of India, Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi.
2. Under Secretary, Ministry of Environment and Forest, Govt. of India, Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi.

3. Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Govt. of India.
4. The Union Public Service Commission through its Chairman, New Delhi.
5. The State of Bihar through Secretary, Environment and Forest Department, Govt. of Bihar, Irrigation Bhawan, Patna.
6. The State of Jharkhand through the Secretary, Forest and Environment Department, Govt. of Jharkhand, Nepal House, Ranchi.
7. Shri S.K. Thakur, Presently posted as Divisional Forest Officer, Jamui Forest division, Jamui.
8. Shri S.N. Pandey, presently posted as Divisional Forest Officer, Mithila Forest Division, Darbhanga.
9. Shri R.B. Singh, presently posted as Divisional Forest Officer, Purnea Forest Division, Purnea.
10. Shri Janardhan Prasad Keshri, Divisional Manager, MFP Project Division, Daltonganj.
11. Shri Bhagwan Mishra, Divisional Manager, MFP Project Division, Jamshepur.
12. Shri Ram Bharat, Divisional Manager, MFP Division, Giridih.
13. Shri Madhukar, DFO, Social Forestry Division, Chaibasa.
14. Shri Ajit Kumar Singh, DFO, Social Forestry Division, Hazaribagh Van Bhawan.

..... Respondents.

- By Advocates: Shri R.K. Choubey, ASC for U.O.I. And UPSC
Shri Binod Jee Verma, SC for State of Jharkhand.
Shri R.K. Choubey, ASC for the UPSC.
Shri R.K. Singh with Shri M.P. Dixit and Shri S.K. Dixit for
respondents no. 8 and 9.
Shri J.K. Karn with Shri H.K. Karn for respondents 10 to 14.

O R D E R

Amit Kushari, M (A) :- In these two OAs the facts are identical and the reliefs claimed are also identical. Union of India (Respondent no. 1) has also submitted identical written statement in both the cases. Under these circumstances, both the OAs are being taken up together. The erstwhile State of Bihar was divided into Bihar and Jharkhand on 15.11.2000. The

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IFS cadre of the erstwhile State of Bihar had 52 vacancies under the promotional quota - to be filled by promotion from State Forest Service officers. After the bifurcation of the State of Bihar 39 of these promotional vacancies were allocated to Jharkhand and 13 were allocated to the State of remaining Bihar. At the time of bifurcation there were 30 promotee IFS officers in the State of Jharkhand and 10 promotee IFS officers in the State of Bihar. Their names can be seen at Annexure A/2 and Annexure A/3 of OA 381 of 2006. As a result of this there were 3 vacancies in the State of Bihar and 9 vacancies in the State of Jharkhand. In the year 2003 2 vacancies of the year 1996-97 of the united State of Bihar were filled up by giving promotion to 2 State Forest Service officers of united Bihar, namely, R.L. Mishra and T.N. Verma. Since there were 3 vacancies existing in the State of Bihar at the time of bifurcation and the Govt. of Bihar was requesting the Govt. of India to allocate more officers to Bihar due to acute shortage of suitable officers in Bihar, Govt. of India allocated these two officers to the State of Bihar. In the year 2000 when the State Service officers were divided into two cadres, Bihar and Jharkhand, these two officers were allocated Jharkhand Forest Cadre. Therefore, they were aspiring to get Jharkhand cadre in the IFS. However, the Govt. of India chose to allocate these two officers to the State of truncated Bihar against the 3 available vacancies so that the State of Bihar did not feel shortage of

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officers. Repeated pleas made by these two officers for allocation of Jharkhand cadre of IFS were not accepted by the Govt. of India. As a result of this, the divided State of Bihar was left with only one vacancy of the pre-partition period, whereas the State of Jharkhand was left with 9 vacancies of the pre-partition period. So in all there were 10 vacancies which existed in the pre-division period and these vacancies had to be filled up from the Joint Forest Service cadre of undivided Bihar. The DPC was held sometime in the year 2004 for filling up of these 10 vacancies and 7 officers were found fit to be promoted. Three officers could not be promoted because there were departmental proceedings pending against them. Therefore, out of the 10 vacancies of undivided Bihar 7 officers were appointed to the IFS cadre. Respondents no. 7,8 and 9 of OA No. 318/2006 were promoted in the list of 7 persons. Since all 3 of them were working in the Bihar State Forest Services and were not working in the Jharkhand State Forest Services they were all allocated to the Bihar cadre of IFS and not to Jharkhand cadre. The Govt. of India lost sight of the fact that the truncated State of Bihar had only one vacancy in IFS in the pre-partition period and the three officers could not be accommodated against Bihar cadre. Only one could be accommodated and the remaining two had to be accommodated in the Jharkhand cadre. Perhaps, the Govt. of India was under the impression that there were three vacancies in the new State

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of Bihar since there were 13 promotional vacancies and 10 officers were in position at the time of partition of the State. In fact they lost sight of the fact that during the period 2000-04 two officers, namely, R.L. Mishra and T.N. Verma had been promoted to the Bihar cadre of IFS for the 1996-97 vacancies and , therefore, the number of vacancies was not 3, but it was reduced to 1. If the Govt. of India had not lost sight of this fact then only respondent no. 7, Shri S.K. Thakur (in OA No. 318/06) would have been allocated Bihar Cadre and respondent no. 8 and 9 (in OA No. 318/06) would have been allocated Jharkhand cadre. The Govt. of India has also gone by the logic that since respondent no. 8 Shri S.N. Pandey and respondent no. 9 Shri R.B. Singh belonged to State Forest Service of truncated Bihar they had to be promoted to the State cadre of truncated Bihar only. This logic does not seem to be quite appropriate because if this logic is correct then Govt. of India ought to have applied this logic while promoting R.L. Mishra and T.N. Verma also. These two officers were working in Jharkhand State Forest Services and they had been promoted to the IFS cadre of truncated Bihar. If the Govt. of India had allocated R.L. Mishra and T.N. Verma to the Jharkhand cadre of IFS then all this confusion would never have arisen. Both these OAs are a result of this mistake and confusion created by the Govt. of India. The Govt. of Bihar repeatedly pointed out these anomalies to the Govt. of India as is evident

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from the written statement submitted by the Govt. of truncated Bihar in both the OAs, but Govt. of India did not relent and did not agree to correct their mistakes by transferring respondent no. 8 and 9, namely, Shri S.N. Pandey and Shri R.B. Singh to Jharkhand cadre. The applicants in these two OAs feel that had these two vacancies been made available in the IFS cadre of truncated Bihar then a number of officers belonging to the State Forest Services of truncated Bihar could have aspired to be promoted to the IFS and the mistake on the part of Govt. of India has seriously affected their career prospects for ever.

2. The learned counsel for the applicants in both the OAs have pointed out that injustice done to the applicants had a cascading effect downwards and the resultant vacancies in the State Forest Service could have been used for filling up more officers in the rank of Assistant Conservator of Forests to the higher posts in the State Forest Service.

3. Union of India in their supplementary affidavit filed in both the OAs has ultimately admitted the mistake. In para-7 of their written statement they have stated as under:-

“Whereas in the case of Bihar, against 3 vacancies 5 officers were sent thereby leading to 2 surplus officers.”

However, in para 12 they have said that this surplus in Bihar has been taken care of while dealing with subsequent vacancies. The

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promotional quota vacancies of Bihar cadre have now been reduced from 7 to 5 so that there were no surplus personnel in the promotional quota of IFS of Bihar cadre. Respondent no. 1 has also pointed out in para-11 that they are unable to accept the plea of Govt. of truncated Bihar to transfer the two surplus officers (respondent no. 8 and 9) to the Jharkhand cadre of IFS because it would not be desirable to transfer officers from Bihar to Jharkhand and vice-versa at this stage due to a number of litigations in various Courts regarding allotment of officers to Bihar and Jharkhand cadre. It may also be mentioned here that the Govt. of Jharkhand has clearly expressed their unwillingness to accept any of these officers from Bihar to Jharkhand and the Standing Counsel of the State of Jharkhand made this point abundantly clear while arguing the matter before us. Respondent no. 8 and 9 have also expressed their total unwillingness to be reallocated to Jharkhand cadre since they are permanent residents of Bihar (truncated).

4. We have carefully considered the entire matter and have gone through the pleadings carefully. From the facts placed before us and all the arguments that were advanced, it was quite clear to us that the whole issue had arisen in both the OAs due to the inadvertent mistake committed by the Govt. of India. However, now the position is that respondents no. 8 and 9 in OA No. 318/2006 have become members of IFS for the State of

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truncated Bihar and if they have to be transferred to another State cadre like Jharkhand it would amount to a permanent cadre transfer. Cadre transfer of an All India Service officer cannot be effected unless the receiving State agrees to accept the officer. The State of Jharkhand is clearly unwilling to accept respondent no. 8 and 9 into their fold of IFS. In view of this position, it is now impossible to transfer them to the Jharkhand cadre of IFS. The solution found by Govt. of India in reducing the subsequent vacancies of the State of Bihar in the promotional quota – seems to be the only feasible and practicable way of correcting this mistake. If these two respondents cannot be sent to Jharkhand all the other reliefs prayed for by the applicants become immaterial.

5. In view of these observations ~~and arguments~~, both the OAs are hereby dismissed. No order as to costs.


[Amit Kushari] M[A]

srk.


[Ms. Sadhna Srivastava] M [J]