

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI**

ORIGINAL APPLICATION NO. 851/2001

Date of Decision: 3.12.2002

Versus

Union of India & Ors. Respondents

Smt. H.P. Shah Advocate for Respondent No.1
Smt. S.J. Gore Advocate for Respondent No.2
Shri R.R. Shetty. Advocate for Respondent No.4

CORAM: HON'BLE SHRI S.L. JAIN. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. . . MEMBER (A)

1. To be referred to the reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library. ✓

Shanta F
(SMT. SHANTA SHAstry)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.851/2001

THIS THE 3rd DAY OF NOVEMBER, 2002

CORAM: HON'BLE SHRI S.L. JAIN. .. MEMBER (J)
HON'BLE SMT. SHANTA SHAstry. .. MEMBER (A)

Dionisio N.F. Carvalho,
Dy. Conservation of Forests,
Monitoring & Evaluation
Forest Department,
Government of Goa. Applicant

By Advocate Ms. Delilah for applicant

Versus

1. Union of India, through
the Secretary, Ministry of
Environment & Forests,
Paryavaran Bhavan, CGO Complex,
Lodhi Road, New Delhi-411 003.
2. Union Public Service Commission,
Dholpur House,
Shahajahan Road,
New Delhi-110 001.
3. State of Goa,
through the Chief Secretary,
Government of Goa,
Panaji - Goa.
4. Shri V.T. Thomas,
Dy Conservator of Forests,
South Goa Division,
Margao - Goa. Respondents

By Advocates Ms. H.P. Shah for R1
Smt. S.J. Gore for R2
Shri R.R. Shetty for R4.

O R D E R
Hon'ble Smt. Shanta Shastry. Member (A)

By the present OA the applicant is challenging
the notification dated 11.10.2001 issued by Respondent
No.1 appointing Respondent No.4 i.e. V.T. Thomas of
the State Forest Service of Goa to the Indian Forest
Service with immediate effect.

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2. The applicant was initially appointed as Assistant Conservator of Forests on adhoc basis vide order dated 20.01.1987 and has been working as Assistant Conservator of Forests/ Deputy Conservator of Forests in the Goa Forest Department. The applicant was appointed on regular basis as ACF from 08.8.1990 and was confirmed on 08.8.1992 vide order dated 01st September, 1999 after completion of two years of probation. The State Forest Service (Assistant Conservator of Forests (ACF for short) / Deputy Conservator of Forests (DCF for short) is the feeder grade for promotion to the IFS. The promotion to the IFS from the feeder grade is regulated by the Indian Forest Service (Recruitment) Rules, 1966 and Indian Forest Service (Appointment by Promotion) Regulations 1966. Appointment by promotion to the IFS is made only on the recommendations of the State Government concerned and in consultation with the Union Public Service Commission (UPSC for short). Sub Regulation (1) of Regulation 9 of the IFS (Appointment by Promotion) Regulation 1966 provides for appointment of a member of the State Forest Service (SFS for short) to the IFS from the names which appear in the select list for the time being in force during the period when the select list remains in force.

4. A joint cadre has been created for the IFS known as AGMUT cadre for the states of Arunachal Pradesh, Goa, Mizoram and Union Territories. This cadre fixed

the promotional quota for the states and Union Territories on 02.8.1999. The total promotional posts allotted to Goa by the said order are three. There was a vacancy for one post for promotion from the SFS in Goa in the year 1997 and as per the Regulation, a select list was prepared on 15.10.1997 for the said vacancy. The select list included the following names: (1) Shri O.V.R. Reddy, (2) Shri M.A. Desai and (3) Shri V.T. Thomas and the vacancy was duly filled by promoting Shri O.V.R. Reddy to the Indian Forest Service.

5. The Joint Cadre ^{Authority} revised the promotional quota for Goa segment ^{of} AGMUT cadre of IFS to four vide notification dated 10.5.2001.

6. The respondents have now filled up the vacancy of 10.5.2001 by appointing Shri V.T. Thomas by promotion to the IFS. Shri V.T. Thomas was at Sl. No.3 of the select list of 15.10.1997.

7. The grievance of the applicant is that the notification dated 11.10.2001 appointing Respondent No.4 to the IFS has been issued without the recommendations of the Respondent No.3 or without consultation with Respondent No.2 i.e. UPSC as required under the recruitment rules and Regulations of 1966. According to the applicant Respondent No.4 was not in the select list in force. The applicant submits that according to ~~Sub~~

Regulation (5) of the IFS (Appointment by Promotion) Regulation 1966 (for short IFS Regulation 1966), the select list shall not exceed the number of substantive vacancy as on the first day of January of the year in which the meeting is held. Since there was only one substantive vacancy, the inclusion of additional two names in the select list was not in conformity with the Sub Regulation (1) of Regulation 5 of the IFS Regulations 1966. There was no vacancy in 1998, 1999 and 2000 as well as in January, 2001. Therefore, no meeting of the Selection Committee was required to be held for those years and no select list was prepared. The learned counsel for the applicant further submits that the select list of 1997 was therefore, no longer in force as one person from the select list had been duly appointed against the sole vacancy available then.

8. The learned counsel mentioned that the select list of 1997 of officers to be appointed by promotion to the IFS was the subject matter in OA No.165/2001 which was decided by this Tribunal on 24.7.2001. While dismissing the OA the Tribunal came to the conclusion that the select list of 15.10.1997 was no longer in force, it had lapsed once an officer had been appointed against the sole vacancy and this had also been admitted by the respondents in the written statement filed in the aforesaid OA. The respondents cannot now go back on that and say that the select list of 1997 was still in force in 2001.

9. The learned counsel for the applicant has drawn our attention to the Sub Regulation 4 of Regulation 7 of the IFS Regulation 1966 which relates to the validity of the select list. According to this "the select list shall remain in force till the 31st day of December of that year in which the meeting of the Selection Committee was held with a view to prepare the list under Sub Regulation (1) of Regulation 5 or upto sixty days from the date of approval of the select list by the Commission under Sub Regulation (1) or as the case may be finally approved under Sub Regulation (2) whichever is later." Since the select list of 1997 was finalised and the vacancy was filled up on 15.10.1997 it had reached finality and therefore, it was no longer in force. The respondents therefore ought to have convened a fresh meeting of the Selection Committee for the vacancy which arose on 10.5.2001 instead of promoting Respondent No.4 from the earlier select list. The respondents' action is irregular.

10. The applicant has also contended that according to Sub Regulation (3) of Regulation 5 of the IFS Regulation 1966 the Selection Committee is not to consider the case of the members of the State Forest Service who had attained the age of 54 years on the first day of January of the year in which the Committee meets. In the case of Respondent No.4 he had already crossed the age of 54 when appointed on 15.10.2001 in

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that he would have retired then, the superannuation age being 58 years in Goa had it not been for his appointment by promotion to the IFS. He was not eligible on 10.10.2001.

11. The applicant submits that he fulfills all the requirements for appointment by promotion to the IFS. To be eligible, an officer must be substantive in the SFS as on the date of January of the year in which the Selection Committee meets and must have completed not less than eight years of continuous service (whether officiating or substantive). The applicant submits that he is the senior most and therefore, Selection Committee meeting ought to have been convened to consider the case of the applicant instead of giving appointment to Respondent No.4.

12. The respondents have opposed the OA. They maintain that their action in promoting Respondent No.4 to the IFS is in order and in accordance with the provisions of the IFS Regulations 1966. They submit that it is true that according to the second amendment to IFS (Appointment by Promotion) Regulation 1997 the select list shall remain in force till 31st day of December of the year in which the Selection Committee was held with a view to prepare a list under Sub Regulation (1) of Regulation 5 or upto sixty days from the date of approval of the select list by the Commission under Sub Regulation (1) or as the case may be finally approved

under Sub Regulation (2) whichever is later. The list is to meet the requirement or promotion against the vacancy existing as on the first day of January of the year in which the select list is prepared plus any vacancy arising during one year from the date of one of the meeting of the Selection Committee. However, the learned counsel for the respondents submits that the interpretation of the aforesaid rule came in for close scrutiny in different judicial fora, the most notable judgment being in Nepal Singh Tanwar Vs. Union of India in the Hyderabad Bench of the CAT and then in the Supreme Court reported in 1998 (1) SCALE (SP 7 = 1998 (4) SLT 221. The Hon'ble Apex Court ruling was that ordinarily the preparation of the select list every year should be the practice, but if there are good reasons for not doing so and the court was satisfied that there were valid reasons for not preparing the select list for the subsequent years, Regulation 7 (4) will come into operation and the previous list would continue to remain in force. Accordingly, orders were amended by the OM dated 18.01.2000. Since no further meeting of the Selection Committee was held in respect of Goa Segment of the AGMUT cadre of the IFS after 1997 and as the vacancy became available in 2001, Respondent No.4 namely Shri V.T. Thomas, who was at S1. No.3 in the select list of 1997 was appointed to the IFS because Shri M.A. Desai who was at S1. No.2 in the select list had already retired on superannuation. The Notification of

11.10.2001 has been issued by the respondents on the basis of the select list drawn up in 1997 by the Selection Committee, it was duly constituted and the select list was approved by the UPSC. Therefore, the contention of the applicant that the Notification had been issued without the recommendations of Respondent No.3 or without consultation with Respondent No.2 is not correct. The respondents further defended their action by stating that Respondent No.4 had not attained the age of 54 on the first day of the year 1997 when the Selection Committee had met and the select list was drawn up. The respondents also submit that the amendment to the IFS Regulations were notified on 31.12.1997 and the provisions came into force with effect from 01.01.1998. Therefore, in view of the OM of the Government dated 18.01.2000, referred to earlier, the select list of 1997 was not to be disturbed. The Notification of 31.12.1997 amending the Regulations has only prospective effect and therefore, the select list was very much in force even in 2001 as no meeting of the Selection Committee had been held after 1997 till 2001.

13. Respondent No.4 also has filed his reply in the matter explaining and justifying his appointment by promotion to the IFS. According to him the select list was very much in force in view of the judgment of the Supreme Court in the case of Nepal Singh Tanwar Vs. Union of India. According to Learned counsel for

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Respondent No.4 the applicant has not presented the law as it stood on the crucial date of 15.10.1997 when the Respondent No.4 was inducted into select list of IFS, instead the applicant has presented only the subsequent amendment of 31.12.1997. According to the Regulation in force at the time the select list was prepared, the provision was that "a select list prepared shall be in force until the next select list is prepared" and the next select list was not prepared and therefore Respondent No.4 was rightly promoted.

14. The amended Regulation i.e. Regulation 7 (4) vide Notification dated 31.12.1997 refers only to such select lists as are prepared after this cut off date of 31.12.1997 and there was a clarification by the Central Government by OM of 18th January, 2000. Respondent No.4 further submits that the applicant is not the senior most, his seniority is of adhoc nature as three writ petitions have been filed in the High Court of Bombay at Panjim, Goa, regarding seniority. Respondent No.4 also points out that he was not a party to OA 165/2001 decided by this Tribunal on which reliance has been placed by the applicant and therefore that decision cannot be binding on Respondent No.4. Even though the vacancy came to be notified on 10th May, 2001 after increasing of the promotion quota of Goa Segment, the vacancy was not expected before 15.10.1997. However, the process of coming into existence of the vacancy was

known to Central Government and the State Government right from 31.12.1997 and this was during the year 01.4.1997 to 31.3.1998 during which the select list came to be made and Respondent No.4 was listed at S1. No.3 of the select list and therefore, it would have rightly gone to Respondent No.4 had it been notified promptly, Respondent No.4 cannot be blamed for the same.

15. We have heard the learned counsel for the applicant, official respondents and Respondent No.4 and have given our careful consideration to the arguments advanced. We have also perused Regulations and Rules relied upon by the parties.

16. The factual position is that the Selection Committee for appointment of SFS officers by promotion to the IFS ^{met} was made in the year 1997. At that time, there was only one substantive vacancy. However, the select list was prepared consisting of three names as per the then provisions in the recruitment rules and regulations of IFS. Thereafter, the select list was operated upon by giving appointment to the officer at S1. No.1 in the select list namely Shri O.V.R. Reddy. Thus, the purpose of the select list was served. The dispute is now about whether this particular select list was in force even in the year 2001 when the additional vacancy occurred on 10.5.2001 and whether the notification issued on 11.10.2001 by the respondents is

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in order? In order to assess the correct position, it is necessary to refer to the relevant rules and the Regulations. It is also to be noted that the Regulations came to be amended at the end of 1997.

17. The promotion to the IFS from the feeder grade of the SFS is regulated by the IFS recruitment rules 1966 and the IFS (Appointment by Promotion) Regulation 1966. Sub Rule (1) of Rule 8 of the IFS (Recruitment Rules) 1966 conferred powers on the Central Government to appoint a member of the SFS on the recommendations of the State Government concerned and in consultation with the UPSC. The IFS Regulations of 1966 were amended twice, last amendment being on 31.12.1997. Since the select list of 15.10.1997 was prior to the second amendment, it is worthwhile to see the relevant regulations prior to 31.12.1997. Regulation 3 relating to constitution of Committee to make selection, Regulation 5 refers to preparation of a list of suitable officers, Regulation 7 (4) which talks about select list and Regulation 9 provides for appointment to service from the select list.

19. Regulation 9 prior to the amendment of 31.12.1997 reads as follows:

"Appointment to the Service from the Select List - (1) Appointments of members of the State Forest Service to the Service shall be made by the Central Government on the recommendation of the State Government to the order in which the names of the members of the State Forest Service appear in the Select List for the time being in force."

...12.

This was amended on 31.12.1997 ~~on 31.12.1997~~ as follows:

"Appointments to the Service from the Select List - (1) Appointment of a member of the State Forest Service who has expressed his willingness to be appointed to the Service, shall be made by the Central Government in the order in which the names of the members of the State Forest Service appear in the Select List for the time being in force during the period when the Select List remains in force

...Provided further that the appointment of an officer, whose name has been included or deemed to be included in the Select List provisionally under the proviso to sub-regulation (4) of Regulation 5 or under the proviso to sub-regulation (3) of Regulation 7, as the case may be, shall be made within sixty days after the name is made unconditional by the Commission, in terms of the first proviso to sub-regulation (4) of Regulation 7."

Thus, it will be seen that by amendment, it has now been laid down that the appointment of officer, whose name has been included ^{is} deemed to have been included, ~~in the Select List~~ shall be made within sixty days if his name has been made unconditional by the Commission in turn. Thus, the select list shall be valid for a period of sixty days from the date UPSC has made it unconditional.

20. Regulation 5.1 prior to the amendment reads as follows:

"Preparation of a list of suitable officers - (1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Forest Service as are held by them to be suitable for promotion to the Service. The number of member of the State Forest Service to be included in the list shall be calculated as the number of substantive vacancies anticipated in the course of the period of 12 months, commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules plus twenty per cent of such number or two, whichever is greater."

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...13.

The amended Regulation reads as follows:

"Preparation of a list of suitable officers - (1) Each Committee shall ordinarily meet every year and prepare a list of such members of State Forest Service as are held by them to be suitable for promotion to the Service. The number of members of the State Forest Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under Rule 9 of the recruitment rules. The date and venue of the meeting of the Committee to make the selection shall be determined by the Commission."

^{the portion}
In the amended regulation ^{plus twenty per cent}
^{of such number two}
deleted restricting the number of members of the SFS to be included in the list to the number of substantive vacancies as on the first day of the year in which meeting of the Selection Committee ^{is} held.

21. Regulation 7 (4) speaks of the validity of the select list. Prior to the amendment of 31.12.1997.

Regulation 7 (4) reads as follows:

"The Select List shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of Regulation 5, is approved under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2)."

Amended version reads as follows:

"The Select List shall remain in force till the 31st day of December of the year in which the meeting of the selection committee was held with a view to prepare the list under sub-regulation (1) of Regulation 5 or upto sixty days from the date of approval of the Select List by the Commission under sub-regulation (1) or, as the case may be, finally approved under sub-regulation (2), whichever is later."

Thus, by the amended version a limit has been laid down on the period of validity of the select list. The validity has now been confined to 31st day of December of the year in which the meeting of the Selection Committee was held or up to sixty days from the date of approval of the list by the Commission. Thus, the select list cannot remain in force beyond 60 days from the date of approval by the UPSC.

22. According to the respondents the select list having been prepared prior to 31.12.1997, the same has to be governed by the pre amended ~~Regulations~~ ^{as per} and the ruling given by the Hon'ble Supreme Court, ^{as} the vacancy pertains to the year 1997. Therefore, the respondents were justified in following the pre amended ~~Regulations~~. But the fact is that ^{the} ~~Regulations~~ were amended, with this the earlier provisions have been superseded and they cannot be in force even after the amendment. Had any vacancy occurred in addition to the solitary vacancy during 1997 itself, the respondents could have been justified in holding the list of 1997 to be still in force. But there was no further vacancy till 10.5.2001 by then the amended ~~regulation~~s had already come into force. The vacancies are to be filled as per the rules and regulations in force at the time vacancy occurred and not before or after. Since the vacancy in the present case arose on 10.5.2001, it will have to be filled in accordance with the provisions of the amended ~~Regulations~~ only. Reliance has been placed on the

judgment in the case of Nepal Singh Tanwar (supra). A perusal of the judgment shows that it was decided on 09.12.1996 and apparently the Regulations which were placed before the Hon'ble Supreme Court in that case were, the unamended regulations that is applicable prior to 31.12.1997. This is evident from the portion in para 3 of the judgment which reads as follows:

The grievance is that the appellant could not have been appointed, as by then the list was exhausted. However, this grievance does not appear to be correct for the reason that under the relevant regulation 7 (4) the select list was to continue until its review and revision effected under Regulation 5 (4) is approved under Sub Regulation (1) or as the case may be finally approved under Sub Regulation 92)"

Whereas this Regulation 7 (4) has been amended on 31.12.1997 providing that the select list has remained in force till 31st day of December of the year in which the meeting of the Selection Committee was held or upto sixty days from the date of approval of the select list by the Commission. The ruling given in the judgment therefore cannot be said to be applicable in the present case as it was with reference to the old regulation prior to 31.12.1997.

23. In our considered view, the respondents' action

in promoting the person at S1. NO.3 of the select list of 1997 against the vacancy which had occurred four years later is not justified. In fact, this Tribunal had rightly concluded even in OA No.165/2001 that since the vacancy did not occur till 10.5.2001, there was no question of considering the officer at S1. No.2 of the select list of 1997 as at the relevant time, there was no additional vacancy and in view of the amendment to Regulation 7 (4) the select list cannot be in force beyond sixty days from the date of approval of the UPSC. This being the position, we have to hold that the action of the respondents was not correct. The respondents ought to have rightly held a fresh meeting of the Selection Committee to prepare a fresh select list for the vacancy which arose on 10.5.2001 in accordance with the amended regulation of 31.12.1997 which came into force from 01.01.1998. Accordingly, we quash and set aside the impugned Notification dated 11.10.2001 and direct the respondents to hold a fresh meeting of the Selection Committee to consider officers of the SFS including the present applicant provided he is otherwise eligible for the vacancy that occurred on 10.5.2001 and if the applicant is found fit fit, he may be appointed by promotion to the IFS according to the procedure laid down under the IFS Regulations (Second Amendment) of 1997-1998.

24. In the result, the OA is allowed ~~to costs.~~ ^{to costs. No expenses.}

Shanta S
(SMT. SHANTA SHAstry)
MEMBER (A)

S L Jain
(S.L. JAIN)
MEMBER (J)

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