

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1471/95 , 458/96 and 44/97.

Date of Decision: 22-2-99

Vijayshankar Rammanohar Singh

.. Applicant

Mr. S.G.Aney with Mr.M.M.Sudame

.. Advocate for
Applicant

-versus-

Union of India & Anr.

.. Respondent(s)

Mr. V.S.Masurkar.

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri D.S.Baweja, Member(A).

(1) To be referred to the Reporter or not? *No*

(2) Whether it needs to be circulated to *No*
other Benches of the Tribunal?

R.G.Vaidyanatha
(R.G.VAIDYANATHA)
VICE - CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1) ORIGINAL APPLICATION NO.1471/95.
2) ORIGINAL APPLICATION NO. 458/96.
3) ORIGINAL APPLICATION NO. 44/97.

Pronounced, this the 22nd day of FEBRUARY 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri D.S.Baweja, Member(A).

1. Original Application No.1471/95.

Vijayshankar Rammanohar Singh,
Director,
Forest Guards' Training School,
Shahapur,
Dist: Thane - 421 601.

...Applicant in
(OA 1471/95)

2. Original Application No.458/96.

Gurdial Singh Kandey,
I.F.S.,
Dy. Conservator of Forests,
Bhandara Forest Division,
Resident of Forest Bungalow,
Bhandara.

...Applicant in
(OA 458/96)

3. Original Application No.44/97.

Vithal Ramaji Kanekar,
I.F.S.,
Dy. Conservator of Forest,
Akola,
resident of Akola, (M.S.).
(By Advocate Mr.S.G.Aney with
Mr. M.M.Sudame for the applicants
in all the three OAs).

...Applicant in
(OA 44/97)

V/s.

1. Union of India,
through its Secretary,
Ministry of Environment and Forests,
Parivaran Bhavan, C.G.O.Complex,
Lodhi Road,
New Delhi - 110 003.
2. State of Maharashtra,
through its Secretary,
Revenue & Forests Department,
Mantralaya,
Mumbai - 400 032.
(By Advocate Mr.V.S.Masurkar)

...Respondents in
all the three OAs.

...2.



: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

These are three applications filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply opposing all the applications. We have heard the learned counsels appearing on both sides. Since common questions arise for consideration in all these cases, they are being heard together and disposed of by this common order.

2. All the three applicants were appointed as Assistant Conservator of Forests in the Maharashtra Forest Service. Subsequently, they have been inducted to the Indian Forest Service (for short, I.F.S.). Subsequently, they have been allotted year of allotment. The applicants are dissatisfied with the year of allotment given to them. Therefore, they have approached this Tribunal for the relief of getting proper year of allotment.

V.R.Singh is the applicant in O.A. 1471/95. He joined the Maharashtra Forest Service in 1966. He was confirmed in Maharashtra Forest Service Class-II by order dt. 11.2.1985. Then he was appointed to the I.F.S. by order dt. 15.10.1987 and allotted to the State of Maharashtra. Then the applicant came to be confirmed in the I.F.S. of Maharashtra cadre by order dt. 31.8.1992 to take effect from 15.10.1988. Then by the impugned order 11.1.1994 the applicant has been given the year of allotment as 1982.

In O.A. 458/96 G.S.Kandey is the applicant. He joined the Maharashtra State Forest Service in 1965. Subsequently, he was promoted to the I.F.S. cadre by order dt. 26.7.1993, but to take effect from 29.11.1990. Then by the impugned order dt. 31.1.1996 the applicant has been given the order of allotment as 1985.

In O.A. 44/97 V.R.Kanekar is the applicant. This applicant joined the Maharashtra State Forest Service in 1966. He was confirmed in Maharashtra State Forest Service in Class-II w.e.f. 6.4.1979 as per order dt. 11.2.1985.

Then he was promoted to I.F.S. on 15.10.1987. He was confirmed in I.F.S. w.e.f 15.10.1988 by order dt. 13.8.1992. Then by the impugned order dt. 31.1.1996 this applicant has been given the year of allotment as 1985.

3. All the applicants have common cause and have made similar allegations in their applications alleging inaction and delay on the part of the respondents in confirming the applicants in the Maharashtra State Forest Service. They have alleged that there was undue delay in considering the names of the applicants for I.F.S. It is alleged that the respondents have not followed the statutory rules in taking up the question of induction of State Officers to I.F.S. as and when vacancies arose. There was inordinate delay in considering the case of applicants for promotion to IFS cadre. It is also alleged that vacancies were not filled up as and when they arose. It is alleged that the respondents after delaying filling up vacancies clubbed together all the vacancies after a gap of few years and then considered the names of the applicants. According to the applicants they should have been promoted to the I.F.S. cadre long prior to the dates now given. For instance, in the first case V.R.Singh alleges that he was eligible for promotion to I.F.S. in 1979 itself when there was sufficient number of vacancies. He has been promoted as late as in 1987. Then all the applicants have pointed out the instances and particulars of delay in clubbing the vacancies and in taking up the case of applicants for promotion to I.F.S. cadre. According to the applicants if they had been promoted much earlier as per the vacancies available, then the year of allotment would have been much earlier than the one now given. If the year of allotment is ante-dated then the applicants will get seniority and it will be helpful for them to get future promotions. Therefore, the applicants have approached this Tribunal for two main reliefs.

They want that their promotion to I.F.S. should be re-opened and they should be promoted to I.F.S. from an earlier date. Then after giving them promotion from an earlier date, the respondents should be directed to give them proper year of allotment. The learned counsel for the applicants pressed only these two reliefs in all these three cases though in one or two cases there are other reliefs which were not pressed at the time of arguments.

4. In all the three cases the Union Government and the State Government have filed separate written statements, but their defence appears to be common. The defence is that the applications are barred by limitation and liable to be dismissed on this ground alone. It is stated that there was some delay in taking up promotions to I.F.S. due to administrative reasons and due to reasons beyond the control of the State Government. It is pointed out that there were number of litigations questioning the constitution of the I.F.S. cadre and matter went up to the Supreme Court and the dispute was finally settled by the Supreme Court in 1983. This long drawn litigation is the main reason for the respondents in not taking up the cases of the applicants for promotion to I.F.S. cadre earlier.

It is stated that the applicants case for I.F.S. could not have been taken up earlier unless they had been first confirmed in the State Service when substantive vacancy occurred. Then it is stated that the promotion to IFS of the applicants and the year of allotment have been done as per rules.

As far as the applicants in the second and third cases are concerned, it is further pleaded that they came to be appointed to the I.F.S cadre at a later stage due to orders of the Tribunal. As far as the applicant in 458/96 is concerned, it is stated that his promotion was considered and then he was

promoted as per the order of this Tribunal dt. 11.3.1992 in OA 889/90 where a specific direction was given that the applicant should be promoted from the date his immediate junior was promoted. Similarly, it is pleaded that the applicant in O.A. 44/97 had to be promoted w.e.f. 29.11.1990 in view of the Tribunal's Order dt. 29.12.1994 in OA 547/91.

The respondents, have therefore pleaded that the order of promotion and year of allotment do not suffer from any legal infirmities, hence it is prayed that all the OAs be dismissed with costs.

5. Mr. S.G. Aney, the learned senior counsel appearing for the applicants contended that there was delay in the order of confirmation of the applicants in Maharashtra State Forest Service, but he is not challenging the same in these OAs. However, he submitted that as per the relevant rules like Indian Forest Service (Recruitment) Rules, 1966, Indian Forest Service (Fixation of Cadre Strength) Regulation 1966, Indian Forest Service (Appointment by Promotion) Regulations 1966 the dates of promotion of the applicants is highly belated. It was argued after the confirmation of the applicants in State Service in 1979 they had to be considered for promotion every year from 1979 and this was not done. A comment was made that vacancies of number of years were clubbed together and then promotions were done. In fact, the applicant has even filed MP in the first case seeking amendment of the OA to take one more additional ground that for determination of vacancies even the deputation posts should be taken into consideration and this has not been done. It was, therefore, argued that if the promotions had been done yearwise from 1979 and onwards, then the applicants year of actual promotion should have been much earlier to the dates now given. He therefore, submitted that a direction may be given to the respondents to re-open the case and consider the

applicants for promotion to IFS cadre from 1979 and onwards, on yearwise basis, depending upon the vacancies available each year and then their year of promotion should be determined. Then it was further pointed out that once the year of promotion is ante-dated from the year now given to the applicants, the respondents should be directed to allot proper year of allotment to the applicants. The learned counsel for the respondents, on the other hand, contended that all the three applications are barred by limitation, delay and laches. He argued that the question of confirmation of the applicants in the Maharashtra State cadre or the question of year of promotion of applicants cannot now be raised in these applications which are filed long after the dates of promotion and therefore, the claim in that respect is barred by limitation, delay and laches. As far as the question of correct year of allotment is concerned it was argued that no material is placed on record to show that the year of allotment given on the basis of year of promotion is wrong. It was stated that the year of allotment was properly given as per Rules and does not call for any interference by this Tribunal.

While replying, the learned counsel for the applicants submitted that the applicants have got a right to challenge the year of allotment only recently when the impugned order was issued in 1994 and 2 OAs are filed within one year from the order allotting the year of allotment. Hence, there is no bar of limitation in two cases. In OA 44/97 there is a delay of few months or maximum one year in challenging the order of allotment and therefore an MP has been filed in that OA for condonation of delay which is MP 247/97 and the delay may be condoned.

6. As far as the question of limitation is concerned, the learned counsel for the applicants strongly relied on a decision of the Apex Court dt. 20.11.97



in SLP No.2078/92 and connected cases (Union of India & Ors. V/s. Jwala Prasad and Ors.), where the Supreme Court has pointed out that the year of allotment can be questioned only after an order is issued by the government fixing the year of allotment and therefore unless such an order is issued the officials cannot raise the question of year of allotment.

In view of the law declared by the Apex Court, it is to be held that as far as year of allotment and the question of seniority is concerned, the dispute can be raised by any official only after an order is passed by the Government regarding year of allotment.

In OA 1471/95 the order of allotment is communicated to the applicant by letter dt. 10.2.1994. The OA is filed on 12.10.1995. The applicant sent two representations in 1994. According to the provisions of the Administrative Tribunals Act, a party has to send a representation for exhausting departmental remedies and after waiting for six months he can approach this Tribunal. Even otherwise this is a case of few months delay in filing the application as far as his challenge to year of allotment is concerned. The applicant has filed MP 245/97 where he has given some explanation as to why there was a short delay in approaching this Tribunal. After considering the facts and circumstances of the case, we feel that few months delay in filing the application should be condoned. Accordingly, MP 245/97 is allowed and the delay in filing OA 1471/95 is hereby condoned.

As far as OA 458/96 and 44/97 are concerned there is no delay so far as challenging the year of allotment is concerned.

7. In this case there is no pleading, much less ^{any} argument addressed before us that the year of allotment is wrong based on the dates of promotion given to the applicants. It is not the applicants case that depending on the dates of promotion given to the applicants the year of allotment is wrong.

For instance, applicant in OA 458/96 and OA 44/97 were given promotion to IFS cadre w.e.f. 29.11.1990 and on that basis they have been given year of allotment as 1985. There is no allegation anywhere in the pleadings that accepting the date of promotion w.e.f. 29.11.1990 ^{is} correct, the year of allotment is wrong. Similarly, in the other case also.

Therefore, this is not a case where accepting the dates of promotion as correct, there is any error or mistake in giving the particular year of allotment to the applicants.

8. The whole case of the applicants as could be seen from the pleadings and as pressed into service at the time of arguments is that the dates of promotion of the applicants should be pre-dated or ante-dated by few years and consequently there should be correct year of allotment. For instance, the applicants case in OA 1471/95 is that his promotion to IFS w.e.f. 15.10.1987 is wrong and he should be considered for promotion every year from 1979 and on that basis he should be given proper year of promotion and as a result of year of allotment has to be changed. He nowhere says that even if the year of promotion in 1987 is correct there should be change in the year of allotment from 1982 to any earlier year and as a consequence the order of allotment which is given as 1982 should be ante-dated to some earlier year.

Therefore, in all the three cases the applicants want this Tribunal to give them an earlier year of promotion than what has already given and as a consequence the Government should be directed to re-determine the year of allotment to an earlier year.

9. The question is whether now we can go into that question of re-determining the year of promotion in view of lapse of time. In that



context the question of limitation, delay and laches assume importance.

The learned counsel for the applicants relied on many authorities to support his argument that how the promotion should have been considered from an earlier point of time and not from the actual date given by the Government. In our view, this exercise of determining the proper year of promotion to IFS cadre cannot be considered in view of long lapse of time and it is hit by limitation and principles of delay and laches.

10. In OA 471/95 V.R.Singh was promoted to the IFS cadre by order dt. 15.10.1987 (vide the order of promotion at page 39 of the paper book). Then by a subsequent order dt. 31.2.1992 the applicant was confirmed in the IFS cadre w.e.f. 15.10.1988 (vide order at page 40).

Therefore, we find that the present OA is filed in 1995 challenging the correctness of the date of promotion of the applicant to IFS cadre made on 15.10.1987. If after receiving the order dt. 15.10.1987 the applicant was aggrieved that he should have been given the promotion earlier and not as late as 1987 he should have immediately challenged the same by approaching a Court or Tribunal stating that he was given promotion to the IFS cadre in 1987, but it should be ante-dated and he should be given promotion to IFS cadre either in 1980, 1985 or 1986. The applicant took no steps to challenge the decision of the administration in giving him promotion to the IFS cadre by order dt. 15.10.1987. Now, the applicant by filing the present application eight years later in 1995 cannot challenge the correctness of the order of promotion dt. 15.10.1987. Nothing prevented the applicant from approaching the Court or Tribunal to say that he should get promotion to IFS from 1980 or 1981 and not 1987. Now, in 1995 by filing the present application the applicant cannot challenge the date of promotion given in the order dt. 15.10.1987 which is



about 8 years prior to the date of the present application. A question of seniority cannot be allowed to hang on for years to come. It is not as if giving some personal relief to the applicant in the form of some arrears of pay etc. Any decision given by this Tribunal is going to affect number of other persons in IFS cadre who are not parties to this present application. Suppose, if we now hold that the government was wrong in giving applicant promotion to IFS cadre in 1987 and he should have been promoted in 1980 or 1981 then it is going to upset the seniority list and it affects many persons who are not parties to the present litigation.

11. Under section 21 of the Administrative Tribunals Act, 1985 a party has to approach this Tribunal within one year from the date of cause of action. Here the cause of action accrued to the applicant on 15.10.1987 when he was promoted to the IFS cadre and he should have moved the Court or Tribunal that his promotion should have been considered in an earlier year i.e. in 1979, 1980, 1981 itself. Now after having accepted the promotion and having worked for eight years he cannot be heard to complain about his year of promotion 8 years later by filing this application in 1995. Therefore, the applicant's prayer in the application seeking a direction to the Government to ante-date his date of promotion to IFS cadre cannot be granted and the claim is barred by the principles of delay and laches, besides limitation. Such an exercise is bound to affect many of the IFS officers who are not parties before this Tribunal. The applicant has no right to challenge the year of allotment provided he can show that the year of allotment now given on the basis of his promotion in 1987 is wrong or incorrect. But it is not the case of the applicant at all, but he wants an earlier date of promotion to the IFS and consequently an earlier year of allotment which cannot be done due to long lapse of time, delay and laches.

12. As far as the claim of G.S.Kandey who is the applicant in OA 458/96 is concerned our view is that his case is still worse and he cannot make any ground in the present OA asking for promotion to IFS from an earlier date at all.

It is on record that G.S.Kandey was not given promotion in the first instance and some of his juniors got promotion. It has also come on record that he filed OA 889/90 asking for his promotion. The Respondents have clearly stated that because of the order of the Tribunal dt. 11.3.1992 in OA 889/90 this applicant was given promotion w.e.f. 29.11.1989. Since there was reference to this case number in both the pleadings, to satisfy ourselves, we have secured the file of OA 889/90 and perused the order passed by this Tribunal. It appears, this applicant's promotion was not considered when his juniors got promotion because some disciplinary enquiry was pending against him. But the disciplinary enquiry ended in his exoneration by order dt. 14.5.1988. Then there was one more disciplinary enquiry against the applicant and he was found guilty and a minor penalty of warning was levied as per order dt. 17.5.1988, then adverse remarks were communicated to him. But, however, subsequently the adverse remarks were expunged on his representation. In these circumstances, the Tribunal held that since the Disciplinary Enquiry has ended in his favour and adverse remarks having been expunged, his promotion should be considered from the date his two juniors who were shown as Respondents No.4 and 5 in the application got promotion by order dt.29.11.90. Therefore, the order of the Tribunal is that applicant should be considered for promotion from the date his juniors got promotion viz. w.e.f. 29.11.1990 and consequently the administration has issued the order of promotion to the applicant dt.26.7.1993 giving promotion to the applicant G.S.Kandey w.e.f.

29.11.1990 (vide the order which is at page 26 of the paper book). Now having approached this Tribunal and having obtained an order that he should get promotion from the date his juniors got promotion which means 29.11.1990, the applicant cannot file a fresh OA in 1996 and now ask for promotion from still earlier date. Even otherwise this question cannot be now agitated due to long lapse of time and the claim being barred by limitation, delay and laches which we have pointed out earlier while discussing the case of V.R.Singh.

13. Similarly, the applicant in OA 44/97 V.R.Kanekar also has approached this Tribunal in OA 547/91 and sought for promotion from 29.11.1990 when his juniors got promotion. We have secured the file and perused the order dt.29.12.1994 in OA 547/91 where a specific direction has been given by this Tribunal that the applicant should be promoted to IFS cadre w.e.f. 29.11.1990, that is how the administration has issued an order of promotion granting promotion to this applicant w.e.f. 29.11.1990. For the reasons already mentioned in considering the case of V.R.Singh and G.S.Kandey, the applicant cannot now in another fresh OA ask for promotion from an earlier date and further if he now wants promotion from earlier date the claim will be barred by principles of delay and laches.

14. In view of the above discussion, we find that the applicants cannot be allowed at this stage to re-open the question of the year of promotion to the IFS cadre. To say the least, it is barred by limitation besides being hit by principles of delay and laches. There should be certainty in service matters. This is more so, on the question of seniority. Every official must know where he stands. Therefore, in matters of seniority we cannot allow the sword to hang on for years indefinitely. If the applicants were aggrieved by the date of

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promotion they should have challenged the same as and when the order of promotion was issued and staking a claim for a promotion from an earlier date as per his entitlement and seniority. In the first case OA 1471/95 the applicant's claim is barred by limitation by 8 years. In the second case OA 488/96 the promotion order was issued in 1996 and now it is being challenged in 1996. In the third case OA 44/97 the applicant was given promotion by order dt. 30.9.1995 but the OA was filed in December, 1996. There may not be delay in filing the application after the order of promotion.

As already pointed out that in second and third cases when the applicants themselves approached this Tribunal in the previous OA and got a direction to the government to promote them from 29.11.1990 (on par with the date of promotion of their juniors) they cannot now file fresh OAs again seeking retrospective promotion from an earlier date. The principles of constructive res-judicata comes into play. They cannot again re-open and agitate the matter that they should have been promoted from an earlier date. They should have asked in the previous OA itself that as per their entitlement and seniority they should be promoted from a particular year. Having obtained the an order from the Tribunal that they should be promoted w.e.f. 29.11.1990, it does not lie in the mouth of these two applicants now in the fresh OA for seeking promotion from an earlier year than 1990. If they now want a promotion from an earlier date like say 1980 or 1981 or 1982, they cannot claim the same by filing fresh OAs in 1996 and 1997. Therefore, their claim is barred by limitation, delay, laches and also barred by principles of constructive res-judicata in re-agitating the matter once again after the decision of the Tribunal in the previous two cases.

Therefore, our finding is that all the three applicants cannot now urge or agitate the question of re-opening the year of promotion after long lapse of time.

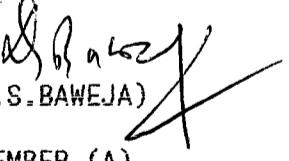
15. We have already held whether the applications are maintainable and within time so far as the challenge to the correctness of the allotment year is concerned. We have earlier pointed out that if the applicants can show that the order of allotment is wrong on the basis of their dates of promotion then this Tribunal could have considered the same and found out whether the year of allotment is correct or not. At the cost of repetition we point out that nowhere in the pleadings the applicants have pointed out that on the basis of the existing dates of promotion there is any mistake in allotting a particular year of allotment. Even at the time of arguments no such arguments were addressed before us by the learned counsel for the applicant. The whole case of the applicants both in the pleadings and in the arguments is that applicants promotion should be advanced to an earlier year say 1979, 1980 or 1981 like that and then on that basis correct year of promotion should be allotted. In our view, this is not permissible and now we cannot re-open the question of date of promotion after a lapse of so many years as far as the first case is concerned and therefore, the claim is hopelessly barred by limitation, delay and laches. As far as the other two cases are concerned there is a short delay, but when the applicants themselves approached this Tribunal in the previous OAs and took a direction from the Tribunal to appoint them from a particular date with reference to their juniors, it is not open to them now in a subsequent OA to ask for promotion from an earlier date. If they now want promotion from an earlier date say in 1980 or 1981 then the claim will be barred by limitation, besides it is hit by the principles of res-judicata which we have already pointed out.

Hence, in our view, the applicants in all these cases are not entitled to now re-open the date of promotion and consequently they have not made out a case for change of year of allotment.

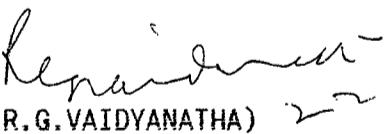
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16. Then we find that the applicant in OA 1471/95 has filed MP NO.(N)101/98, for amendment of the original application. No arguments were addressed on this MP at the time of final hearing. The amendment sought for is to take an additional pleading that determination of vacancies done for the purpose of promotion is not correct since the respondents have not taken into consideration deputation posts for determining the vacancies available for promotion. That means the applicant in this case wants to show that right from the beginning deputation posts are not taken into consideration for determining promotional vacancies and this has resulted in not considering the case of the applicant for promotion in earlier years. We have already pointed out how the applicant after a lapse of so many years cannot be permitted to re-open the date of promotion. We cannot now, go into this question about available vacancies including deputation post in 1979, 1980 or 1981 etc. That exercise, now cannot be done for the reasons already mentioned. Therefore, the MP has no merit and has to be rejected.

17. In the result, all the three applications viz. OA 1471/95, OA 458/96 and OA 44/97 are hereby dismissed. MP 245/97 is allowed. MP (N)101/98 is rejected. In the circumstances of the case, there will be no orders as to costs.


(D.S. BAWEJA)

MEMBER (A)


(R.G. VAIDYANATHA) 22/1/99

VICE - CHAIRMAN

B.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
CIRCUIT AT NAGPUR

Original Application No. 1471 of 1995

Alongwith

Original Application No. 458 of 1996

Dated this 16th the day of June 2000

CORAM :

Hon'ble Mr.V.K. Majotra, Member (A)
Hon'ble Mr.S.K.I. Naqvi, Member (J)

1. Original Application No. 1471 of 1995

Vijayshankar Rammanohar Singh,
Director,
Forest Guards Training School,
Shahpur,
Distt.Thane-421601

2. Original Application No.458 of 1996

Gurdial Singh Kandey,
I.F.S.
Dy.Conservator of Forests,
Bhandara Forest Division,
Resident of Forest Bungalow,
Bhandara

Applicants

By Advocate Shri M.M. Sudame

1. Union of India, through its Secretary, Minsitry of Environment and Forests, Paryavaran Bhawan, C.G.O. Complex, Lodhi Road, New Delhi-110003.
2. State of Maharashtra, through its Secretary, Revenue and Forest Department, Mantralaya, Bombay-32.

Respondents

By Advocates Shri Girish Chaubey
(for respondent no.1)

Shri V.S. Masurkar
(for respondent no.2)

O R D E R (Oral)

BY Hon'ble Mr.V.K. Majotra, Member (A)

Three applicants in these O.A.s were appointed as Assistant Conservator of Forests in the Maharashtra Forest Service. Subsequently, they have been inducted to the Indian Forest Service (for short I.F.S.). Later on they were allotted year of allotment. The applicants are aggrieved by the order dated 11.1.1994 (annexure-1) whereby their year of allotment in the I.F.S. was determined.

2. V.R. Singh- applicant in O.A. No. 1471 of 1995 joined the Maharashtra Forest Service Class II in the year 1966. He was confirmed in that service by order dated 11.2.85. Then he was appointed to the Indian Forest Service by order dated 15.10.1987. He was confirmed in the I.F.S. (Maharashtra cadre) by order dated 31st August, 1992 effective from 15.10.1988. By the

3. ::

impugned order dated 11.1.1994, the applicant was accorded 1982 as the year of allotment.

3. G.S. Kandey - applicant in O.A.

No.458 of 1996 joined the Maharashtra Forest Service Class II in the year 1965. He was promoted to I.F.S. Cadre by order dated 26.7.93 effective from 29.11.1990. By the impugned order dated 31.1.1996, he was accorded 1985 as year of allotment.

4. Both the applicants have a common cause having made similar allegations in their applications alleging in-action and delay on the part of the respondents in confirming the applicants in the Maharashtra State Forest Service. It is alleged that the respondents have not followed the statutory rules in considering the State Officers to I.F.S. as and

when vacancies arose. The delay in filling up vacancies by promotion led to clubbing together of all the vacancies after lapse of few years whereafter the applicants were considered. According to the applicants, they should have been promoted to the I.F.S. cadre long prior to the dates now given. In the first case - V.R. Singh has averred that he was eligible for promotion to I.F.S. in 1979 when there were sufficient number of vacancies, however, he was promoted long after in 1987. Similarly, the other applicants have pointed out delay in considering him when they became eligible for promotion to I.F.S. and when vacancies existed. According to the applicants, if they had been promoted much earlier as per the availability of the vacancies, their year of allotment would have been much earlier than the one now allocated. Thus, if the year of allotment to I.F.S. is ante-dated then the applicants will get seniority and consequently earlier consideration for future promotions. Thus, the applicants have approached this Tribunal mainly for two reliefs;

- "1. they want re-opening of their promotion matter to I.F.S. and also promotion to I.F.S. from earlier date;
2. the applicants have sought direction to the respondents to give them proper year of allotment

5 Learned counsel for the applicants has pressed only these reliefs though in one or two cases, there are some other reliefs which were not pressed at the time of arguments.

6. The Union Government and State Government have filed separate written statements in these^{1/2} cases but their defence appears to be common. According to them, these applications are barred by limitation and are liable to be dismissed on this ground alone. They have stated that there was some delay in considering promotions to I.F.S. due to administrative reasons and certain reasons beyond the control of the State Government. It is stated that there were number of litigations regarding consideration of the I.F.S. cadre and matter went up to the Supreme Court and the dispute was finally settled by the Supreme Court in the year 1983. According to the respondents, this long drawn litigation is the main reason for the respondents for not taking up the cases of the applicants for promotion to I.F.S. cadre earlier.

7. The respondents have also contended that the applicants' case for I.F.S. could not have been considered earlier unless they ~~had been~~ ^{1/2} first confirmed in the State Service, when substantive

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vacancies occurred. It is also stated by them that the promotion to I.F.S. of the applicants and their years of allotment have been allocated as per rules.

8. In the case of the applicants in O.A.No. 458 of 1996, it is further pleaded that he ^{was} appointed to the I.F.S. cadre at a later stage due to the orders of the Tribunal. The promotion of the applicant in O.A.No. 458 of 1996 was considered as per orders of this Tribunal dated 11.3.1992 in O.A.No. 889 of 1990 where a specific direction was given that he should be promoted from the date his immediate junior was promoted. The respondents have, therefore, pleaded that the order of promotion and year of allotment does not suffer from any legal infirmities, hence, it is prayed that the O.A. be dismissed with costs.

9. This Tribunal vide its order dated 22.2.1999 dismissed the claim of the applicants on the ground of inordinate delay and latches and observed that the matter cannot now be allowed to be re-opened or re-agitated. The aforesaid order of the Tribunal was carried to the High Court of

Judicature at Bombay, Nagpur Bench in Writ
Petition No. 1712 of 1999, ^{and 2634}

of 1999, decided on 11.10.1999, whereby
the order dated 22.2.1999 of this Tribunal in ^{all}
the present O.A.s was quashed and set aside,
restoring these applications and remanding them
to the Tribunal for consideration and disposal
in accordance with law.

10. We have heard the learned counsel of
both the parties and examined the material avail-
able in these O.As.

11. Learned counsel of the applicant, con-
tended that the issue of delay and latches has been
finally decided by the Hon'ble High Court of Judi-
cature at Bombay, Nagpur Bench requiring this
Tribunal to adjudicate the matter in accordance
with law. He referred to order dated 20.11.1997
in the matter between Union of India and Others
Vs. Jwala Prasad and Others J.T. 1998(8) S.C.137
in which it is held that the Central Government
is the statutory authority to determine such year
of allotment. Therefore, before such determination
is made by such statutory authority, the petitions
filed before the Administrative Tribunal were mis-
conceived and premature
If any one has grievance against such determination,
it will be open to such person to challenge the same
before the appropriate authority in accordance with
law. In this view of the matter, the starting point
of the dispute in the present matters is annexure-1

Chomiselle te zefso eni ydakewiñ AERI, f.r. Bateb
Dene te Kipnis eni ydakewiñ AERI, f.r. Bateb
te arnaliwore eni ka kipnis mi. Batebawet aw
yfliwet te molyalwet ariwet. Batebawet aw

• B.I. I. 1963 (1963-Benioffia Raya). • The I. 1963
Raya, 1963 (1963-Benioffia Raya). • The I. 1963
was composed of a number of individual segments,
each segment being roughly 100 km long.
• B.I. I. 1963 (1963-Benioffia Raya). • The I. 1963
last map sheet from G.I. I. 1963. • The I. 1963
is covering part of the following islands:

permitted to be released as promotion
by promotion) readjustment 1966
Jugjien Forest Service (abolition)

Highly Polarized Light (Kirkpatrick et al. 1988) (left)
Spherical Harmonics (right)

As a consequence of supersaturation measures to assist faster precipitation.

that buyes 8 day 8 of the Receipt
of these Rates which are made by
the case of the best condition
as follows.

the development of a "new" and "more effective" form of government, and the "abolition of the existing political institutions".

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e.g. + + +

dated 11.4.1994 whereby the order of allotment and seniority of the applicants amongst others was determined in terms of the Provisions of Indian Forest Service Regulation of Seniority Rules, 1968 (1968 Seniority Rules). The I.F.S. was constituted under All India Services Act, 1951 with effect from 01.7.1966. The I.F.S. is governed by the following rules;

1. Indian Forest Service (Recruitment) Rules 1966 (hereinafter referred to as Recruitment Rules).

2. Indian Forest Service (Appointment by Promotion) Regulations, 1966 (hereinafter referred to as Promotion Regulations).

3. Indian Forest Service (Fixation of Cadre Strength) Regulation 1966 (hereinafter referred to as Cadre Strength Rule).

That the Rule 4(2) (a) and 4(2) (b) of the Recruitment Rules provide the method of recruitment to the service namely.

1. By a competitive examination.

2. By promotion of substantive members of State Forest Service.

Rules 8 and 9 of the Recruitment Rules which are material to the case of the petitioners run as follows;

" 8 Recruitment by Promotion:

(1) The Central Government, may on recommendation of the State Govt. concerned and in consultation with

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

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

(3).

9. Number of persons to be recruited under Rule 8.—

(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 percent of the number of senior duty posts borne on the cadre of that state or group of States.

(2)"

Regulation 3(1) of Promotion Regulations provide for the constitution of a committee to make Selection of State Forest Service members for recruitment to the service. Regulation 5 of the promotion Regulations further provides for preparation of a list of suitable Officers for promotion to the Service. Regulation 5(1) and (2) are reproduced below:-

*5. 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

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as are held by them to be suitable for promotion in the Service. The number of the State Forest Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules or 10 percent of the senior posts shown against items 1 and 2 of the cadre schedule of each State or Group of States whichever is greater.

(2) The Committee shall consider for inclusion in the said list, the cases of members of the State Forest Service in order of seniority in that service of a number which is equal to five time the number referred in Sub-regulation(1);

Provided that such X

Provided further that

Provided also that the Committee shall not consider the case of a member of the State Forest Service unless, on the First day of January of the year in which it meets he is substantive in the State Forest Service and has completed not less than eight years of continuous service (Whether officiating or substantive) in posts included in the State Forest Service."

12. According to the learned counsel of ^{they} the applicants could not be considered for inclusion

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in the select list as they had not been conferred substantive status in the State Forest Service after confirmation. Vide order dated 11.2.1985 (annexure-4), the applicants were confirmed in the State Forest Service. Shri V.R. Singh and Shri G.S. Kande were confirmed w.e.f. 06.4.79, and 03.4.75 respectively. However, since these orders were issued in 1975, review D.P.C. meeting should be held for their promotion to I.F.S. between 03.4.75 to 11.2.85 in the case of G.S. Kande and between 06.4.79 to 11.2.1985 in the case of Shri V.R. Singh. Learned counsel for the applicant, contends that as per annexure-7, the Principal Chief Conservator of Forests, Maharashtra State had admitted that whereas the cadre review should have been conducted during 1969, 1972, 1975, 1978, 1981 and 1984, it was done only during the year 1977 and 1981. This resulted in accumulation of backlog of posts available under promotional quota to the extent of 18 posts in the year 1984. The break up is given below:

<u>Year</u>	<u>Authorised Strength</u>	<u>Utilisation</u>	<u>Gap</u>
1973	29	22	7
1978	29	17	12
1983	31	15	16
1984	31	13	18

12 ::

the written Statement of the respondent no.2, the vacancies in promotion quota existed in the relevant years but since the applicants had not been confirmed, they could not be considered for inclusion in the select list. The respondent no.2 has stated through his reply that as per annexure R-1, the promotion quota was under utilised from year to year because the norms for initial recruitment finally crystallised in the year 1983, when the litigation in regard to the initial recruitment to the Indian Forest Service was finally settled by the Supreme Court.

14. The next point taken up by the learned counsel of the applicant is that in view of the delay in confirmation of the applicants in State Forest Service, the applicants could not be considered for inclusion in the select list and respondents ultimately resorted to clubbing of vacancies. As a matter of fact, it is obligatory under Regulation 5 of the Indian Forest Service Appointment by Promotion Regulations, 1966 (Regulations of 1966) "that D.P.C. should meet at regular intervals for the preparation of the select list. The number of State Forest Service to be included in the list has to be calculated on the basis 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 19 of the Recruitment Rules plus 20% of such number, whichever is greater....

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16.

Learned counsel of the applicants placed reliance on the ratio of the order dated 17.11.1986 made by this Tribunal in O.A. No. 641 H.P. of 1993 Shri B.S. Parmanand Ors. Versus Union of India and Others. In that case, the respondents were directed to prepare yearwise panels for the years 1990, 1991 and 1992 as per vacancies and as per the persons who would fall within the zone of consideration for each year's vacancy/vacancies and after considering their eligibility and fitness prepare fresh Select Lists yearwise under the Rules. By this process, appointments may be made of the officers finding place in the select lists. Learned counsel drew attention to Table 'A' in O.A.No.458 of 1996 to show that the appointment by promotion was not done every year and the vacancies were clubbed to be filled in a year of recruitment which is contrary to the Rule;

TABLE - A

Sr.No.	Date of Noti- fication	Year of re- cruitment	No. of Officers appointed by promo- tion.
1.	27.2.69	1968	12 (-4) = 8
2.	03.4.74	1974	10 (-4) = 6
3.	11.4.74	1974	02 -----
4.	15.5.74	1974	04 -----
5.	30.10.79	1979	10 -----
6.	24.06.80	1980	1 (-1) = 0
7.	18.09.81	1981	5 (-1) = 4
8.	11.12.84	1984	9 -----
9.	24.11.86	1986	14 -----
10.	15.10.87	1987	11 -----

16. He further referred to the order dated 10.9.97 in the matter of Indra Singh Vs. Union of India and Others in O.A.No.982/96, in which the Allahabad Bench of this Tribunal quashed the combined select list of vacancies which arose during a period of nearly 12 years and directed the respondents to prepare the yearwise select list by filing review D.P.C. in accordance with law.

3.17. The Indian Forest Service(Fixation of Cadre Strength Regulation), 1966 (herein after referred as Regulation of Cadre Strength) were amended on 22.2.1989. According to the applicants' counsel, the promotion quota of 33 1/3% has to be calculated in the present matter under the old rules whereunder item-1 i.e. senior posts under the State Government(103) and item no.2 Central Deputation Reserve at the rate of 20% of item 1 above i.e. 21, have to be taken into account. Referring to Jabalpur Bench of the Tribunal's order dated 09.6.87 in T.A.No.81 of 1986 K.K. Goswami Vs. Union of India and Others, it is mentioned that even internal deputation reserve has to be reckoned for computing the promotion quota. The S.L.P. against the aforesaid judgment was dismissed and, therefore, ratio in that case has become binding, hence for all.

18. Learned counsel of the respondents contended that the grievance of the applicants arose when their immediate juniors were considered for promotion and, therefore, the question of their induction in the I.A.F.S. should not be considered at all. When they were not considered from 1975/1979 onwards, the question of allotment to I.F.S. relating to those years cannot arise at all. Learned counsel states that the High Court was not requested to consider the matter in this light and, therefore, the plea of limitation was not accepted by the High Court.

19. ^{above} We have seen/that this Tribunal vide its order dated 22.2.1999 had dismissed all these applications on the point of limitation. However, the Hon'ble High Court of Judicature at Mumbai, Nagpur Bench had held that the applicants were not responsible for delay and latches when the Central Government had chosen to assign the year of allotment in the year 1994 with retrospective effect from the year 1987. The High Court held the petitioners entitled to agitate the issue as to the fixation of their seniority under the consequential order with regard to their promotion if eligible under the rules. Whether or not the respondents pointed out that the grievance of the applicants arose when their immediate juniors were considered and that the question of their induction cannot be raised, we are not in a position to say. The respondents had full opportunity to raise this question as well before the High Court. If they

did not, the issue of limitation cannot be reopened before this Tribunal. In our view, the issue of limitation has been closed by the Hon'ble High Court for all purposes.

20. The next question raised by the learned counsel of the respondents is relating to the non-joinder of the essential parties. According to the learned counsel of Union of India, the U.P.S.C. is an essential party in the matter which convenes and presides over the meeting of the D.P.C. but U.P.S.C. has not been impleaded by the applicants. Learned counsel of the applicants rebutted the point by stating that this point has not been taken up by the respondents in their reply.

21. Both the learned counsel of the respondents have further taken exception to the fact that the applicants have not impleaded several I.F.S. Officers whose interest would be adversely affected if the claimed reliefs are granted to the applicants. Learned counsel of the applicants maintained that so far as the direct recruits in the I.F.S. are concerned their year of allotment depends on the year when they took the U.P.S.C. examination. Their year of allotment remains unchanged and would not be affected by any change in the year of promotion and allotment of the applicants. The question involved in the non-joinder of the parties is whether grant of relief to the applicants will cause any prejudice to the personnel, whether direct recruits or promotee,

by grant of relief to the applicants for theirpg.17/.

consideration for inclusion in the select list for the years 1975 to 1979 onwards and also any change in their year of allotment. In our view, certainly the inclusion of the applicants in the select list in earlier orders and earlier allocation of year of allotment, will adversely affect the rights of direct/promotees/officers who have joined the stream already. Although, in several cases which have been quoted above, by the applicants, U.P.S.C. and or direct/promotee officers have not been made parties, adjudication in the present case will certainly disturb the settled affairs in I.F.S. after a long period. Non-impleading the colleagues, whether direct or promotees, will lead to prejudice against them affecting their rights which accrued to them. In our view, before adjudicating the O.A.s on merits, it would be necessary and proper to require the applicants to implead their colleagues, direct recruits/promotees, whose rights may be affected if the claimed reliefs in the present O.A., are granted.

22. The applicants are directed to implead the U.P.S.C. and their colleagues in the I.F.S., whether direct recruits or promotees, whose rights are likely to be affected in case the reliefs claimed are granted to the applicants, within a period of two months from the date of communication of this order. The cases be listed on 13.11.200th for further orders.

(S.K.I. Naqvi)
Member 'J'

V.K. Majotra
Member 'A'