

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 1471/95, 458/96, 44/97 and 1083/98.

Dated this *Friday* the *28th* day of *February* 2003.

CORAM : Hon'ble Shri B. N. Bahadur, Member (A).

Hon'ble Shri S. L. Jain, Member (J).

O.A. NO.: 1471/95.

Vijayshankar Rammanohar Singh,
I.F.S., Director,
Forest Guards' Training School,
Shahapur,
District : Thane 421 601.

..... Applicant.

(By Advocate Shri S. P. Saxena)

VERSUS

1. Union of India through its Secretary,
Ministry of Environment &
Forests, Paryavaran Bhavan,
C.G.O. Complex, Lodhi Road,
New Delhi - 110 003.
2. State of Maharashtra through
the Secretary,
Revenue & Forests Department,
Mantralaya, Bombay 400 032.
3. Union Public Service Commission,
through its Chairman,
Dholpur House,
Shahjahan Road,
New Delhi - 110 011.
4. Shri J.S. Grewal.
5. Shri C.S. Joshi.
6. Shri A. K. Joshi.
7. Shri R. N. Biswas.
8. Shri S. K. Sood.

9. Shri D. C. Pant.
10. Shri S. K. Khetarpal.
11. Shri P. J. Thosre.
12. Shri M. K. Jiwarajka.
13. Shri S.W.H. Naqvi.
14. Shri Tasneem Ahmed.
15. Shri P.P.S. Yaduvendu.
16. Shri Vinod Kumar.
17. Shri S. Asthana.
18. Dr. Nandkishor.
19. Shri Alind Chandra.
20. Shri V.K. Mohan.
21. Shri Krishna Mohan.
22. Shri A. K. Saxena.
23. Shri S. N. Khurana.
24. Shri A. K. Nigam.
25. Shri R. Choudhari.
26. Shri A. D. Shejale.
27. Shri S. Bhagat.
28. Shri R. M. Dayal.
29. Shri Ashok Sharma.
30. Shri A. K. Jha.
31. Shri S. Bahadur.
32. Shri Anil Mohan.
33. Shri M. Hussain.
34. Shri P.C.S. Singh.

35. Shri A.S.K. Sinha.
36. Shri R. R. Sahay.
37. Shri Shree Bhagwan.
38. Shri S. A. Thorat.
39. Shri S.D. Sontakke.
40. Shri A. R. Chadda.
41. Shri N. B. Majumdar.
42. Shri S. C. Gairola.
43. Dr. Anmol Kumar.
44. Shri Devendrakumar.
45. Dr. Devendranath.
46. Shri A. R. Bapat.
47. Shri M. V. Joshi.
48. Shri S. D. Dakshindas.
49. Shri V. T. Patki.
50. Shri V. R. Sane.
51. Shri S.D.Samant.
52. Shri V.B. Sawarkar.
53. Shri S. D. Sathe.
54. Shri D. P. Sane.
55. Shri V.G. Takalkar.
56. Shri S. R. Dorle.
57. Shri S. B. Elkunchwar.
58. Shri M.H.N. Shaikh.
59. Shri P. L. Rajkondawar.

60. Shri S.H.A. Qureshi.

61. Shri Sarvesh Kumar.
(By Advocate Shri V.S. Masurkar
for Respondent Nos. 2 and 3).

... Respondents.

O.A. NO.: 458/96

Gurudial Singh Kandey,
I.F.S.
Dy. Conservator of Forests,
Bhandara Forest Division,
r/o. Forest Bunglow,
Bhandara.

... Applicant.

(By Advocate Shri S. R. Atre)

VERSUS

Respondent No. 1 to 3 same as in
O.A. No. 1471/95 shown above.

4. Shri J. N. Saxena.

5. Shri K. Subramaniam.

6. Shri B. Mujumdar.

7. Shri Jwala Prasad.

8. Shri A. B. Bhangare.

9 to 50 same as listed under
Respondents in O.A. No. 1471/95
from Sl. No. 4 to 45.

51. Shri B.S. Thengadi.

52. Shri Navin Singh.

53. Shri V. K. Sinha.

54. Shri F.S. Jafry.

55. Shri U. K. Agrawal.

56. Shri S. S. Misra.

57. Shri Jarnain Singh.

58. Shri K. P. Kharat.
59. Shri M. Karunakaran.
60. Shri R. K. Das.
61. Shri K. N. Khawarey.
62. Shri B.S.K. Reddi.
63. Shri R.S. Mangarulkar.
64. Dr. P. N. Munde.
65. Shri Anurag Choudhari.
66. Shri R. N. Roy.
67. Shri Anup Kumar Wadhwa.
68. Shri A. K. Mishra.
69. Shri C.R. Gajbhiye.
70. Shri Dilip Singh.
71. Shri G.R.K. Rao.
72. Shri V.S. Bardekar.
73. Shri S. H. Patil.
74. Dr. Mohan Jha.
75. Shri B. P. Singh.
76. Shri A. Ashraf.
77. Dr. V.D. Chafekar.
78. Shri Meyipokin.
79. Shri D. K. Meena.
- 80 to 91 same as listed under
Respondents in O.A. No.
1471/95 from Sl. No. 46
to 57.
92. Shri S.H.A. Qureshi.
93. Shri V. R. Singh.

94. Shri D.Y. Deshmukh.
95. Shri S.A.S. Baboo.
96. Shri S.G. Joshi.
97. Shri V. K. Walke.
98. Shri A. V. Ashtekar.
99. Shri S. V. Chandekar.

... Respondents.

(By Advocate Shri V.S. Masurkar
for Respondent Nos. 2 and 3.)

O.A. NO.: 44/97.

Vittal Ramaji Kanekar,
Deputy Conservator of Forest,
Akola,
(Maharashtra State)

... Applicant.

(None present)

VERSUS

1. Union of India through
its Secretary,
Ministry of Environment and
Forests,
Paryavaran Bhavan, C.G.O.
Complex, Lodhi Road,
New Delhi - 110 003.
2. State of Maharashtra,
through its Secretary,
Revenue & Forests Department,
Mantralaya,
Bombay - 400 022.

... Respondents.

(None present for Respondent No. 1
By Advocate Shri V.S. Masurkar for R-2).

O.A.NO.: 1083/98

Dr. Arun Ramchandra Bapat,
Occupation : Service
Resident of Nasik.

... Applicant.

(In person)

VERSUS

1. Union of India through
The Secretary,
Government of India,
Ministry of Environment and
Forests, C.G.O. Complex,
Paryawaran Bhawan,
Lodhi Road, New Delhi 110 003.
2. The State of Maharashtra (through
its Secretary, Forests),
Department of Revenue and Forests,
Mantralaya, Annex Mumbai 400 032.
3. The Principal Chief Conservator
Of Forests,
Maharashtra State,
Jaika Motors Building,
Nagpur 440 001.
4. Shri A. K. Jha,
Conservator of Forest,
Thane.
5. J. N. Saxena.
6. C. S. Joshi.
7. A. K. Joshi.
8. D. C. Pant.
9. P. J. Thosare.
10. Srirish Asthana.
11. S. N. Khurana.
12. A. K. Nigam.
13. R. M. Dayal.
14. Sarvesh Kumar
15. A. K. Saxena.
16. Alinda Chandra.

... Respondents.

(By Advocate Shri V.S. Masurkar
for Respondent Nos. 2 & 3.
By Advocate Shri G.S. Walia for
Respondent No. 4.
By Advocate Smt. S.P. Joshi for
Respondent Nos. 5 to 15).

O R D E R

By Hon'ble Mr.B.N.Bahadur, Member (A) -

We have heard, together, the above four OAs as there is similarity in the facts and issues. However, wherever there are differences these have been dealt with, in exclusion. It must be noted that the Applicants in all the four OAs are members of the Indian Forest Service (I.F.S.) and have come up to this Tribunal making claims and seeking reliefs basically in regard to seniorities in service. The parties/their counsels in the case were heard by us at length over a few days. For the sake of convenience we first take up the case of the Applicant in OA 1083 of 1998 viz.Dr.A.R.Bapat.

2. The Applicant had filed this Application in 1998, and had submitted that the Application is made pursuant to final rejection of his representation submitted pursuant to the direction issued in the case which went up to the Hon'ble Supreme Court. Direction's of Jodhpur Bench of this Tribunal has been described in Para 3 of the OA. The Applicant states that he was selected by the Maharastra Public Service Commission (MPSC) for Superior State Forest Service Class II (SSFSC -II) in 1964-65, underwent two years training at Dehradun. Applicant's career progression is then described and the point is made that executive has no right to postpone confirmation because date of confirmation i.e. working against substantive vacancy is one of eligibility conditions for induction into the Indian Forest Service. Further, he states that he was confirmed w.e.f.

31.12.1975 (Annexure-4) promoted to Deputy Conservator of Forest - Class I (DCF - I), vide order dated 18.2.1976 (Annexure-5) and that after two years had acquired the right to stand confirmed but, the Applicant further states, he was inducted into Senior I.F.S. cadre (Maharashtra) only vide order dated 11.12.1984, and confirmed into the Indian Forest Service vide order dated 7.9.1998 (Annexures A-6 & A-7).

3. The Applicant submits that he could foresee the hardship that would come to a lot of State Class II Officers, and therefore started agitating at the proper time in 1985. Representations made by him are then described. The Applicant, thereafter, had approached the Jodhpur Bench of this Tribunal by filing OA 244 of 1991 which OA was disposed of on 3.8.1994 and a copy of that order is available at Annexure-11. The Applicant states that basically this Tribunal had directed the Respondents to decide about the year of allotment, within a period of four months. In fact, Applicant states that somewhere in August, 1994 he received a copy of order dated 11.1.1994 from Respondent no.3 and claims that this was not brought to the notice of the Jodhpur Bench. Further progression and development are then described including disposal of one SLP by Hon'ble Supreme Court, dated 20.11.1997. The point made by the Applicant is that the Government of Maharashtra inordinately delayed the confirmation of SSFSC -II officers, thus denying them opportunity for being

considered for appointment to the IFS at the correct time. The Applicant further states that due to non-determination of vacancies, non-revision of the cadre strength/composition of Maharashtra Cadre and due to the fact that initial recruits of Indian Forest Service unlawfully occupied promotional quota posts, it has so transpired that persons who are juniors to the Applicant have become senior to him. It is stated that there was no reason to exclude the Applicant from promotion in the year 1973 itself or at best in 1974, and that some three of his juniors have superseded him eg. Shri J. N. Saxena, Shri B. Majumdar and Shri Jwala Prasad.

4. During the course of the pendency/hearing of the OA, the Applicant had moved certain amendments which had been allowed accordingly. Para 8 i.e. "relief sought" column has been amended and now stands to read as follows:

(1) The order assigning the year of allotment and seniority of the 50 (Fifty) promoted officers of the Maharashtra Cadre of Indian Forest Service, since rests on impugned order in OA No.189/88 and determined by the Central Government, during the pendency of "Special Leave petition (Civil) No.2078 of 1992 UOI and ors. Vs. Jwala Prasad and ors. (with special leave petition Nos.13491/92 and 6279/93, be quashed.

(2) The cursory rejection of applicants representation dated 19.3.98 on the basis of partial facts, irrelevant matters and misconstrued facts, being wrongful order dated 23rd Oct.1998, be set aside.

(3) The wrongful notification number 17013/12/83-IFS-II Government of India, Ministry of Agriculture, Department of Agriculture and Co.op New Delhi dated 11th December be quashed.

(4) The respondents to determine the vacancies in the IFS cadre of Maharashtra in the year 1973 onwards and to see that the candidates who were eligible under the occurrence/availability of vacancies and their service record may also be seen for the year which promotion is to be made, and if the Applicant is found to be suitable, then he may be promoted in the IFS cadre from that very year and he may be awarded all consequential benefits.

(5) That after holding the meeting as aforesaid the respondents may be further directed to assign the year of allotment to the applicant and he may be given all consequential benefits flowing from the allotment of year.

(6) That the petitioner may further be promoted from the date when a person junior to him has already been promoted and he may be given all consequential benefits pertaining to pay fixation, seniority and further promotions if any etc.

(7) Any other which may be considered just and proper in the facts and circumstances of the case may be passed in favour of the Applicant.

(8) This Original Application may kindly be accepted and the Applicant may be granted cost with interest.

5. Similarly, Private Respondents 4 to 16 have been arrayed and notices were duly served to them through the State Government. Replies have been filed in this case on behalf of the Central Government (Page 385), by the State Government (Maharashtra) and by some of private respondents/intervenors in the case. Attention at this stage must be drawn to the Hon'ble Supreme Court's order dated 18.2.2002 where the Hon'ble Apex Court has directed the Tribunal to serve notice on the Secretary, Government of Maharashtra (Forest Department). ~~On our notice, Secretary shall circulate among all direct recruits.~~ It is further ordered that those of them who applied before the Tribunal would be impleaded and heard as parties before the Tribunal. This order was made on application filed by one Shri

Alinda Chandra who was also added as party respondents. These orders have been followed.

BnB 6. The Government of India in the Ministry of Environment and Forests has stated that all points raised by the Applicant were met out in detail in the impugned order dated 23.10.1998 (Annexure-20). Parawise replies are then submitted and all allegations are denied. The rules concerning promotion of officers to Indian Forest Service are outlined, including the procedure expected to be followed as also the rules relating to the determination of year of allotment. It is stated that Applicant was promoted to the IFS w.e.f. 11.12.1984 and was allotted 1983 as year of allotment in terms of the rules and was placed below one Shri P.C.Singh, a direct recruit of 1980 batch. Since the Applicant has not officiated continuously on cadre post in accordance with Rule 9 of IFS (Cadre) Rules, his seniority in the IFS was determined with reference to the date of promotion to the SSFS. Parawise replies are provided and it is reiterated that all the contentions raised have been answered and dealt with in the order dated 23.12.1998 (Annexure-20). It is further stated that confirmation of the Applicant in SFS is the concern of Respondent no.2. It is also stated that the finalisation of initial constitution to the IFS Cadre of Maharashtra got delayed due to some orders of various Courts and came to be finalised only in 1983. It is stated that this was

unavoidable due to pending litigation. It is pointed out that applicant cannot equate himself with direct recruits since he is initially appointed to the SFS, and that Applicant is under mistaken belief that S/Shri B.Majumdar and Jwala Prasad are his juniors. These are directly recruited officers, unlike the Applicant.

7. A statement has been filed on behalf of Respondents 2 & 3 i.e. State Government of Maharashtra where apart from taking the point regarding delay and laches, parawise replies are provided. It is stated that the position is explained in detail by the Central Government and that the claim of the Applicant is devoid of merit. The Applicant was appointed regularly as ACF Class II w.e.f. 1.4.1967 after completion of training and his confirmation is made with others in substantive posts w.e.f. 31.12.1975 and was later preponed as 4.6.1973. It is further stated that mere confirmation in State Forest Service does not confer a right for induction in the IFS from that date. Applicant was considered for IFS from 1974 onwards but he was selected in 1984 on the basis of Select List prepared by the UPSC.

8. Respondents 5 to 13 have been represented by learned counsel viz. Ms. S.P.Joshi and Respondent no.4 by learned counsel Shri G.S.Walia. Respondent no.16 Shri Alinda Chandra has filed a reply. These have been considered, and while they are not being para-phrased, ^{and} here, their contentions are being taken into account.

9.1 In OA bearing No.1471/95, the Applicant Shri V.R.Singh has come up to the Tribunal seeking the relief for quashing and setting aside of the impugned order dated 11.1.1994 issued by Respondent no.1 through which years of allotment of the Applicant to the IFS have been ordered. A direction has also been sought to the Respondents to recast the promotion quota of the IFS and consider him for promotion to the IFS, from 1979 onwards, and promote him from the date he is found suitable. Consequential benefits are also sought. Applicant's case as made in the OA is as follows, in gist. The regulations for governing promotion to the IFS and the procedure are first described in detail and it is stated that Applicant completed required 8 years' of service on 1.4.1974. He ought to have been confirmed immediately after completion of probation on 1.4.1970. He finally came to be confirmed vide order dated 11.2.1985 which granted substantive status to the Applicant by awarding deemed date to 6.5.1979. He was considered for promotion in IFS in 1986 and finally came to be promoted on 15.10.1987. Since the order of confirmation was issued on 11.2.1985, the Applicant could not be considered for promotion to the IFS between 6.4.1979 to 11.2.1985, although vacancies were available. The Applicant further avers that the determination of year of allotment which is very important, was made after a lapse of 7 years on 11.1.1994 and that too not correctly. 25 officers were allotted as 1992 as year of allotment and the point regarding this aspect is also discussed in the OA by stating that full utilisation of available vacancies

in the promotion quota was not done. Details are given in Para 4.9 with certain names etc.

9.2 The Applicant avers that it can be seen that by the Regulations being not followed, the Applicant was deprived of his right to be considered for promotion to the IFS at the correct time i.e. in 1979, if not earlier and that his year of allotment in IFS would have been 1975 if not earlier. Certain grounds have been taken by the Applicant in OA which amongst others were argued by his learned counsel Shri S.P.Saxena.

9.3 A Reply has been filed on behalf of Respondent no.1 where the first point is taken that the Application is barred by time. The methodology of determination of seniority etc. is described with reference to rules and it is stated that while ordinarily the Selection Committee should meet every year to consider promotion to the SSFS Officers to the IFS, there could be reasons beyond the control of the State Government where regular meetings may not take place. Reliance is sought in this regard from the judgment of Kasturi (1998 1 SCALE 11). It is stated that finalisation of initial recruitment to Maharashtra Cadre was delayed due to litigation pending in the court of law and the aspect relating to initial recruitment cannot be raised now. Selections made subsequently cannot be invalidated merely because meetings were not held at that stage, on an annual basis. It is stated that impugned order has been rightly issued in terms of the provisions of Seniority Rules and the Applicant has been assigned 1982 as year of allotment.

10. Respondent no.2 has also filed a statement which states that the Applicant was confirmed in MFS Class II vide order dated 11.2.1985 in the substantive vacancy become available for his confirmation as per seniority. Order of confirmation of the Applicant cannot be issued earlier than 11.2.1985 since the Applicant was confirmed till 1985. For want of vacancy he could not be considered for appointment to the Indian Forest Service. It must be noted here that during the course of pendency/progression of the OA, the Applicant has been granted permission to amend the OA by incorporating additional Respondents than Respondent no.1 (incorporation of Respondent nos.4 to 61 who are other officers of the IFS). Replies have been filed on behalf of certain Respondents in a statement available on the Paper Book from Page 132 onwards. Similarly Dr.A.R.Bapat who is respondent no.46 has also filed reply. While all replies filed are not being paraphrased here, these have been considered.

11. In OA 458/96, the Applicant Shri G.S.Kandey whose case is similar to the Applicant Shri V.R.Singh in that he is also a direct recruit to the State Forest Service Class II. He is also aggrieved that the seniority accorded to him and comes up to the Tribunal seeking the relief by way of direction to Government to hold a review selection to the IFS by considering Applicant immediately after he became eligible for consideration in terms of Regulation 5 of Indian Forest Service (Appointment by Promotion) Regulation, 1966. He also seeks a declaration that 36 officers who were initially recruited and promoted were promoted

illegally and that Applicant should be considered for appointment to the IFS from his date of confirmation in SFS (3.4.1975). Consequential benefits are also sought. It may be mentioned that Applicant also seeks that the Tribunal hold and declare that it is mandatory to hold meetings of Selection Committee every year after the first action of initial recruitment is over. The Applicant has also incorporated a large number of private Respondents (All officers of Indian Forest Service) i.e. from Respondents 4 to 99. Notices have been served in the manner as indicated above and certain written submissions have been filed by some private respondents. The stand taken by Respondent no.1 and Respondent no.3 are similar to the stand taken in the OA No.147 of 1995 filed by Shri V.R.Singh.

12. OA 44 of 1997 has been filed by yet another officer viz. Shri V.R.Kanekar who is also directly recruited to MFS Class II. In the case of this Applicant, he states that he was sent to training at Dehradun on 1.4.1966 completed his training on 1.4.1968, completed two years probation on 31.2.1970 and was promoted to the post of DFO in September, 1980 in Maharashtra Forest Service Class I. The Applicant was confirmed in Maharashtra Forest Service in Class II vide the same order of 11.2.1985 w.e.f. 6.4.1979 and was promoted to IFS on 15.10.1987. The case therefore is similar. The stand taken and the case presented by the Applicant is also similar to the case of Shri

Kandey and Shri V.R.Singh which has already been described in detail above. Para 8 of the OA through which the relief sought has been mentioned, however reads as follows:

"(a) Quash and set aside the order dated 2.3.96/31.1.96 issued by the G.O.I. communicating year of allotment of applicant to IFS. (Annexure 1 & 1A).

(b) Direct the Respondent to recast the recruitment to the promotion quota of IFS and recruitment to consider the Applicant's name for promotion to IFS from 1979 and onwards. If he is found suitable he be promoted to IFS from relevant date.

(c) Direct the Respondent to extend all consequential pecuniary and other benefits of seniority etc. to the Applicant after re-determination of his year of allotment and seniority."

Replies have been filed on behalf of Respondent no.1 where the stand taken is similar to the stand taken in the other two cases of S/Shri Singh and Kandey, a separate written statement has been filed on behalf of Respondent no.2 (Government of Maharashtra) where also the stand taken is similar to the earlier stand taken by them in the cases of Shri Singh and Shri Kandey. In Para 10 of his written statement to the State Government, the peculiar facts and dates with reference to the case of Shri Kanekar are described.

13. We have heard arguments in great detail as made by the Applicant himself in OA 1083/98 i.e. by Dr.Bapat, by learned counsels Shri S.P.Saxena for Applicant in OA 1471/95, by learned counsel Shri S.R.Atre for Applicant in OA 458/96, Shri V.S.Masurkar for the State of Maharashtra in all cases and Shri C.N.Anand for the Union Government. Learned counsel Ms. Joshi was heard on behalf of the private Respondents represented by her

(as in title sheet above). One of the intervenors Shri Sood who is private Respondent in OA 1471/95 and OA 458/96 was also heard personally while Shri G.S.Walia, learned counsel was heard for Respondent no.4 and Ms.Joshi for Respondents 5 to 15 in OA 1083/98. Some of the arguments were made at great length and have been carefully considered, the gist of this arguments is recorded below.

14. Arguing his case Dr.Bapat recalled the Supreme Court order (page 139) where the issue related to inter se seniority of direct recruits and promotees in IFS, Maharashtra Cadre. Shri Bapat then traced the fact of unreplied representations and his filing the OA in June, 1998. Dr.Bapat contended that the order made by Jodhpur Bench of the Tribunal was important (Page 127). He argued that the delay and laches aspect had been set aside by the High Court and that the matter now has to be heard on merits alone.

15. Dr.Bapat then dwelt at some length on the point that vacancies were available at the relevant time in IFS, and that the details as filed in the case of Shri V.R.Singh may be seen. He argued that DPCs were held only in 1969, 1974, 1979, 1981 and 1984. No cadre review as per rules was held. He also drew our attention to the letter of the PCCF (Page 87) and argued that PCCF had clearly supported the cause of the promotees vide this letter.

16. Arguing the case on behalf of the State Government, their learned counsel Shri V.S.Masurkar stated that all Applicants really seek protection vis-a-vis Jwala Prasad's case and that what was really involved was the aspect of year of allotment. Reliance was sought in the case of Chandra Prakash (2001 (2) SC SLJ 1). It was argued that the allowing of new parties to be added did not save the Applicants from limitation. Unsettling of seniorities was not proper as per settled law. It was argued that in Shri Bapat's case only prayer at 8 (ii) survives where he is aggrieved by what he calls the cursory rejection of his representation. Shri Masurkar argued that Applicant's case was hit by constructive res judicata as he is asking reliefs one by one. Only malice can be the basis of his demands.

17. Arguing for the Applicant in OA 1471/95, learned counsel Shri S.P.Saxena first took us over the facts of the case. He argued that Applicant was not considered for induction to IFS in time, that his year of allotment should be 1975 and also dwelt on the point that the letter at page 41 showed that there were adequate number of vacancies at the relevant time. He argued that unless year of allotment was given, no one can come up for redressal of grievances and that the High Court judgment implies that there would now be no limitation, delay and laches, Government had to make amends for not holding regular DPCs, clubbing years of vacancies being filled up, not undertaking cadre review and their other faults. Thus there had been gross negligence by the Government for which Applicant could not be made to suffer, it was argued.

18. The case for Applicant in OA 458/96 was argued by learned counsel Shri S.R. Atre. He first took us over the facts and chronology of events as also the relevant rules etc. He referred to the judgments of the High Court in the matters relating to the Applicants and argued that substantive or officiating service of 8 years duration in the State service was enough for eligibility for consideration to IFS. He referred to the written statement of State Government at page 88, onward and stated that confirmation was not relevant. This stand of requirement of confirmation has also been taken by Central Government in Para 11 of its written statement and is not a correct stand. Applicant had become eligible in 1974 (in this connection it must be seen that State Government has said in para 7 of written statement page 89) that Applicant had once been superseded by his juniors for appointment to the IFS. It was hence argued by Shri Saxena that Applicant's case should be reconsidered as if in the DPC of 1975.

19. There was no representation ^{by} Applicant in OA 44/97 but Applicant's written pleadings and such other arguments in other cases as were relevant in his case were considered carefully.

20. In regard to the three OAs other than Shri Bapat, Shri Masurkar made the following arguments in gist. Shri Kandey relies only on Jwala Prasad's case. In fact his prayer clause shows that he is aggrieved in the matter of recruitment to the IFS and not about his seniority. These matters have been decided and he cannot come up now. Kanekar's case was identical to Shri

Kandey's case. Reference was drawn to the matter in Writ [Petition 4706 of 1999. It was argued by Shri Masurkar that the High Court case referred (Jwala Prasad's case) only to the aspect of year of allotment and not for induction into IFS. Reliance was placed on case laws in the matter Y.R.Mohan Vs. GOI (2001 (2) SLR SC 36). Shri Masurkar also argued that, Shri V.R.Singh was in fact seeking reliefs on the aspect of year of allotment also and that correct year of allotment was provided, in regard to Para 8.2 it suffered from delay and laches. Learned counsel Shri Masurkar produced for our perusal a number of files (original record) relating to Selection Committee meetings right from the year 1974 onwards and prayed that these may be gone into as relevant.

21. Learned counsel Ms. Joshi argued the matter for person represented by her and first made the point that Dr. Bapat's case was hit by the principles of res judicata and constructive res judicata. ~~The~~ ^{her} pleas not taken are to be deemed abandoned (AIR 2002 SC 1013 - Korda case). She adopted Shri Masurkar's arguments in this regard and made the point that her clients were not parties in the High Court and were coming up in this litigation for the first time. She argued that the only saving from delay and laches could occur in the matter of year of allotment (for seniority) and not for any other cause. Ms. Joshi argued that there have been no representations between 1975 and 1984 and the matter could not be re-opened later.

22. A point was also made on the argument of existence of vacancies to the effect that since the "not-exceeding" clause exists for promotees there were no rights to Dr.Bapat as was clear from T.N.A.S. case reported at 2000 (5) SCC 728. The aspect of initial recruitment was then dealt with by Ms.Joshi who stated that IC officers were filling up the promotion posts to a very large extent at the initial stage. The case of K.Prasad Vs. UOI referred to in the written statement of Shri Alok Joshi at page 718 of the Paper Book was then referred to at some length. There was no provision of mandatory nature for Selection Committee meetings to be held every year, it was also argued.

23. Referring to the other cases especially of Shri V.R.Singh, learned counsel Ms. Joshi stated that even for induction to the IFS or before no recourse was taken to litigation in time either before the State or Central Administrative Tribunal and the matter relating to delayed confirmation is not a matter before the C.A.T. now. There is no prayer for quashing the orders issued between 1979 and 1985. Miss Joshi then dwelt at some length on the law settled against unsettling of settled position of seniority especially after all this time.

Learned counsel Shri G.S.Walia argued the case for Respondent no.5 in OA 1083 making the following points; that the reliefs sought were vague and that relief sought at Annexure-8-C was also not relevant and that vague pleas had also been taken

before the Hon'ble Jodhpur Bench which had rejected them. It was argued that Jwala Prasad's case did not help the Applicant, that the case was hit by res judicata and constructive res-judicata, that the order of Jodhpur Bench was final and no liberty was granted by Jodhpur Bench. It was argued that while Applicant's have taken the plea of vacancies being available, no clear cut data had been provided by the Applicants. That M.A.T's findings were relevant. The argument regarding aspect of unsettling of settled position resulting in chaos and complication as also limitation were dealt with at some length by Shri Walia who stated that being impleaded in 2002, he in any case was not affected in this regard (AIR 2001 SC 1185).

24. One of the Respondents namely Shri Sood argued his case in person stating that he was private respondent and had filed affidavits in the cases of Shri V.R.Singh and Shri G.S.Kandey. First taking up the point regarding vacancies, Shri Sood rested his case on the written statement and stated that the Hon'ble Supreme Court has settled the matter in the case of K.Prasad in so far as initial constitution (IC) is concerned. Thus 80 out of 90 posts were already filled to start with and only 10 posts could have been filled. Shri Sood was at pains to point out that it was not as though a large number of vacancies were available as is being made out by the Applicants especially Dr.Bapat. He then referred to the written statement filed by him and stated that gaps existed between authorised strength and

utilisation. These were decisions taken at the early stage and it was not in any way justified at this stage now for Applicants to claim that they should be filled in with retrospective effect. No law was violated. Giving examples, Shri Sood stated that in 1979 only 11 officers (promotees) could have been taken whereas Shri Kandey is at a lower serial number where he would have to supersede 17 persons which cannot be his claim. Further stating that the direct recruit ratio was well below authorised strength, Shri Sood prayed that costs may be awarded since persons like him are being dragged to the Court from time to time.

25. We have perused all the papers brought before us in the four cases and have carefully seen the written statements etc. and have taken into consideration the arguments made. We have also seen the judgments on the basis of which arguments are being raised.

26. Let us first recall that in the position of rules etc. governing the All India Services. including the IFS as in these cases, two important major steps are involved. The first relates to the induction of the State Forest Service (SFS) Officers' to IFS and the second, the determination of year of allotment in respect of such officers. The provision of year of allotment is in fact the provision of seniority and inter se placements vis-a-vis direct recruits is then made as per rules. Let us take up the case of Dr. Bapat (OA 1083/98). A reading of Para 8 which consists of eight sub paras by way of relief sought, in fact shows clearly that he is questioning both aspects, even though

the prayers may have been drafted in a manner that does not clearly show that tries to make out as if he is questioning only seniority. In fact in his arguments the first aspect about his not being inducted into IFS at the correct time i.e. after eight years of service was strenuously stressed upon; the question of vacancies available at that time was also argued in detail. Now the objection taken by Respondents on all sides vis-a-vis limitation and delay and laches has to be examined with regard to the aforesaid two stages of induction into the IFS and allotment of seniority. It was argued by Dr.Bapat and other Applicants that the issue regarding limitation, delay and laches has been closed by the Hon'ble High Court and the case can be only decided on merits. We have carefully seen the order of the High Court dated 9.4.2001. The Hon'ble High Court refers to the order of the Apex Court in SLP (Civil) No. 2078/97 dated 20.11.1997. The operative part of the order is quoted and opportunity to have the Application decided on merits has been granted with reference to the order of Hon'ble Supreme Court dated 20.11.1997. The order of the Hon'ble Supreme Court is the order which refers only to the aspect of year of allotment as is amply clear from its perusal. Thus it is a position of facts that the protection vis-a-vis of limitation, delay and laches relates only in regard to determination of the seniority i.e. year of allotment, and not regarding the grievances relating to induction into the IFS.

27. We have also gone into the facts of the earlier litigation of Dr. Bapat before the Jodhpur Bench of this Tribunal. We have considered the various arguments taken on the basis of this judgment, by rival parties. The Jodhpur Bench of the Tribunal has provided relief to the Applicant in the following terms:

" We have heard arguments on behalf of both the sides. The limited question now in this O.A. is that the Applicant has not been given the year of allotment and for some reasons he has filed the O.A. and the same is admitted by the respondents in the para stated above, we therefore, dispose of this O.A. by giving a direction to the respondents that they shall inform the applicant about the year of allotment within a period of four months of this order and if he becomes entitled for any consequential benefits the same shall be paid to him. We further direct that while considering the year of allotment they shall keep in consideration the order Annexure-A-3 dated 11th February, 1985."

Clearly no reliefs were provided to the Applicant Dr. Bapat in respect of his grievance regarding his late induction into the IFS. Well as the Applicant may have grievance against this order, it cannot be gone into in this OA since the order of Jodhpur Bench made on 3.8.1994 had attained finality. In fact the contention taken by learned counsel Ms. Joshi and others about constructive res judicata and res judicata vis-a-vis this order of Jodhpur Bench holds force. Thus, he cannot come up in the matter regarding late induction into the IFS. One must note here that therefore we now need not go into vacancies available etc. at a time of completion of eight years of service by the Applicants in all four cases. Nevertheless there is some substance in the argument that even these cannot be determined by

us as no facts and data have been provided in clear terms by Applicant regarding vacancies, in fact the doubts raised by Shri Sood have some relevance.

28. Now once the above conclusion is reached we can certainly go into the merits of the case vis-a-vis year of allotment of Dr. Bapat ^{and others Prs}. It is not shown how the year of allotment is wrongly determined. The whole argument was that since induction was late the year of allotment was wrong. It is not as though there is a calculation mistake. Hence no relief becomes due in the matter of year of allotment.

29. Dr. Bapat ^{and others Prs} has raised certain points in regard to initial constitution. It was argued on behalf of the Respondents that this issue has been settled by the Hon'ble Apex Court in the matter of K. Prasad and others Vs. Union of India and others, (AIR 1988 SC 535). The judgment of the Hon'ble Supreme Court has been seen by us and indeed settles the entire matter. The judgment discusses the issues in great length, and being in rem applies to the Maharashtra Cadre also. Thus the objection regarding initial constitution do not hold force. In view of the above circumstances, the relief sought by Dr. Bapat cannot be provided.

30. In the other three cases the basic facts are similar, in that all of them are direct recruits in the State Forest Service. However certain individual details are different and have been carefully considered. All papers have been seen and arguments considered.

31. Let us first take the case of Shri G.S.Kandey (OA 458/96). A careful perusal of the relief sought by him at sub paras 1 to 7 of Para 8 shows that Shri Kandey is seeking remedy against his delayed appointment to the IFS. In all the sub paras of para 8, the relief sought is for a direction to hold a review selection to the IFS and provide him such selection after the completion of 8 years of service in SFS, on 1.4.1973. As we have discussed in detail above in Dr.Bapat's case, the seeking of this relief is hit by the law of limitation and delay and laches. As discussed above, the judgment of Jwala Prasad and that of Hon'ble High Court provide protection only in matter of seniority. Hence, the case of Shri Kandey will fail as grossly hit by the law of limitation and the infirmities of delay and laches.

32. In the remaining two OAs viz. OA 1471/95 filed by Shri V.R.Singh and OA 44/97 filed by Shri V.R.Kanekar, the reliefs are sought on both counts viz. late induction into the IFS and late seniority and alleged wrongful grant of seniority thereby. In fact a perusal of their cases shows that, shorn of the facts of

earlier litigation in Dr.Bapat's case the cases put forth by the other three Applicants are similar to Bapat's case, in arguments made and grounds taken. We have discussed the various stands taken and the issues involved above while dealing with Dr.Bapat's case . These need not be repeated as they apply to the cases of Shri V.R.Singh and Shri V.R.Kanekar, squarely. Therefore, there would be no ground for providing the relief sought in these two OAs either.

33. In view of the above discussions, all the four OAs (viz.OAs 1471/95, 458/96, 44/97 and 1083 of 1998 are devoid of merit and are hereby dismissed. No orders as to costs.

Member(J)

Member (A)