

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:: HYDERABAD BENCH
AT HYDERABAD:

O.A.NO. 130 of 1990.

BETWEEN:

1. B. Thrinadha Rao and
(8) others.

... APPLICANTS.

AND

Union of India and
(12) others.

... RESPONDENTS.

...

COUNTER AFFIDAVIT FILED ON BEHALF OF THE RESPONDENTS
11 AND 13.

I, Santokh Singh, S/o. *Lale S. Karam Singh*, aged
56 years, working as Divisional Forest Officer, Hyderabad
do hereby solemnly affirm and sincerely state on oath
as follows:

1. I am the Respondent No. 13 in the above O.A and as
such I am well acquainted with the facts of the case.
2. A copy of the Original Application is read by me
and I understood the contents therein by the applicants.
I am filing this ^{Counter} affidavit on my behalf and also on behalf
of the Respondent No. 11.
3. The above application is not maintainable and it
is liable to be dismissed as time barred. In the above
application the prayer was for a declaration declaring
the selections made resulting in appointment of respon-
dents 6 to 13 in pursuance to the selections from 1985-
1988. The earliest of the G.Os that was sought to be
questioned in this context was G.O.No. 1279, FAH&F Department
dated 16-12-1986. Therefore, the above application should
have been dismissed in limine as time barred. The delay
in not questioning such selection immediately thereafter
was neither explained nor the delay was prayed to be

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[Signature]
Deponent.

condoned . Under these circumstances, the application should have been dismissed as time barred. Therefore, it is now prayed that the above application be treated as belated and time barred and on this count this may be dismissed.

4. It is further submitted that the failure to prepare Inter-se seniority list as alleged by the applicants cannot be an action that can be questioned before this Hon. Tribunal and infact, the applicants have rightly questioned the same by way of filing O.A.No.3183/88 on the file of the A.P.Administrative Tribunal and the same is still pending. The legality or illegality of the action of the respondent authorities in not preparing the final seniority list as alleged by the applicants comed within the purview and the jurisdiction of the A.P.Administrative Tribunal and accordingly the same was questioned by the applicants before the A.P.A.T, therefore they cannot agitate for redressal against the said cause of action by way of filing the above O.A. Therefore, this application is liable to be on that ground also. The above application is also liable to be dismissed on the ground that it is premature, since the correctness of the action of the government depends upon the finding to be rendered by the A.P.A.T in O.A. 3183/88. Unless such decision is rendered the question of entertaining the above application by this Hon. Tribunal does not arise.

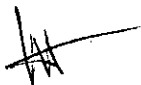
The whole basis for questiong the action of the respondent authorities in making promotions under the promotional Regulation 1966 of the respondents 6 to 13 is the lack of seniority list which was expected to be prepared by the respondent authorities. The contention ~~that~~ was that the seniority/^{list} was not made and such inaction of the respondents was already questioned before the A.P.A.T.

Before obtaining final orders in such O.A the applicants now have chosen to file this application simultaneously allowing the Hon. Tribunals to raise the parallel decisions in parallel proceedings leading to considerable confusion and confrontation. It is well settled now that the courts do not choose to render Judgmenets deciding the issues leading to conflicting Judgements by competent courts in-respect of the same or common issues. Therefore, this Hon. Tribunal may refrain from considering the issues involved in the above matter till the issue is finally settled by the A.P.Administrative Tribunal in O.A.3183/88, and therefore, this application may be rejected on the ground that the filing of the O.A is premature.

5. Having been served with the copies of the O.A, I am advised to file this counter-affidavit with reference to the averments made therein and accordingly this Counter affidavit is filed while requesting this Hon. Tribunal to decide the maintainability of the application by way of taking up preliminary issue before resorting to adjudicate the issues involved in the main O.A.

It is necessary to notice that the main relief that is sought for in the above O.A. The prayer is to call for the records relating to the promotions that are made in pursuant to the select list of the years 1985-86; 86-87 and 1988 of the respondents 6to 13 to the cadre of the Indian Forest service and to declare such appointments as illegal and void. Consequentially the applicants also prayed for a direction directing the respondents 1 to 5 to review the selection lists of the years 1985-1988duly considering the names of the applicants after preparing a valid inter-se seniority list and pass such other orders.

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Deponent.

6. Thus promotions made in pursuance to the select list prepared by the authorities are questioned and after setting-aside such promotions the applicants prayed for a direction for preparation of a valid inter-se seniority list of the direct recruits and the promotees and basing upon such list the applicants prayed for consideration of their names by way of reviewing the select lists of the year 1985-1988. A direction to prepare a valid inter-se seniority list in the category of the Assistant Conservator of Forests, which is a category-IV in the A.P. State Forest Service cannot be given by this Hon. Tribunal. This comes within the purview of A.P. Administrative Tribunal and rightly the matter is still pending before the A.P.A.T. Therefore, if this relief cannot be given to the respondents naturally further direction to review the select list, keeping in view final seniority list inter-se prepared also cannot be given. Therefore, the whole of the issue depends upon the real issue of the preparation of the inter-se seniority to be adjudicated by the A.P.A.T. Thus the whole of the relief asked for is inter-woven or inter-linked with the preparation of the seniority list of the persons in the category-IV of the A.P. Forest Service. Therefore, the whole of the prayer is liable to be rejected by this Hon. Tribunal at this stage and for this reason also the O.A is liable to be dismissed.

7. The interim relief was to stay all proceedings in the direction of selecting A.P. State Forest Service officers for promotion to the Indian Forest Service by the Selection committee for the year 1989 in a meeting scheduled to be held on 22-12-1990 or any other subsequent date. By afflux of time the relief asked for has become infructuous and therefore, the interim relief cannot be granted in the

matter and it is liable to be rejected without considering the merits of the request.

In respect of this contention for dismissal of the petitioner for various reasons submitted supra I am advised to answer to each of the contentions made by the applicants in the above O.A, in order to avoid the criticism of not answering the allegations made by the applicant. Therefore, I am also answering the each of the contentions though there is no necessity in the eye of law.

8. The applicants are direct recruits in the category of Assistant Conservator of Forests. The post of Assistant Conservator of Forests is in category-IV of the A.P. State Forest Service. The A.P. Forest service consist of various categories of officers. The officers in category-IV are the Asst. Conservator of Forests of erstwhile Hyderabad Government and ~~Asst. Conservator~~ all of them are directed to be called as Assistant Conservator of Forests only.

These posts are governed by A.P. Forest Service rules issued in G.O.Ms.No.225, FAAH&F dated 3-2-1965 as alleged from time to time. Rule 2 of the said rules provide for appointments to the post in category -IV. This rule provides that the method of appointment to category -IV posts viz., Asst. Conservator of Forests may be by way of direct recruitment or recruitment by transfer from Rangers of the A.P. Forest Subordinate Services.

While making appointments it is obligatory on the part of the authorities to follow the ratio prescribed for direct recruitment and the persons to be appointed

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by transfer. That ratio is fixed at 5:5. It is necessary to notice that the direct recruits to the post of Asst. Conservator of forests are entitled to be recruited against Substantive vacancies and they cannot be discharged for want of vacancies and whereas, the persons appointed by transfer from the Subordinate services can either be appointed to a substantive post or to a temporary post with eligibility of discharge from the post of Asst. Conservator of forests for want of vacancy in the order of juniority. This discrimination is sought to be maintained by virtue of the notes (i) and (ii) inserted into the rule -2 with retrospective effect. Thus the direct recruits to the post of Asst. Conservator of Forests are entitled to seek enforcement of ratio in respect of substantive vacancies or the post of quasi-permanence by being in existence for more than 3 years or above or such of those posts which are likely to be continued indefinitely. All other temporary posts are also liable to be filled in, but not by direct recruitment. Equal number of posts are thus available to the promotees and at the same time, they are also made entitled to claim for promotion in respect of the temporary posts to which direct recruitment is prohibited. This is the legal position with reference to claim for quota and also the posts in respect of which the quota rule can be sought to be enforced.

9. While the legal position is such, it is necessary to notice the factual position in order to appreciate the contentions of the applicants Vs. respondent employees.

Between 1968-1986 appointment by transfer took place in respect of 129 posts. During the period of 1968-1975 there was no direct recruitment for want of training facilities to be given them on direct recruitment. From

1976-1979 in each year there was direct recruitment and 33 persons were recruited by way of direct recruitment to the post of Assistant Conservator of Forests. Thereafter during 1980-81 there was no direct recruitment. Thereafter from 1982 to 1986 including 1986 except in the year 1985 direct recruitment took place and 23 persons were recruited with reference to the availability of substantive vacancies for direct recruitment. Thus the total number of persons who are appointed by the direct recruitment between 1976-1986 has come to 56. From this it is clear that the equal number of posts are liable to be filled in by appointment or by transfer which we may call as promotion. But the total number of substantive vacancies and the posts of quasi-permanance are only 108. In fact, out of these 108 posts 73 posts are ~~xxxx~~ ~~peraryxpsstxx~~ permanent basis and 35 posts are temporary posts. Of course covered by note-i, inserted in Rule-2 of the A.P. State Service rules. Thus ⁱⁿ the total number of posts 108, for determination of quota to be earmarked for direct-recruits as they are entitled by way of direct recruitment only in the ratio of 5:5 and they can have a claim for 54 posts only, out of 108 posts. Whereas, 56 persons were recruited during the period inquestion. Thus they are in excess of their quota and therefore, the claim that the promottees were in excess of their quota does not arise. The ratio fixed has always been followed by the authorities and there has been no occasion whether it is failed to observe the same. In fact, the posts that are filled in during the years 1968-1975 and 1985 ought to have been excluded from the number of substantive posts which taken into account for determining the quota that is earmarked for the direct-recruits. In fact the authorities failed to do so. Infact, the posts

that are filled in by ~~direct~~ promotion during the years in which there was no direct recruitment, cannot be carried away for the purpose of determination. There is no provision allowing for carrying away the vacancies remained unfilled by direct recruitment in any year. In the absence of any specific rule if a quota rule was not followed for the reasons specified by the government like for want of training facilities etc., it has to be construed that the quota rule was relaxed, though there has been no positive order relaxing the quota rule, yet, it has to be presumed that the quota rule deemed to have been relaxed in exercise of the powers conferred upon the government under Rule 47 of the A.P. State Subordinate service rules (general rules), therefore when the quota rule was found broken down or failed to be observed the number of vacancies that were filled up during that period by way of promotion cannot be allowed to be taken into account ~~by way~~ for the purpose of determination of the number of posts to be earmarked for direct recruits as contemplated in note-1 of Rule-2 and the government failed to notice this legal position in its correct perspective. As a result, the persons who are entitled to be promoted to the post of Assistant Conservator of Forests in the substantive vacancies in their respective quota have been put to inconvenience and in fact the persons belonging to the Subordinate services have suffered prejudice ~~xxxx~~ ~~xxxxxx~~ in this regard and the question of direct recruits as a class put to inconvenience is absolutely far from truth.

I am also advised to submit that the direct recruits before their recruitment have no right to claim the enforcement of the quota rule. They have no locus standi

to question the inaction on the part of the government in disregarding the quota rule prior to their recruitment. It is only after recruitment they can question the inaction on the part of the government only in respect of earmarking the posts in respect of which confirmation is to be given to them on being directly recruited to the post of Asst. Conservator of Forests and for all other purposes they have no right to question the action of the government, therefore the entire plea of the applicants is liable to be rejected is not within the contemplation of the issues that can be raised under the rules. Therefore, the whole of the contention of the applicants is liable to be rejected.

From 1968-1986 129 persons were appointed by way of transfer from the Subordinate Services viz., the post of Ranger officers and whereas upto 1986, 56 persons were appointed as Asst. Conservator of Forests by way of direct recruitment. Thus the total number of posts that were filled in during this period in the Department has come to 185 posts. Out of these 185 posts, as already submitted that 708 (108) posts only are either substantive or quasi-permanence posts. The remaining 77 posts are temporary posts were filled in and therefore they were rightly filled in by promotees subject to certain other eligibilities. Merely because post is continued under a set of circumstances for a longer period than expected after filling up the same it cannot be presumed that it should have been considered as a post quasi-permanence. Therefore, the relevant time with reference to which the post is to be construed either as a quasi-permanence or temporary depends upon the time when the same was filled in and with reference to this examination any

other comes to the conclusion that these are the temporary posts at the time when they were filled and they could not have been considered as quasi-permanence posts, therefore, the authorities could able to filled them up with only by appointment by transfer from the subordinate category of officers, therefore, there is no illegality or inconformity and the applicants have not suffered any damage or inconvenience and factually the quota rule is not dis-obeyed to the detriment of the direct recruits, but the quota rule was in fact dis-obeyed only to the detriment of the promottees. Therefore, the contention of the applicants is liable to be rejected.

10. The contention of the applicants that the ratio of 5:5 was brought into force with effect from 6-6-67 is true and in fact the earlier ratio was not acted upon at all and therefore, there cannot be any controversy for not having acted upon the earlier ratio which was in force upto 6-6-1967. As already submitted the direct recruitment took place only from 1968 and the quota rule was given effect only from the year 1968 when the direct recruitment was made. Therefore, it is in this context it is necessary to notice that when there was a broke down in observing the quota rule the rote rule is also bound to be ignored for the period during which the quota rule was not given effect and in any event, a failure to give effect the quota rule prior to 1968 cannot now allowed to be questioned in the above application, and therefore, these aspects are beyond the scope and extent of the above application and also beyond the scope and extent of the jurisdiction conferred upon this Hon. Tribunal, therefore controversy relating to the broking down of the quota rule prior to 1968

cannot be a subject matter of any issue to be adjudicated by this Hon. Court.

11. As already submitted that the contention of the applicants that non-observation of the quota rule and rota rules that they have suffered prejudice is untenable and unacceptable in view of the submissions submitted supra.

The applicants have also raised certain comments against the seniority list issued by the government in the year 1975 and this aspect was rightly answered by the counter filed by the respondents 4 and 5 and have the advantage of the going through the said counter and therefore, I am advised to adopt the same with reference to these objections.

12. With reference to the allegations that the promotions made over and above their quota by the government excess to the direct recruits, I have to submit that the promotes have never been in excess of their quota in the context of the legal position and factual position there has been no excess of their quota rule therefore, it is neither legally correct nor factually correct. Therefore the contention is liable to be rejected.

13. As I already submitted that the total numbers of vacancies are 185 between 1968-1986 and basing upon such number they are claiming in the above application that they are entitled for 92 posts. The contention is erroneous and contrary to the provisions contained in Rule-2 R/W. note appended to it. Therefore, the contention is liable to be rejected and the number of posts to a tune of 77 have to be deducted from the total

number of 185 posts on the ground that they are temporary posts for which the direct recruits are not entitled.

14. It is true that 56 persons were appointed as direct recruits as against their entitlement of 54 posts. Thus the direct recruits are appointed in excess of their quota, but in any event, pushing them down for the purpose of seniority is not provided and therefore, the applicants could not question the said action at any relevant point of time. Having failed to question the excess recruitment for the years concerned now I am advised to state that they are entitled to question their recruitment ~~after~~ a long lapse of time in the context of the provisions contained in Sec.20 of the A.P. Administrative Tribunal Act, 13/1985.

15. There has been no justification for the applicants to state that ignoring the date of confirmation of promotees the government illegally taken the date of appointment of promotees. In fact neither the promotee or direct recruitee cannot be held responsible for the delays in confirmation and confirmation depends upon the exigencies of administration and also depending upon the actions of the government and the employees cannot be put to loss as observed by the Supreme Court of India, therefore, the government ~~have~~ was right in taking the date of appointment for the purpose of fixing the inter-se seniority and there has been no inconfirmity or illegality in taking into account the date of initial appointment for the purpose of determination of placement in the inter-se seniority list and this aspect now upheld by the Constitutional

Bench of the Supreme Court of India in Maharashtra Engineers Case and therefore, the allegation made by the applicants are liable to be rejected at the threshold.

16. The contention of the applicants that there is no seniority list prepared or published in respect of officers appointed subsequent to 1971 and still the selections were made for the purpose of confirmation of I.F.S or for promotion to the post of Deputy Conservator of Forests is also not based on any facts and therefore, such contention is denied and the applicants are put to strict proof of this allegation .

In fact the Supreme Court has gone to an extent of upholding the principle of taking into account the length of service of a person promoted with reference to his discharge functions in officiating capacity. Therefore, there cannot be any grievance for being taken into account the date of appointment as basis for preparation of the inter-se seniority or for determination of placement in the inter-se seniority list.

17. The contention of the applicants that they have filed R.P.3183/89 for preparation of the inter-se seniority list following the ratio of 5:5 is still pending and it is true that this issue has to be decided by the A.P. Administrative Tribunal and not by this Hon. Tribunal.

The rules do not prohibit to operate upon a provisional or tentative seniority list for the purpose of selection of candidates to the higher post and accordingly the government or authorities have acted upon the tentative seniority list that was

prepared for the Asst. Conservator of Forests on 1-1-1988 and there is nothing with such preparation and and till final seniority list is issued, it is obligatory on the part of the authorities, to act upon such available seniority list and there has been no rule warranting consideration of the case of any person entitled to get his promotion for being appointed to the post depends upon only on the seniority of final nature. Any promotion or appointment made depends upon the review to be made with reference to the finality to be given to the tentative seniority list by determination of final seniority. All promotions made during the interrugnum period have to be reviewed therefore, there cannot be any grievance for the applicants in making promotions basing upon the tentative seniority list by way of issuance of final seniority.

18. There is no justification for the applicants to question their placement in the tentative seniority list containing 129 names and this question cannot be allowed to be raised before this Hon. Tribunal. However, there is no error or irregularity in providing seniority with a particular placement by issuance of tentative seniority list, therefore, the contention of the applicants is liable to be rejected.

19. The contention that 43 direct recruits were given their due place in the tentative seniority list is also not correct and therefore, it is denied and the applicants are put to strict of this allegation.

20. The applicants having submitted that they have failed to object against the tentative seniority list, there is no justification for them to seek this Hon. Tribunal to adjudicate the issue which is before the government

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Deponent.

the government. Whatever the objections filed by them they are bound to be considered by the government and ofcourse there is no justification for the government to take their own time in the matter of preparation of the final seniority and resulting in prejudice against each of the persons finding place in the seniority list . Therefore, it is not only the applicants that are aggrieved of the delays in preparation of the final seniority list, but also the respondents herein also the same position, The delay on the part of the government may be deprecated but at the same time, it cannot be said that the delay is not prejudice to these applicants in this application and it is not the subject matter for adjudication before this Hon. Court. I am advised to refrain from answering about the correctness of the objections raised by the direct recruits as averred by them in clause-c of paragraph 6 of the petition, since such objections are supposed to be considered not by this Hon. Tribunal but by the government or by the A.P. Administrative Tribunal.

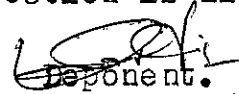
21. The contention that the promotees were further promoted as Deputy Conservator of Forests ignoring the claims of the direct recruits without giving due place to the direct recruits etc. is all not correct and therefore, it is denied and the applicants are put to strict proof of this allegation ..

22. The promotions to the post of Deputy Conservator of forests are always made with reference to the eligibility, qualification and seniority as provided in rules, therefore such promotions were never questioned by any person at any relevant point of time and therefore, the applicants are not justified in

questioning such promotions at this juncture by filing this application and for this reason alone the above application is liable to be dismissed.

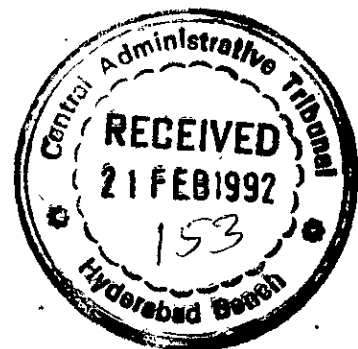
23. The applicants having admitted that this O.A is filed only to redressal of their grievance that occurred on the promotion of State Forest Service Officer to the cadre of I.F.S, they ought not have referred/^{to}the matters which are not relevant for the purpose of determination of the main issue and as such the applicants are guilty of mis-joinder of cause of action and mis-stating the facts irrelevantly in the context of the redressal prayed for this reason also the application is liable to be dismissed.

24. The contention that the selections to I.F.S cadre were made since 1971 without any valid seniority list is untenable and is liable to be rejected. Having stated that they are not liable to question the selection till 1985 and they have admitted that have no locus-standi to question such selections, there is no justification for the applicants to raise the plea in this application with reference to the selections that are made prior to such period. I am advised to submit that the selection Committee constituted under Rule 3 of the I.F.S (appointment by transfer) Regulation 1966 on being duly constituted considered the names of the respondents herein 6 to 13 and such committee is competent to consider and at the point of time when such selection was made the respondents 6-13 including ourselves are liable to be considered and accordingly the selections were made under the rules and such selection cannot be questioned in this above application, therefore, the above application is liable


Deponent.

HYDERABAD DISTRICT:
IN THE ^{Central} ADMINISTRATIVE TRIBUNAL
AT HYDERABAD: Bench

O.A.NO. 130 OF 1990.



COUNTER AFFIDAVIT FILED BY
THE RESPONDENTS 11 AND 13.

Copy submitted
to the Bench
21/2/92
Bench
N. S. R. R. R.
A. B. B. B. B.
C. S. C. 21/2/92
FILED ON: 27-12-1991.

FILED BY:

M/S. M.R.KCHOUDARY
P.V.RAMANA.

COUNSEL FOR RESPONDENTS NOS.
11 AND 13.

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21/2/92