

16

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 226 of 97

Date of Decision. 15-1-2002

Sri L.D. Adhikary & Ors.

-----Petitioner(S)

Mr. A.K. Bhattacharya, Mr. D.K. Das, Mr. K.P. Pathak, Mr. P.J. Phukan

-----Advocate for the
Petitioner(s)

-Versus-

Union of India & Ors.

-----Respondent(s)

**Mr. A. Deb Roy, Sr. C.G.S.C., Mr. B.K. Sharma, Mr. S. Sharma, Dr. Y.K. Phukan
Mrs. M. Das.**

-----Advocate for the
Respondent(s)

THE HON'BLE **MR. K.K. SHARMA, ADMINISTRATIVE MEMBER**

THE HON'BLE **MR. S. BHARATI ROY, JUDICIAL MEMBER**

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble : **ADMINISTRATIVE MEMBER**

K. C. Sharma

18

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No.226 of 97

Date of Order: This the 15th Day of Jan. 2002

HON'BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER

HON'BLE MRS.BHARATI ROY, JUDICIAL MEMBER

1. Sri Laksheswar Dev Adhikary
at present serving as Conservator of
Forests, Central Assam Circle,
Guwahati-1.
2. Sri S.K.Sen
Conservator of Forest(Headquarter)
Guwahati-1.
3. Sri B.N.Pathak,
Conservator of Forests
Northern Assam Circle,
Tezpur.
4. Sri P.Roy,
Conservator of Forest(Hills),
Haflong ... Applicants.

By Advocate Mr.A.K.Bhattacharya , Mr.D.K.Das, Mr.K.P.
Pathak, Mr.P.J.Phukan

-Vs-

- 1) Union of India
Represented by the Secretary to the
Government of India, Ministry of
Environment and Forests, CGO Complex
Phase- II Lodhi Road, New Delhi
- 11) The Union Public Service Commission
represented by the Chairman, Dholpur House,
New Delhi.
- 111) The State of Assam
represented by the Commission
Secretary to the Govt. of Assam
Department of Forest, Dispur.
- iv) Vinod Kr.Vishnoi
Conservator of Forest,
Southern Assam Circle, Silchar. ... Respondents.

By Advocate Mr.A.Deb Roy, Sr.C.G.S.C., Mr.B.K.Sharma,
Mr.S.Sarma, Mr.Y.K.Phukan, Government Advocate, State of
Assam, Mrs. M.Das, G.A.Assam, U.K.Nair.

O R D E R.

K.K.SHARMA, MEMBER(ADMN):

There are 4(four) applicants in this O.A. and

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they have sought permission under Rule 4(5)(a), CAT Procedure Rules 1987 to join in this Application, as the relief claimed is the same. The request under Rule 4(5)(a) CAT Procedure Rule 1987 is accepted.

2. The applicants have claimed the following reliefs :-

- i) Re-fixation of seniority of the applicants and Respondent No.4 in the light of the Judgment dated 25.7.1997 in Civil Rule No.2979 of 97.
- ii) To direct the respondent State Govt. to comply with the Provisions of Rule 6(A), IFS Recruitment Rules in making promotion to Senior Time scale of IFS.
- iii) To make promotion to the post of Chief Conservator of Forest, Assam, after re-fixing the seniority as prayed at Sl.No.1 above.

3. Mr.A.K. Bhattacharya learned counsel appearing on behalf of the applicants submitted that the applicants belong to the Assam Forest Service and they were promoted to the IFS Joint Cadre Assam, Meghalaya on 2.12.1983. The applicants were assigned the year 1977 as the year of allotment. The respondent/^{No.4}with others being aggrieved with the assignment of 1977 as year of allotment to the applicants moved O.A.No.184 of 1989 and this Tribunal by order dated 28.2.1999 directed the Central Govt. to assign 1979 as the year of allotment. Mr.A.K.Bhattacharya the learned counsel for the applicant argued that in terms of judgment dated 25.7.97 in Civil Rule No.2979 of 97 the seniority of the Respondent No.4 required Revision as Respondent No.4 had not passed Departmental Examination passing of which was a condition precedent for promotion to Senior Time scale

11/1/98

under the Indian Forest Service Recruitment Rules 1966. The Rules being statutory could not be violated by the Respondents. The respondents have started process to give promotion to the Respondent No.4 to the Higher post of Chief Conservator of Forests without recasting the interse seniority between the applicants and the Respondent No.4 which is detrimental to the interest of the applicants. It is stated that the Respondent No.4 with three other applicants had challenged the assignment on 1977 as the year of allotment to the applicants by filing the O.A.No.184 of 89 before this Tribunal. By order dated 28.2.94 this Tribunal directed the Central Government to allot 1979 as the year of allotment to the applicants. In the meantime various cases relating to sub Rule (3) Rule 6(A) IFS Recruitment Rules 1966 were filed before this Tribunal. The Tribunal passed the order in O.A.No.198 of 90 dated 19.7.91 holding that passing of Departmental Examination was not condition precedent for getting promotion to the senior time scale of IFS which was latter followed by the Hon'ble Tribunal by order dated 2.4.1997 in O.A.No.141 of 96, (Annexures B and C to the O.A.). Being aggrieved by the decision of the Tribunal in O.A.No.141 of 96, State of Assam preferred a Civil Rule 2979 of 97, before the Hon'ble Gauhati High Court. The Hon'ble High Court by an order dated 25.7.97 set aside the order of this Tribunal, (Annexure D to the O.A.). It is submitted on behalf of the applicants that in view of the position of law laid down by the High Court, it is a condition precedent for promotion to senior time scale that one has to pass departmental Examination. The Respondent No.4 was allotted 1978 as the year of allotment and promoted to Senior time scale without passing Departmental Examination and this violated Sub Rule (3) of Rule 6(A)

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of the Indian Forest Service Rules. The applicants have referred to the Order dated 30.9.88 Annexure A filed with which the rejoinder on 15.9.1999/mentions that the Respondent No.4 had passed the examination in Assamese, in the year 1987. This shows that he had not passed the Departmental examination before promotion to super time scale in 1982. The Respondent No.4 was confirmed in IFS with effect from 6th March 1981 without having passed Departmental Examination and as such the Respondent No.4 could not be given the seniority in the Senior time scale above the applicants. The Respondent No.4 was given the senior time scale on 25.6.82. While he became entitled to senior time scale in 1987 after passing Departmental examination. The applicants have been given the Senior time scale from 2nd December 1983 and as such the applicant have to be considered senior to the Respondent No.4. Mr.A.K. Bhattacharya learned counsel for the applicant referred to the IFS Rule 6(A) of the IFS Recruitment Rules. Rule 6(A) of the IFS Recruitment Rules which is reproduced below :-

"6 A. Appointment of officers in the junior time scale of pay to posts in the senior time scale of pay.

1) Appointments of Officers recruited to the service under clause (a) or clause(aa) of sub-rule(2) of Rule 4 to posts in the senior time scale of pay shall be made by the State Government concerned.

2) An Officer referred to in sub-rule (1), shall be appointed to a post in the senior time scale of pay if, having regard to his length of service and experience, the State Government is satisfied that he is suitable for appointment to a post in the senior time-scale of pay.

Provided that

(Emphasis supplied)

Sub-rule(3) of Rule 6(A) states as follows :-

"(3) Notwithstanding anything ..

contained in sub-rule(2) the State Government may -

- (a) withhold the appointment of an officer, referred to in sub-rule(1), to a post in the senior time scale of pay -
 - (i) till he is confirmed in the service, or
 - (ii) till he passes the prescribed departmental examination or examination, and appoint to such a post, an officer junior to him.
- (b) appoint an officer, referred to in sub-rule (1), at any time to a post in the senior time scale of pay as a purely temporary or local arrangement."

According to the learned counsel in view of the High Court order dated 25.7.97 it is mandatory to pass the Departmental Examination before being promoted to the senior time scale. The learned counsel also submitted that the order of the High Court was considered by the Supreme Court by filing the SLP and the same has been rejected. The learned counsel referred to the Supreme Court's Judgment¹⁾/ICAR¹ v. T.K. Suryanarayan & Ors., reported in 1997 6 SCC page 766 to submit that the statutory rules have to be strictly complied. The other cases referred by the learned counsel for the applicant are -

- (ii) 1997 to SCC page 420 - for the submission that eligibility for recruitment should be decided as per law prevailing after the vacancy arose.
- (iii) 1994 4 SCC page 114 para (6) to submit that a decision rendered long ago can be overruled.....
- (iv) AIR 1996, 1440 para 12 - for the submission that law laid down by S.C. applies to all

11/11/97

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pending proceedings.

(v) 2001 SCC page 118 - for the submission that a duty is cast on the authorities to comply with requirements of law and plea of administrative chaos unless based on material should not be accepted to deny relief to a party.

(vi) 1997 5 SCC page 536 para 97 page 342

(vii) 1999 4 SCC page 11 para 13 and 16. The

learned counsel has also mentioned these cases to support his case.

The learned counsel also referred to the Halsbury's Laws of England to submit that as under :-

"II. Judicial precedent. As in other branches of the law, judicial precedent plays a crucial and significant part in Civil procedural law¹. Some of the cases decided by the courts are of far-reaching importance and may be said to have a virtually legislative effect, so much have they changed the operation of procedural law². The decision of a court upon a procedural question, on what may be called "procedural facts", may well have the effect of creating a substantive legal right or imposing a substantive legal duty, without deciding the substantive merits in the particular case."

4. The Central Government as well as the Respondent No.3 the State of Assam have filed the written statement. The Union of India was represented by Shri A. Deb Roy. Referring to the written statement Mr. A. Deb Roy, Sr. C.G.S.C. submitted that issue relates to the grant of senior time scale to direct recruits and involves the State Government. Dr. Y.K. Phukan learned counsel appeared for State of Assam. Dr. Phukan submitted that following

11/11/2001

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order of the Central Administrative Tribunal the applicants have been assigned the year 1979 as the year of allotment.

5. Mr.B.K.Sharma learned counsel appeared on behalf of the Respondent No.4 and newly added respondent No.5 Shri Suresh Chand. On behalf of Respondent No.4 the reply to the show cause was filed on 18th November 97 and the written statement was also filed on 18th Sept.99. The Respondent No.4 has taken objection to the Admission of the O.A. and had requested the dismissal of the application in limine in as much as there is suppression and misrepresentation of relevant facts in preferring the O.A. and also bad for non-joinder of necessary parties. The application was also barred by limitation and was hit by the principles of waiver, estoppel and acquiescence. It is stated that in the application before the Central Administrative Tribunal the applicant is required to give particulars of order against which the application was made. In the application no order has been mentioned against which the applicants have made grievance. The applicant have misread and misinterpreted the particular judgment dated 25.7.97 passed in Civil Rule No.2979/97. The applicants have not exhausted the Departmental remedies and their case is simply based on the judgment dated 25.7.97, which cannot have any retroactivity. By filing this application the applicants have sought to unsettle the settled matters and such a design on their part is not bonafide. The Respondent No.4 is senior to the applicants and his seniority has been settled pursuant to the judgment in O.A.No.184 of 89 against which SLP was dismissed by the Apex Court. There is no question of altering the seniority of the applicants vis a vis the respondents No.4, the same having been settled by this Tribunal as well as the Apex Court. The same pleas have been raised again in this O.A. and the same cannot be re-agitated. In this connection

CC Sharma

a Writ Petition No.933/89 was filed by the applicants No.1,2 and 3. In the Writ Petition, the same ground was urged as in this O.A. The Apex Court had refused to grant any relief to the applicants. Similar issue was raised in O.A.No.243/86 by one Shri M.K.Sinha, IFS and the same was dismissed by this Tribunal. Against such dismissal an SLP No.3209/88 was preferred, which was also dismissed by the Apex Court. By filing the O.A. the applicants have made another attempt to get seniority over the Respondent No.4. The applicants have sought to disturb the order of 1982 which could not be done in the O.A. No.184 of 89. The present applicants had taken a specific plea regarding passing of Departmental Examination for promotion to senior scale of IFS. The same question can not be reagitated by the applicants by filing another O.A. on the basis of the judgment delivered by Gauhati High Court in a totally different fact situation. Referring to the judgment of the Gauhati High Court dated 24.7.97 Mr.Sharma submitted that the 4 applicants who were deprived of senior time scale approached the Central Administrative Tribunal for grant of senior time scale to which they were entitled on completion of 4 years service. Their plea was that their promotion to senior time scale could not be withheld on the ground that they had not passed the Departmental Examination. In the circumstances, it was held by Central Administrative Tribunal that if the vacancy was available the petitioners should be deemed to be promoted to the senior time scale. The State Government took the plea that they could not be promoted till they passed the Departmental Examination. It was held by the Gauhati High Court that

CC Sharma

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it was left to the discretion of the State Government to withhold the promotion to the officers to the senior time scale till the passing of the Departmental Examination. It was stated that before the Gauhati High Court it had not been pointed out that any SLP against the order of this Tribunal directing to promote to the senior time scale before passing the Departmental Examination had been rejected by the Apex Court. The applicants suppressed the fact that they were party to O.A.No.184 of 89 in which SLP taken by the present applicants was rejected. The applicants referred to this order of High Court for cancellation of promotion of Respondent No.4 to the senior time scale of IFS way back in 1982. Such a claim of the applicants is barred by limitation. The judgment of Gauhati High Court at (Annexure D to the O.A.) on which the applicants are relying upon is not applicable to the Respondent No.4. The promotion of the respondent No.4 to senior time scale cannot be disturbed after more than 15 years. The judgment on which the applicants rely cannot have any retrospective effect and if the judgment is applied to all past cases, there would be chaos and confusion as many officers who are beneficiaries of promotion to senior scale without passing the Departmental Examination would be effected. The applicant has not impleaded such officers. After getting senior scale in 1982 the applicant has got further promotions and the application has been made with the purpose of affecting the promotion of the applicant to the rank of Chief Conservator of Forest. The applicant had cleared all the Departmental Examinations all though the same is not a condition precedent for promotion to the senior scale. The Central Government has not prescribed any Departmental Examination which was

11/11/89

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required to be cleared by the IFS Officers. The entire case of the applicants is based on the Judgment in Civil Rule No.2979 of 97. The judgment cannot give rise to a cause of action.

6. Mr.B.K.Sharma learned counsel for the Respondents argued that the year of allotment and the seniority of Respondent No.4 is automatically fixed in terms of Rule 3 of IFS(Regulation of seniority) Rules 1968 irrespective of his promotion to the Senior scale. Similarly the seniority of the applicants has been fixed in terms of the said rules. The State Government was vested with the discretion to withhold the promotion to direct recruit IFS officers to the senior time scale of pay in exercise of its power under sub-rule 3 of Rule 6(A) of the IFS(Recruitment) Rules 1966. Such power can be exercised by the State Government till an IFS Officer is confirmed or till he passes the prescribed departmental examination. The State Government did not prescribe any Departmental Examination for making the same as condition precedent for passing the Departmental Examination. Mr.B.K.Sharma referred to the Notification No.FRB/120/98/21 dated 14th October 1999 under which the State Government of Assam had appointed a Committee to frame rules regarding holding of Departmental Examination for IFS as well as Class I and Class II officers of State Forest Service. The Respondent No.4 has cleared all the examination and has been confirmed with effect from 6.3.81. It is denied that the Respondent No.4 has not passed Departmental Examination. The Respondent No.4 had joined to the IFS in the year 1978 and he had undergone 2 years training in Indian Forest College, Dehradun and thereafter four months training in Lal Bahadur Shastri National Academy of Administration,

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29

Mussoorie and had cleared all the examinations there ~~including Assamese~~. He joined the Forest Department, Assam in 1980. He was never informed about holding of any Departmental Examination and that clearing of such examination was a condition precedent for promotion to Senior scale or the State Government was likely to withhold the promotion on non-passing of such Examination. The Respondent No.4 was also deputed to undergo one year Diploma Course at Indian Institute of Photo Interpretation, Dehradun and he qualified with honours on 24.6.82. The Government of Assam promoted him to the senior time scale of pay on 25.6.82 in exercise of powers under Rule 6(A) of IFS Recruitment Rules. ~~The~~ He ~~applicant~~ has since been promoted to the rank of Chief Conservator of Forests. Mr.Sharma also referred to the fact that all though the promotion of the applicants in O.A.No. 141 of 96 was withheld by the State Government but all those applicants had since been granted promotion to senior scale of IFS without passing so called Departmental Examination. This will go to show that clearing of Departmental Examination is not condition precedent for promotion to senior time scale. Under no circumstances the applicants could be treated as senior to Respondent No.4, in as much as the year of his allotment is 1978 as against the year of allotment of the applicants 1979. The applicants' rank below the direct recruits to IFS of 1979. By seeking seniority over the Respondent No.4, the applicants have also sought seniority over the 1979 batch of direct recruits. The Respondent No.5 has also filed written statement and Mr.B.K.Sharma appeared on behalf of Respondent No.5 also. It is submitted ~~that~~ on behalf of respondent No.5 that the applicants have prayed for recasting the seniority between them and Respondent No.4.

K C Sharma

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As the Respondent No.4 is senior to the Respondent No.5, any order passed in favour of the applicants, will adversely effect the Respondent No.5. It is submitted that the passing of the Departmental Examination was not condition precedent. Mr.Sharma further argued with reference to the passing of Departmental Examination in Assamese in 1987 that passing of both Assamese and Bengali Examinations is not required. One is required to pass in either Bengali or Assamese. The applicant had already passed the Bengali Examination and also appeared in Assamese though it was not necessary. He had also passed Assamese Examination in 1987.

7. Mr.Sharma referred to the Judgment in

1) 1998 (3) GLJ(CAT) - 384

11) 1997(2) GLT 447 - President M.P.Congress

Committee Vs. Speaker to argue that Judgment cannot give rise to any cause of action. Regarding the delay and laches the learned counsel referred to AIR 1999 Supreme Court 1796. According to the learned counsel the legal position is that a later decision of High Court cannot reopen the matter which had attained finality. He referred to the AIR 1986 SC 2166 and argued that the order which had not been challenged with the petition cannot be quashed. Other cases cited by the learned counsel for the respondent are listed below :-

Delay and laches:-

1995 Supp (III) SCC 231

1999 (3) GLT 108

Delay defeats remedy as well as right :

AIR 1993 SC 2276.

AIR 1992 SC 1414

1999 (8) SCC 304

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1998 (8) SCC 607

1999 (2) SLJ (SC) 66

1998 (9) SCC 492.

CAT full Bench judgment VOL.(III) 430

(2001) 1 SCC 240

(2000) 6 SCC 562

1998 (2) SCC 523

AIR 1999 SC 517

AIR 1999 SC 1845

RESJUDICATA/CONSTRUCTIVE RESJUDICATA.

" 1994 (2) SLJ 554 : In this case the issue relating to senior scale promotion was raised and adjudicated upon and the same was by and between the same parties. The issue was also raised by filing SLP taking a specific ground as reflected both in the written statement and show cause reply filed by the Respondent No.4(Refer para 4 of show cause reply)."

PROSPECTIVITY/RETROSPECTIVITY OF A JUDGMENT:

AIR 1999 SC 1945
1995 Supp (1) SCC 271

SETTLED MATTERS NOT TO BE UNSETTLED:

- I. CAT FULL BENCH JUDGMENTS VOL (III) 206
- II. AIR 1999 SC 1510.

Similar relief cannot be granted in case of delay in approaching the Court/Tribunal.

- I) 1999 (3) GLT 108
- II) AIR 1992 SC 1414
- III) 1996 (6) SCC 267

The learned counsel Mr.B.K.Sharma submitted that the case laws relied upon by the applicants are not applicable.

8. We have heard learned counsels for the parties at length and also perused the Annexures filed with the application; written statements and rejoinder. We have

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also given careful consideration to the submissions made by the learned counsels. The respondents have taken strong objection to the delay in filing of this application. The learned counsel for Private Respondents have strongly agitated on the point that the applicants want to disturb the promotion of the respondents to the senior time scale. The respondents No.4 was granted the senior time scale from 25.6.1982 and the application has been filed on 10th September 1997. On the other hand the applicant have stated that the cause of action arises on the basis of the judgment of Hon'ble High Court in Civil Rule No.2979 of 97. This judgment was passed on 25.7.97. The learned counsel for the private Respondents have taken objection and have submitted that the judgment cannot give rise to cause of action. He has also strongly objected to this application on the ground that the same issue came up for consideration before this Tribunal as well as Apex Court. He had referred to the reported judgment and order in O.A.No. 184 of 89 which was decided on 28.2.94, reported in All India Services Law Journal Vol.2 1994, CAT. A few facts of O.A.No.184 of 89 are reproduced below:-

- " The four applicants, Shri Vinod Kumar Vishnoi, Shri Suresh Chand, Shri Rony Trabery C Marak and Shri Sunil Kumar are direct recruits to the Indian Forest Service (IFS) with years of allotment as 1978, 1978, 1978 and 1979 respectively, and they are allocated to the Assam Meghalaya Joint Cadre. The applicants No.1 and 2 are now posted/serving in the State of Assam, whereas the applicants No.3 and 4 are serving in the State Meghalaya. The applicants No.1 and 2 were promoted to the rank of Deputy Conservator of Forests/senior scale in the service on 25.6.1982 vide notification dated 25.6.1982 by the State of Assam(Annexure-1), whereas the applicants No.3 and 4 were promoted to that rank/senior scale on 5.7.1982 and 1.5.1983 vide Notification dated 1.10.1982 and 1.5.1982 respectively by the State of Meghalaya(Annexures 2 & 3).

K C Sharma

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2. The Respondents No.5 to 12 were officers of the Assam Forest Service and had been recruited/appointed to IFS senior scale on promotion vide Notification dated 2.12.1983 (Annexure-4) and allocated to the Joint Cadre Assam Meghalaya. They are all serving in the State of Assam. The Government of India vide order No.18014-8/84-IFS II dated 30.10.1989 (Annexure-8) fixed years of allotment 1976 for Respondent No.9, Shri M.K. Sinha and 1977 for the rest of the seven (7) respondents by dispensing with the requirements of Rule 3(2)(c) of the IFS(Regulation of Seniority) Rules, 1968 in exercise of powers under Rule 3 of the AIS(Condition of Service-Residuary Matters) Rules, 1960 for determining the seniority/years of allotment of these eight officers. The relaxation power was exercised to dispense with the normal Rule 3(2)(c) of IFS(R of S) Rules 1968 for the reasons recorded in paragraphs 3 and 4 of order dated 30.10.1989(Annexure-8) for granting them years of allotment prior to their normal allotment year 1979 and it was worked out on the basis of the 'deemed promotion' of Shri M.K. Sinha(respondent No.9) with effect from 30.11.1981 and for the remaining seven 'deemed promotion' with effect from 27.4.1982.

3. The respondents No.5 to 12 got seniority over the four(4) applicants for all service purposes/prospects due to determination of their allotment years as 1976 and 1977 by virtue of the order dated 30.10.1989(Annexure 8) and therefore, the applicants have filed this application under Section 19 of the Administrative Tribunal Act, 1985 assailing the order contained in Government of India's Order No. 18014-8/84/IFS II dated 30.10.1989 with prayers to quash this order and to direct Respondent No.1 Union of India for assigning 1979 as year of allotment to the respondent No.5 to 12 below the applicant No.4 in accordance with the provision of Rules 3(2)(c) of IFS (R of S) Rules 1968 and also to direct respondents, particularly respondents No.3, State of Assam, not to make any further promotion of the private respondents No.5 to 12 to superior grade/rank on the basis of their years of allotment assigned to them by the impugned order dated 30.10.1978.

4. According to the provision of Rules 3(2)(c) of the IFS(Regulation of Seniority) Rules, 1968, Respondent No.5 to 12 being promoted to IFS on 2.12.1983 are entitled to 1979 as years of their allotment just below the applicant No.4 who was the junior most direct recruit of the year 1979 and already promoted to the senior scale of IFS on 1.5.1983 i.e. prior to promotion of the Respondents No.5 to 12. This position is also admitted in paragraph 2 of the impugned order dated 30.10.1989. The respondents No.5 to 12 also cannot deny such a position because of the statutory provisions. The Government of India in the earlier case (G.C.No.243 of 86, M.K.Sinhav, Union of India and Ors) had also admitted such a position in paragraph 12 of their counter

37

(Annexure V of the written statement of respondent No.5 to 12 in the instant case) by stating that applicant M.K.Sinha(now respondent No.9) would rank junior in the Assam -Meghalaya Joint Cadre of IFS to such of the directly recruited officers born on the joint cadre who were appointed to officiate continuously in senior posts in the said joint cadre upto and including the year 1982. The directly recruited officers referred to in that counter of the Government of India meant the four(4) applicants of the instant case."

The finding in this order at para 33 is reproduced below:-

" In the result, this application under Section 19 of the Administrative Tribunals Act, 1985 is allowed. The order No.18014-8/84-TFS.II dated 30.10.1989 issued by the Government of India, Ministry of Environment and Forests(Annexure 8 to the application)is quashed. The Respondent No.1 Union of India, represented by the Secretary to the Government of India, Ministry of Environment and Forests is directed to assign 1979 as year of allotment to the respondents No.5 to 12 below the applicant No.4, Shri Sunil Kumar in accordance with the provisions of Rule 3(2)(c) of the IFS(Regulation of Seniority) Rules 1968."

It will be seen from the order in O.A.No.184 of 89 that the seniority of the Respondent No.4 vis a vis the applicant was the subject matter of an application before this Tribunal in the year 1989. The issue has been decided and further agitated before Supreme Court. As the question of seniority had been agitated earlier and the ³ ⁴ ~~same~~ cannot be allowed to be agitated again by resort to another application before this Tribunal. Some of the applicants had also filed a Writ petition No.933/89 before the Apex Court taking the same plea as taken in this O.A.The Writ Petition was dismissed by Supreme Court. This being the position the application is liable to be dismissed. We also find that on account of the delay in filing this application the applicant cannot be allowed to agitate the issue raised in this Application. Rule 10 of the Central Administrative Tribunal Procedure Rules prohibits pursuit of plural remedies through a single application. The remedies claimed by the applicants are multiple. On this

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ground also the application is liable for rejection. The learned counsel for the applicant has referred to the judgment reported in 2001 SCC page 118, S.Ramanathan, Vs. Union of India & Ors. to support this application on the ground that if statutory duty was required to be complied with the plea of Administrative chaos could not be a ground for denying the relief. A careful reading this judgment shows that the issue before the Apex Court was about biennial review under IPS Cadre Rules which was due in 1987, initiated 1989 and completed in the year 1991 increasing the cadre strength. The officers likely to benefit with this increase in cadre strength pursued the matter by filing the application before the Central Administrative Tribunal. An objection was taken that the applicant had approached the Tribunal beyond limitation period. Rejecting this plea it was observed in this judgment as follows:-

" We are not persuaded to accept this submission in as much as the appellants approached the Tribunal, the moment the competent authority redetermined the cadre strength in the year 1991, and, therefore, it cannot be said that there has been laches on the part of the appellants to approach the Administrative Tribunal"

It was on these facts when there was no delay in claiming relief that the Supreme Court observed that the plea of administrative chaos could not be accepted. In the present application the applicants have sought to disturb the promotion of the respondents to the Senior time scale on 25.6.82. Such a long delay in claiming relief cannot be condoned. There is much ^{strength} ~~weight~~ in the argument of the learned counsel for the respondents that as per Section 21 of the Administrative Tribunals Act, the Tribunal cannot consider the grievances beyond a period of 3 years from the constitution of the Central Administrative Tribunal.

LC (Ushany)

As Administrative Tribunal was constituted on 1.10.1985 only grievance arising after 1.10.82 can be agitated while the promotion of the applicant to the senior time scale was made on 25.6.1982. Moreover, as argued by Mr.B.K.Sharma learned counsel for the respondent unless the order of promotion of the applicant to senior scale is challenged the same cannot be quashed. The applicant has not challenged the order of promotion of the respondent No.4 to senior time scale. Applicant have challenged the promotion of the Respondent Nos.4 and 5 without challenging the order of promotion.

In view of these reasons we are not inclined to allow the application. Application is accordingly dismissed. There shall however, be no order as to costs.

Bharat Roy
(B.ROY)
JUDICIAL MEMBER

K.K.Sharma
(K.K.SHARMA)
ADMINISTRATIVE MEMBER

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35

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No. 226

of 1997

DATE OF DECISION.....6.7.1999

Shri Laksheswar Dev Adhikary and others (PETITIONER(S))

Mr N. Dutta, Mr K.P. Pathak and
Mr P.J. Phukan

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India and others

RESPONDENT(S)

Mr A. Deb Roy, Sr. C.G.S.C.
Dr Y.K. Phukan, Sr. Govt. Advocate, Assam,
Ms M. Das, Govt. Advocate, Assam,
~~Mr B.K. Sharma and Mr S. Sarma~~

ADVOCATE FOR THE
RESPONDENTS.

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN
THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



26

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.226 of 1997

Date of decision: This the 6th day of July 1999

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. Shri Laksheswar Dev Adhikary,
Conservator of Forests,
Central Assam Circle, Guwahati.
2. Shri S.K. Sen,
Conservator of Forests (Headquarter),
Guwahati.
3. Shri B.N. Pathak,
Conservator of Forests,
Northern Assam Circle, Tezpur,
4. Shri P. Roy,
Conservator of Forests (Hills),
Haflong.Applicants

By Advocates Mr N. Dutta, Mr K.P. Pathak
and Mr P.J. Phukan.

- versus -

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Environment and Forests,
New Delhi.
2. The Union Public Service Commission,
represented by the Chairman,
New Delhi.
3. The State of Assam, represented by the
Commission Secretary to the
Government of Assam,
Department of Forests, Dispur.
4. Vinod Kr. Vishnoi,
Conservator of Forests,
Southern Assam Circle, Silchar.Respondents

By Advocates Mr A. Deb Roy, Sr. C.G.S.C.,
Dr Y.K. Phukan, Sr. Government Advocate,
Assam,
Ms M. Das, Government Advocate, Assam,
Mr B.K. Sharma and Mr S. Sarma.

.....
O R D E R

BARUAH.J. (V.C.)

The present applicants have approached this
Tribunal seeking direction to the respondents to comply
with the provisions of Rule 6A of the Indian Forest

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Service (Recruitment) Rules, 1966 in making promotion to the Senior Time Scale of pay for Indian Forest Service (IFS for short) officers and also prayed for refixing/recasting the correct interse seniority between Respondent No.4 and the applicants in terms of the Judgment of Division Bench of the Hon'ble Gauhati High Court passed in Civil Rule No.2979/97 dated 25.7.1997.

The facts are:

The applicants belonged to the State Forest Service. Later on they were promoted to the IFS Cadre under the provision of IFS (Appointment by Promotion) Regulations, 1966. The contention of the applicants is that they should be promoted without asking them to pass the departmental examination. It may be mentioned here that the question came up for consideration regarding mandatory requirement of Sub rule (3) of Rule 6A of the IFS (Recruitment) Rules, 1966. Some officers of the State Forest Service, aggrieved by the decision of the State Government filed several Original Applications before this Tribunal. The said original applications were disposed of by this Tribunal holding inter alia that the passing of departmental examination was not a mandatory requirement. This was challenged by the Department before the Apex Court by filing Special Leave Petitions. The said SLPs were also dismissed by the Apex Court. Later on, another Original Application (O.A.No.141 of 1996) was filed before this Tribunal. This Tribunal following the decision in the other original applications directed the respondents to promote the applicants without insisting on passing of the departmental examination as required under provision of Sub rule (3)

of.....



of Rule 6A of the IFS Recruitment Rules. However, the said decision was challenged before the Hon'ble Gauhati High Court by filing a Civil Rule No.2979 of 1997. The Hon'ble High Court was pleased to set aside the judgment and order of this Tribunal and further held thus:

".....Thus, if the intendment of the statute is that sub-rule (3) of Rule 6A must prevail over the other provisions of the Rule, it will have to be followed. The appointment to a post in the senior time scale of pay is subject to the following provisions, namely, it is left to the discretion of the State Government to withhold the appointment of an officer, referred to in sub-rule (1) to a post in the senior time scale of pay till such time he passes the prescribed departmental examination or examination."

From the above finding it is clear that passing of Departmental examination is necessary.

The Hon'ble Gauhati High Court further held as under:

".....The State Government must also make necessary arrangements to hold the departmental examination early to give a chance to the respondents and other eligible officers to appear and to pass the examination, which will confer on them the benefit of appointment to the senior time scale of pay, as intended in sub-rule (3) of Rule 6A."

2. The applicants have stated that the State Government, in pursuance to the judgment and order passed by the Hon'ble Gauhati High Court, ought to recast/review the interse seniority between the applicants and the respondent No.4 who was given seniority in the time scale of pay even though he failed to pass the departmental examination under Sub rule (3) of Rule 6A of the IFS Recruitment Rules, 1966.

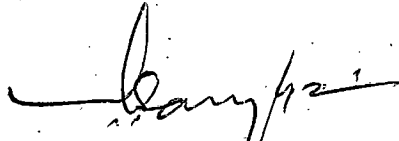
3. In view of the facts and circumstances of the case, we direct the respondents to follow the decision of

the.....



the Hon'ble Gauhati High Court passed in Civil Rule No.2979 of 1997 in fixing the interse seniority.

4. With the above observations the application is disposed of. No order as to costs.



(G. L. SANGLIANE)
ADMINISTRATIVE MEMBER



(D. N. BARUAH)
VICE-CHAIRMAN

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