

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. 138/98

Date: 21/01/02

1. Sri Surajit Dutta (IFS)
2. Sri Durga Kanta Basumatary (IFS) .. Applicants

A N D

1. Union of India
through
Secretary,
Ministry of Environment of
Forests, Parajavaran Bhaban,
CGO Complex, Phase 11,
Lodi Road,
New Delhi -110 003.
2. State Govt. of Assam,
through
The Commissioner & Secretary
to the Govt. of Assam,
Forest Department, Dispur,
Guwahati - 6.
3. The Joint Cadre Authority,
Indian Forest Service (Assam &
Meghalaya),
C/o. Chief Conservator of Forest,
Meghalaya, Shillong.
4. Shri Bikash Brahma
Conservator of Forests,
Southern Assam Circle,
Silchar.
5. Shri D. Hara Prasad,
Conservator of Forests,
Eastern Assam Circle,
Jorhat. .. Respondents

Counsel for the applicant : Mr. A. K. Bhattacharjee

Counsel for the respondents : Mr. A. Debroy, Sr. CGSC for
Central Govt.
Mrs. M. Das, Govt. Advocate, Assam

Mr. B. P. Katakey
for Respondent Nos. 4 & 5

Coram:

Hon. Shri K. K. Sharma, Member (A)

Hon. Mrs. Bharati Ray, Member (J)

Contd.. 2/-

O.A. 138/98

O R D E R

Date:

(Per Hon.Mrs.Bharati Ray,Member(J)

This is an application filed u/s. 19 of the A.T. Act,1985. Since the applicant No.2 has expired, the proceedings against the applicant No.2 stands abated.

2. The applicant No.1, who is now serving in senior post in the in Forest Department of Govt. of Assam was xxx initially joined in the Assam Forest(Class I) as Assistant Conservator of Forest in the year 1974 after completion of two years training period. On completion of six years he was promoted to the rank of Deputy Conservator of Forests in 1980. Applicant thereafter was selected for promotion to the Indian Forest Service(IFS) by the selection committee on 7-8-1996. Subsequently he was promoted to the rank of IFS ^{and} ~~A~~ vide order dt. 12-2-1997 Govt. of India vide order No.17013/02/96-IFS-11 dt. 27-5-1998 fixed the year of allotment for the applicant as 1991.

3. It is the grievance of the applicant that promotion quota for Assam-Meghalaya joint cadre during 1991 was not correctly computed and had it been correctly made promotional quota should have been atleast 30 and in that event vacancy position in the Assam Unit would have been between nine instead of four and the select list prepared in 1991 would contain the name of the applicant and he should have been appointed

in the IFS in the year 1991 itself and in that event his year of allotment would be 1980 instead of 1991 and that although the applicant was eligible to be promoted to IFS in the year 1980 repeated violation of the rules by the respondents in the matter of timely revision of cadre schedule and preparation of annual select list deprived the applicant from his legitimate dues in time. It is also the grievance of the applicant that the direct recruits, though barred as per the quota rule, were given promotion to Senior Time Scale without passing prescribed departmental examination ignoring the provision of sub-rule (3)(a)(ii) of Rule 6A of the I.F.S. (Recruitment) Rules, 1966. The applicant made representation to respondent No.1 through respondent No.2 ventilating his grievance and requested for awarding correct year of allotment consequent upon his appointment to IFS (Annexure A/A to the OA) but he has not received any favourable reply from the respondents. Hence the present application has been filed seeking the following reliefs.:

- "1. To immediately refix/recast the correct seniority positions of the applicants and other officers in the light of the judgment and order dt. 2-4-97 passed in Civil Rule 2979/1997 and for full implementation of the said order of the Hon. High Court.
2. For any order/directions to the respondents to refix the number of promotion posts in the schedule to the cadre strength regulation of Assam-Meghalaya by including item No.5 in the total number of posts available for promotion to the IFS cadre under Rule 8 of the IFS (Recruitment Rules) 1966 and accordingly calculate the correct

promotion quota and grant all consequential benefits to the applicants.

3. to Direct the respondents to strictly make promotion to higher rank by strictly following the quota prescribed by the rules for the promotees like the applicants in terms of the judgment of the Supreme Court on quota between the Direct Recruits and promotees and be further be pleased to grant all consequential benefits to the applicants.

4. For any order directing the respondents to refix the number of promotion posts in schedule to the Cadre Strength Regulation for Assam-Meghalaya by including item No.5 and item Nos.6 and 8 to the extent of the senior duty posts in pre-1988 period and item no.5 and senior duty posts under item no.6 of the schedule in post 1988 period in the computation and amend the Cadre Strength Regulation 1966.

5. The Hon.ble Tribunal be pleased to direct the respondent No.1 to regularly hold the Triennial review under Rule 4(2) of the IFS Cadre Rules."

4. During the pendency of the instant application the applicant made a representation to respondent No.1 for change of his year of allotment.

5. Respondent No.1 contested the application by filing written statement with a preliminary objection that the last cadre review of the strength and composition of the Assam-Meghalaya Joint Cadre

of the IFS was conducted in 1995 and a Notifi-
cation to that effect was issued on 9-11-1995.

The applicant cannot raise for previous cadre
review at this belated stage. The last selection
list of State Forest Service Officers was prepared
by the selection committee on 7-8-1996 and therefore
the application is barred by limitation. It is
also contended in the written statement that
the year of allotment of the applicant in the
cadre of IFS was correctly determined as 1991
in terms of the provisions of Rule 3(2)(c) of the IFS
(Regulation of Seniority)Rules,1968. It is contended
that Sri A.K.Srivastava, the juniormost direct recruit
of 1991 batch was appointed to the Senior Time
Scale on 1-4-1995. The applicant along with seven
other officers were placed below Sri Srivastava
in the interse seniority and the year of allotment
was assigned as 1991. There is no irregularity
in determining the seniority of the applicant.

On the point of inclusion of item no.5 in senior duty
post the respondent no.1 stated that although
in implementation of the order of Jabalpur Bench in
TA No.81/86 the cadre strength Regulation in respect of
M.P. cadre were amended on 22-2-98 but on the same
date another notification was issued amending Rule
9(1) of recruitment rule which reads as follows :

"The number of persons recruited under Rule 8 in any state or group of states shall not, at any time, exceed 33 1/3% percent of the number of posts shown against items 1 & 2 of the Cadre in relation to that State or the group of states, in the schedule to the cadre strength Regulations. "

In view of the above the question of inclusion of item No.5 in the senior duty post does not arise.

6. The learned counsel for the unofficial respondents No.4 & 5 argued on maintainability of the application. His first point is that the application is hopelessly barred by limitation, under the general law of Limitation and u/s. 21 of the A.T. Act, 1985. He also pointed out that issue preceding three years of constitution of Tribunal on 1-11-1985 cannot be entertained by the Tribunal. In this connection he mentioned that respondent No.4 was promoted to Sr.Scale on 25-6-1982. He took the point of res-judicata which is closely connected with the fact of suppression of material fact. His further objection is that a judgment cannot give rise to any cause of action. He also submitted that latter decision of the High Court taking contradictory view regarding legal position cannot reopen a matter which has attained finality. It is also his submission that the order which is not challenged or part of the application cannot be questioned. He made his submission on prospectivity/retrospectivity of the judgment and submitted that a settled matter cannot be unsettled.

In support of his submission learned counsel for the unofficial respondents referred several judgments.

7. Coming to the point of claim of the applicant that 5nos. of vacancies existed in the year 1982 and that he should be appointed in that year had the vacancy position was correctly assessed, the learned counsel for the unofficial respondents submitted that the same cannot be questioned now at this belated stage. He further contended that even if it is accepted that there is some valid ~~green~~ ground by saying that had the vacancy position ^{be} correctly counted there would have been nine vacancy in the Assam in 1991 and in that case applicant would have been found a place in the select list of 1991 and would have been appointed in the IFS in 1991 itself and in such case the year of allotment would be 1980 instead of 1991, the same cannot be questioned at this belated stage nor it can be entertained. Drawing our attention to the annexure of additional reply to the State Govt. learned counsel for the official respondents submitted that from the said annexure i.e. notification Dated Disput -14.10.1999 it is clear that there was/is no prescribed rule to conduct Departmental examination for Indian Forest Service and Assam State Forest Service Class I and II officials. He also drawn our attention to para-4 of the reply statement of the State Government to show that almost all the officers of the Assam segment ~~xxxx~~ of Assam Meghalaya joint cadre

except a few has passed the departmental examination long before the order dt. 25-7-97 passed by the Hon. High Court in Civil Rule No. 2979 of 1997. Therefore the judgment of the High Court in the civil rule dt. 25-7-97 in no way give rise to any cause of action. In this context he also drew our attention to Annexure E to the OA wherefrom it is evident that respondent no.4 and 5 passed the examination long before the judgment dt. 25-7-97. He further submitted that prusuant to the direction of Hon. High Court in Civil Rule No. 2979/97 dt. 25-7-97 the applicants therein were promoted without qualifying the examination.

8. State Govt. i.e. respondent no.2 filed their written statement. It is their specific contention that almost all the officers of the Assam segment of Assam and Meghalaya Joint Cadre except a few had passed the departmental examination before the order dt. 25-7-97 passed in Civil Rule No.2979/97 by the High Court and in the said order there is no direction to review/recast the seniority and promotion given earlier to the officers and hence the question of recast/review of promotion of those officers does not arise.

9. Learned counsel for the applicant pressed for disposing of the representations made by the applicants after giving hearings to the parties. He also made request to pass similar order

passed
~~been passed~~ in OA 226/97 by this Tribunal on 6-7-99.

In this context it needs mentioning that the said order dt. 6-7-99 has been recalled for further adjudication of the matter.

10. We have heard the learned counsel for the parties at length. We have gone through the pleadings and the material papers placed before us and the judgments referred by the counsel.

11. After giving a total view of the arguments by the learned counsel for the parties and after going through the pleadings carefully we find that the relief(s) prayed by the applicant are based on the following grounds:

(i) Wrong assessment of vacancy position during 1991 in the Assam Unit which resulted in non-inclusion of the name of the applicant in the select list prepared in 1991 whereby the year of appointment and year of allotment has been fixed as 1997 and 1991 instead of 1991 and 1980.

(ii) Failure to prepare select list in time, trienial review under the cadre rules and non-counting of the internal deputation reserve posts as item no.5 of the Schedule to the IFS(Fixation of cadre strength Regulation)1966 relating to Assam-Meghalaya joint cadre as Senior Deputy post borne on the said joint

cadre so as to add 33 1/3% thereof
the promotion posts and the conse-
quential loss and prejudice faced
by the applicant to their promotional
post prospects.

(iii) Promotion given to the direct recruit
to Senior Time Scale without passing
the departmental exam in violation of
sub-rule 3(a)(11) of Rule 6A of the
IFS (Recruitment)Rules,1966.

(iv) Recasting the seniority position
of applicant and granting all
consequential relief in terms of
the judgment and order in civil rule
No.2979/97 dt. 25-7-97.

12. We find that the last cadre review of the
strength and composition of the Assam Meghalaya joint
cadre of the IFS was conducted in 1995 and notifi-
cation to that effect was issued on 9-11-95 and the
same was never questioned or challenged.

13. The above points deserves to be rejected
for more than one reasons but primarily being barred
by limitation. The point of wrong calculation of
vacancy position cannot be questioned at this belated
stage. So far the grievance of the applicant that the
select lists were not prepared from 1969 to 1975, 1977
1979 to 1981, 1983 to 1985 and 1987 to 1990

when it is mandatory to prepare the list every year and due to this failure applicant was selected by selection committee on 7-8-96 and was promoted to IFS by order dt. 12-2-97 and was given the year of allotment as 1991 is concerned we find that similar was the grievance of the appellants in Civil Appeal No.2370-2371/87 (K.Jaychandra Singh and another vs. State of Manipur & Ors.) which was rejected by the Tribunal and the decision of the Tribunal was upheld by the Hon. Supreme Court by holding that :

"It is no doubt correct that ordinarily the Selection Committee should meet every year to revise the select list for appointment by promotion to the IFS but due to reasons beyond the control of the respondents, no selection could be made during the relevant period. We see no ground to interfere with the impugned judgment of the Tribunal. We agree with the reasoning and the conclusions reached therein. The appeals are dismissed."

In view of the above we do not find any reason to interfere and entertain the issue herein and that too at this belated stage. From the reply statement of the respondent no.3 we find that the question of non counting of the internal deputation reserve posts as to item no.5 of the Schedule to the IFS (Fixation of cadre strength Regulation) 1966 came up for examination before the Chandigarh bench of the Tribunal in OA 1122/HR/96 Vinod Kumar Jhajhria vs. U.O.I& Ors. The Tribunal in their judgment dt.14-10-97 held as under :

"(14)So far as second relief sought by the applicant i.e. direction to amendment of cadre rules and to increase 2 posts in promotion

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quota of IFS cadre of Haryana retrospectively w.e.f. 22-2-1989 is concerned, it deserves to be rejected for more than one reasons but, primarily, being barred by limitation. Respondent no.1 in its reply has explained that on the basis of the judgment delivered by the Jabalpur bench of the CAT, 2 notifications, both dated 22.2.1989 (Annexure A-4 and A-5) were issued by the Government of India thereby amending the Cadre Strength Regulations and the Recruitment Rules. While the first notification amended the Cadre Strength Regulations in respect of Madhya Pradesh cadre in order to increase the number of vacancies in promotion quota in the IFS of the said cadre after taking into account the State Deputation Reserve alongwith the senior duty posts as also Central Deputation Reserves i.e. item nos.1,2 and 5 of the Cadre Strength Regulations. However, by the second notification issued on the same date, the recruitment rules were also amended according to which the number of persons recruited under Rule-8 in any state would not at any time exceed 33 1/3 per cent of the number of posts shown against items no.1 and 2 of the cadre strength in relation to that State in the schedule to the Cadre Strength Regulations.

15. With the issuance of the aforesaid notification, it was made known to all the State Forest Officers serving in different States that the notification of the Govt. of India was 33 1/3 per cent of the number of posts shown against items no.1 and 2 of the cadre strength in the Schedule. Thus, if any member of the State Forest Service had any grievance, he ought to have challenged the legality of the above stated provisions within the prescribed period of limitation. As pleaded by the applicant himself he became eligible for appointment to the IFS in the year 1988. He did not challenge the above stated provisions till he filed the present OA in the year 1997. Even in the year 1993, the applicant was considered and placed in the select list, and the promotion quota was calculated in terms of the above stated Regulations. The applicant did not question the said method

of calculation of promotion quota within the period of limitation even after his placement in the select list of 1993. In this background, if the claim of the applicant is accepted at this stage the retrospective increase in the promotion quota in the IFS cadre of Haryana is bound to adversely affect the seniority of those directly recruited IFS officers who have been appointed during this long interval of 8 years from the year 1989 till date. None of them has been impleaded in the array of respondents in the present OA."

14. We are of the view that in view of the above findings of the Tribunal the applicant cannot raise the same issue when the rule had been already amended on 22-2-1989.

15. Now we come to the question of giving promotion to the direct recruits to Sr. Time Scale without passing the departmental examination in violation of Sub rule 3(a)(11) of Rule 6A of the IFS (Recruitment) Rules and recasting of seniority position of the applicant and granting all consequential reliefs in terms of the judgment and order in civil rule No. 2979/97 dt. 25-7-97.

16. From the reply of respondent No. 4, we find that almost all officers except a few have passed the departmental examination long before the order of the Hon. High Court dt. 25-7-97.

17. From Annexure 'E' to the OA it is evident

that respondent no. 4 & 5 have passed the examination and have passed

long back and other officers are not party before us.

From Annexure 'E' it is also found that year of allotment

of the respondent 4 & 5 are 1982 and 1984 respectively. We, therefore, do not find any reason to question the validity of their promotion and that too at this belated stage.

18. From the reply statement of respondent No.1 we find that in terms of the provision of Rule 3(2)(c) of the IFS (Regulation of Seniority) Rule, 1968 the applicant along with seven other officers were placed below Shri Srivastava who is the juniormost direct recruit of 1991 batch and who was appointed to the Senior Time Scale on 1-4-1995. As already observed the respondents 4 & 5 have passed the examination long before the order of the Hon. High Court in Civil Rule No.2979 of 1997 and that the year of allotment are 1982 and 1984 respectively, and most of the officers who are not before us also passed the examination prior to the order of the Hon. High Court. Therefore we do not find any illegality in fixation of the seniority of the applicant and we do not feel it necessary to recast the seniority position of the applicant.

19. In view of the above discussion we are of the opinion that the applicant is not entitled to get the relief(s) prayed for. Application is dismissed with no order as to cost.

Bharati Ray
(BHARATI RAY)
Member (J)

(K.K.SHARMA)
Member (A)