

(SEE RULE 4^A)

GENERAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:

ORDER SHEET

Original Application No. _____

Misc Petition No. _____

Contempt Petition No. _____

Review Application No. 4/2002 in O.A 422/2000

Applicants. Md. Ayub Khan

-Vs-

Respondant(s) Union of India & Ors

Advocate for the Applicant(s) Chandra Sekhar Sinha
R. K. Deb Chandray

Advocate for the Respondant(s) C.G.S.

Notes of the Registry	Date	Order of the Tribunal
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27.8.02

Heard Mr. C.S.Sinha, learned counsel for the applicant and also Mr. Mr. A. Deb Roy, learned Sr. C.G.S.C. for the Respondents.

Mr. C.S.Sinha, learned counsel for the applicant stressed on the decision rendered by the Jabalpur Bench of the Central Administrative Tribunal and also stated that the similarly situated persons obtained the benefit excluding the applicant. The learned counsel also submitted that the Tribunal while dismissing the application, failed to take note of Rule 4(2) of IFS (Cadre) Rules and the inaction of the Respondents in holding the selection committee meeting. Referring to the Supreme Court Judgment in S. Ramanathan Vs. Union of India & Ors., reported in (2001) 2 SCC 118 learned counsel submitted that the Respondents authority fell into error in not adhering to the statutory duties entrusted to them by law. The learned

No. 487922
Date 27.7.2002

Dy. Registrar
[Signature]

A Revised application has been filed by the counsel for the petitioner W/R 17 of the CAT (Procedure) Rules, 1987 against the order 21.12.01 in O.A 422/2000 passed by this Honble Tribunal.

Laid before the Honble Conf for further orders.

Section Officer
[Signature]

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27.8.02 / counsel submitted that the Tribunal fell into grave error in dismissing the application as time barred even though same was presented before the Tribunal by accounting and explaining the time taken in filing the O.A.

Mr. A. Deb Roy, learned Sr. C.G.S. C. for the Respondents opposing the application stated that the scope of review is limited and this is not a case for review.

Admittedly, in this application the applicant has assailed the merits of the decision rendered by the Tribunal the error referred to by Mr. C.S. Sinha, in not an obvious error which could be labelled as an error apparent on the face of the records. The scope of review is limited and cannot be equated to that of an Appeal. The power of Review by a Tribunal under the administrative Tribunal Act is akin to the power enjoined in section 114 read with 147 of the Civil Procedure Code. The power of Review is constricted to the scope indicated in order 47. It can be exercised on the application of a person on discovery of new and important matter or evidence which after due diligence was not within the knowledge or could not be produced by him at the time when the order was made. It can also be exercised on account of mistake or error apparent on the face of the record or for any other sufficient reason. The expression "any other sufficient reason" is not to be construed in its widest extent but are to be confined to analogous grounds as was held by the privy council in Chajja Ram V Neke.


Review power in terms of order XLVII R 1(C) is not to be used as an Appeal in disguise after correction of an erroneous decision on rehearing after an elaborate argument. The entire

Ex R.A. 4/2002

Notes of the Registry	Date	Order of the Tribunal
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contd..
27.8.02

*Order dtd 27/8/02
Communicated to the
Kardes Council,*



controversy is related to the correctness of the judgment on the light of the decision of the CAT Jabalpur Bench and Calcutta Bench which was considered by the Supreme Court reported in AIR 2000 SC 1898. In the circumstances we do not find any ground for exercising of the power of Review. The application is thus dismissed. The dismissal of this application shall not, however, preclude the applicant to assail the correctness of our judgment in O.A. 422/2000 before the appropriate forum as per law. No order as to costs.

mb

K. C. Ush...
Member

[Signature]
Vice-Chairman

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Notes of the Registry

Date

Order of the Tribunal

STATE REGISTER
Central Adm. Tribunal
16 AUG 2002
GUWAHATI

In the Central Administrative Tribunal
Guwahati Bench.

Review Petition No. A of 2002
(Title O.A.No. 422/2000)

Md. Ayub Khan.

...

APPLICANT.

- VERSUS -

Union of India and others.

...

RESPONDENTS.

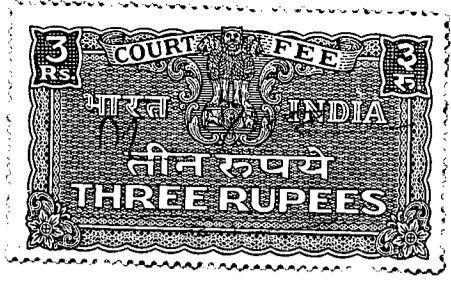
I N D E X

<u>Sl.No.</u>	<u>Particulars.</u>	<u>Page Nos.</u>
1.	Review Petition.	1 - 7.
2.	<u>Annexure - 'A'.</u> A copy of order dated 10th January 1988.	8 - 17.

Submitted.

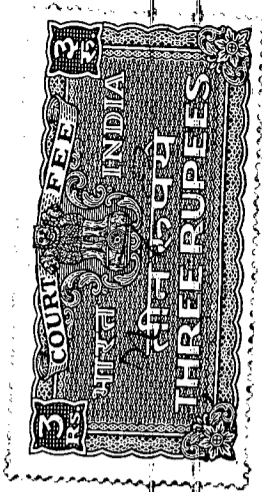
Aravind Kumar

Advocate.



Sl. No 10/July/02

Mahad. Ayub Khan
Subscribed/Signature



In the Central Administrative Tribunal
Guwahati Bench

Review Petition No. of 2002
(Title O.A. No. 422/2000)

In the matter of :-

An application under Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 against the order dated 21.12.2001 in O.A. No.422/2000 passed by the Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman and Hon'ble Mr. Mr. K.K. Sarma, Administrative Member of the Central Administrative Tribunal, Guwahati Bench.

AND

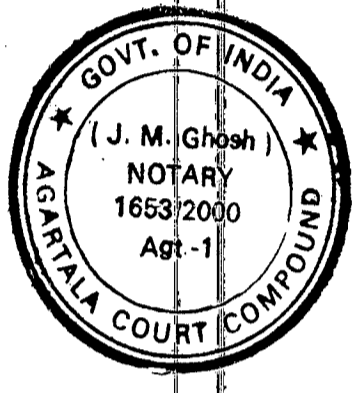
In the matter of :-

Md. Ayub Khan,
Chief Conservator of Forests,
HC. Aranya Bhawan,
P.O. Kunjaban, Agartala,
Tripura West.

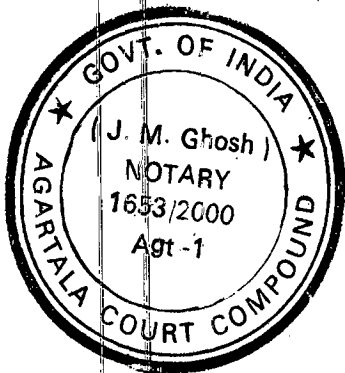
... APPLICANT.

- VERSUS -

1. Union of India represented by the Secretary to the Government of India, Ministry of Environment and Forests, Paryavaran Bhawan, CGO Complex, New Delhi.
2. Union Public Service Commission represented by its Chairman, Dholpur House, Shahjahan Road, New Delhi.
3. The State of Tripura represented by the Secretary, Department of Forests, Government of Tripura, Agartala.



J. M. Ghosh
21/07/02
(J. M. GHOSH)
NOTARY, Govt. of India
1653 of 2000
West Tripura.



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4. The State of Manipur represented by the Secretary, Department of Forests, Government of Manipur, Imphal.
5. Shri R.S. Lal,
Chief Conservator of Forests,
Manipur, Imphal.
6. Shri Rahmingliana Lushai,
Chief Conservator of Forests,
Tripura, Kunjaban, Agartala.
7. Dr. Ashbindu Singh, C/O. Principal
~~Chief~~ Chief Conservator of Forests,
Manipur, Imphal.
8. Shri Seibar Singsit,
Chief Conservator of Forests,
Manipur, Imphal.

... RESPONDENTS.

The humble petition of the Petitioner, named above,
most respectfully SHEWETH :-

1. That the facts of the Petitioner's Application in O.A. No. 422/2000 were lost sight of and were misinterpreted on points of Law and this apart, Petitioner has discovered a document very much relevant to support his claim in O.A. No. 422/2000 and accordingly, review of the order dated 21.12.2001 has become inevitable. Hence this review petition.

2. That the judgment dated 9.6.87 of the Jabalpur Bench upheld by the Hon'ble Supreme Court in respect of including Deputation Reserve in item No.5 of the Cadre Schedule of the I.F.S. for computing promotion quota was erroneously held in

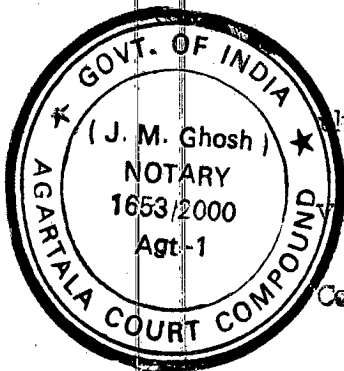
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(J. M. GHOSH)
NOTARY, Govt. of India
1653 of 2000
West Tripura.

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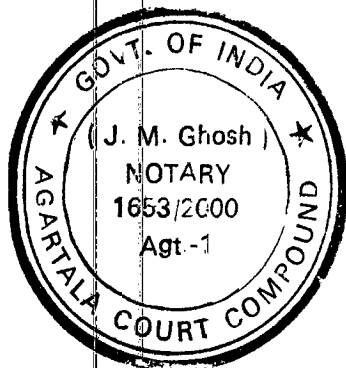


The impugned order dated 21.12.2001 to have been altered by the order dated 19th April 2000 of the Hon'ble Supreme Court in Tamil Nadu Administrative Services Officers' Association Vrs. Union of India and others as reported in A.I.R. 2000 SC 1898.

3. That the order dated 19th April 2000 of the Hon'ble Supreme Court in Tamil Nadu Administrative Services Officers' Association Vrs. Union of India and others which decided on the following issues, listed here below, had no relation or bearing on the issues and claims of the Petitioner.

- (i) Whether mere continuance of temporary and ex-Cadre post created by State Governments and appointing I.A.S. Officers therein, entitle Officers in the feeder cadre to seek mandamus for inclusion of such posts in I.A.S. Cadre.
- (ii) Object of creation of I.A.S. restated.
- (iii) Whether relief of fixation of seniority with retrospective effect should be available to promotees due to delay in undertaking periodic Cadre review under Rule 4 of the I.A.S. (Cadre) Rules and consequential delay in preparation of Select List.
- (iv) Constitutionality of 1997 Amendment in Regulation 5(1) of the I.A.S. (Appointment by promotion) Regulation, 1955 making provision for calculation

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Makal, Ayub Khan
Subhash Chandra

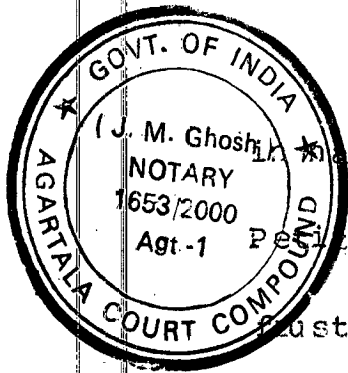
of vacancies to be filled by promotees, on the basis of substantive vacancies available on the first day of January of the year in which the meeting was held and not on the basis of anticipated vacancies.

- (v) Whether Regulation 5(1) of the I.A.S.(Appointment by Promotion) Regulation, 1955 as amended in 1997 confers any unilateral and arbitrary power on the Central Government to hold or not to hold the Selection Committee proceeding.

4. That the Petitioner submits that Shri K.K. Goswami, a State Forest Service Officer of Madhya Pradesh challenged Rule 9 of the I.F.S.(Recruitment) Rules, 1966 stating inter alia that the senior duty post included in the State Deputation Reserve also before the Jabalpur Bench of this Hon'ble Tribunal and the said Tribunal also held that the State Deputation Reserve was covered under the senior duty posts. Against this, S.L.P. was filed and the Hon'ble Supreme Court dismissed the same and thereafter the Central Government amended the Schedule to the Cadre strength Regulation vide Notification dated 31.12.1997 and from this it became clear that the calculation as regards cadre

strength held prior to 22.2.1989 was erroneous. Not only that, as soon as the Rule was amended agreeing the proposition held by the Hon'ble Supreme Court it became statutory

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Signature and, as such, as the relief sought for by the Petitioner related prior to 22.2.1989, he cannot be frustrated of his claims in his application O.A.No.422/2000.

5. That your Petitioner submits that as soon as the Hon'ble Supreme Court upheld the order of the Jabalpur Bench and the Respondent Authority also complied with the same by Amendment and the same relief was also given to other incumbents, which is evident from order dated 10th January, 1988 of the Jabalpur Bench of this Hon'ble Tribunal, to deny the claim of the Petitioner as sought for in O.A. 422/2000 is discriminatory.

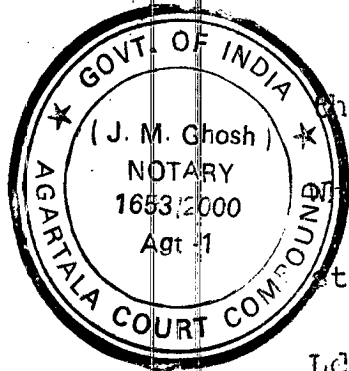
A copy of the order dated 10th January 1988 is enclosed as Annexure - 'A'.

6. That the Petitioner submits that Rule 4(2) of the I.F.S. (Cadre) Rules is an obligatory on the part of the Central Government to redetermine the strength and composition of each Cadre at intervals of every three years and fact remains that no Selection Committee meeting was held for the years 1977, 1978 and 1979. Had there been redetermination of the strength and composition of each Cadre by counting the Deputation Reserve for calculating promotion quota, the posts would have been increased and the Applicant would have been positively benefitted, but the Respondent Authorities did not consider this aspect and as a result,

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1653 of 2000
West Tripura.

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the Applicant has remained deprived of his legitimate claim. Where the Respondent Authorities did not abide by their statutory duty and where there is no fault with the Applicant, the Tribunal ought to have not dismissed the petition of the Applicant on the ground of time-barred.

7. That the Applicant submits that the Amendment in the Cadre Schedule in February, 1989 was superseded by the Central Government vide Notification dated 31.12.97 and the position of the Cadre Schedule was restored and 5 posts of promotion quota were provided on the basis of the strength right from 1972. But in case of giving benefit, it is observed that the benefit of the increased promotion quota has been allowed to the new comers and not to the aggrieved persons, like the Applicant.

8. That the Applicant humbly submits that on the aforesaid grounds and circumstances, the order dated 21.12.2001 deserves to be reviewed in his favour, otherwise the Applicant will suffer irreparable loss and injury arising out of non-consideration of the facts and circumstances submitted in the original application.

9. That the rest would be submitted verbally at the time of hearing.

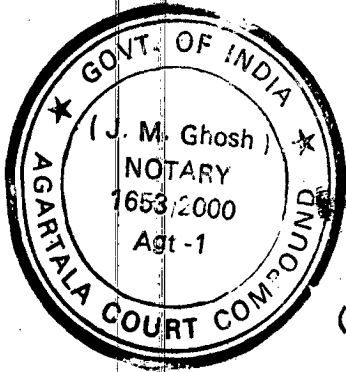
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NOTARY, Govt. of India.
1653 of 2000
West Tripura.

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Mahol, Ayus Khan
Subodh Singh

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Mahol, Ayub Khan
Subodh Chandra

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In the premises above, it is most humbly prayed that Your Lordships would be graciously pleased enough to -

- (a) admit the Review Petition;
- (b) call for records;
- (c) pass necessary order on hearing both the parties for ends of justice; and
- (d) pass any such order or orders as Your Lordships may deem fit and proper.

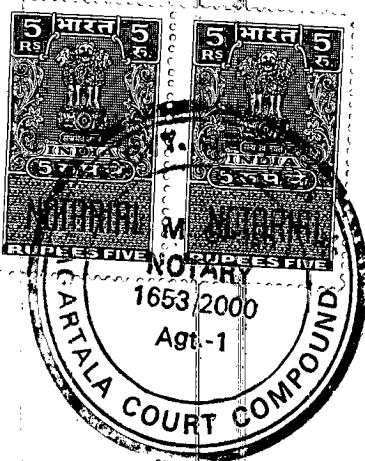
AND

For this act of kindness, the Applicant, as in duty bound, shall ever pray.

VERIFICATION

I, Md. Ayub Khan, S/o. Lt. N. U. Khan,

presently holding the post of Chief Conservator of Forests in the Government of Tripura, do hereby verify that the statements made in Paragraphs 1 to 9 are true to my knowledge and I have not suppressed any material fact in this Review Petition and I sign this Verification this 21st day of July, 2002.



J. M. Ghosh
(J. M. GHOSH)
NOTARY, Govt. of India.
1653 of 2000
West Tripura.

Mahol, Ayub Khan
21/7/2002,

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 422 of 2000.

Date of Order : This the 21st Day of December, 2001.

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

The Hon'ble Mr K.K.Sharma, Administrative Member.

Mohd. Ayub Khan,
Chief Conservator of Forests,
Agartala, Tripura.

. . . Applicant

By Advocate S/Bri J.L.Sarkar, M.Chanda.

- Versus -

1. Union of India,
represented by the Secretary
to the Govt. of India,
Ministry of Environment & Forests.
Paryavaran Bhawan, C.G.O.Complex,
New Delhi.

2. Union Public Service Commission,
represented by its Chairman,
Dholpur House,
Shahjahan Road, New Delhi.

The State of Tripura,
represented by Secretary,
Department of Forests,
Government of Tripura, Agartala,
Tripura.

4. The State of Manipur,
represented by the Secretary,
Department of Forests,
Manipur, Imphal.

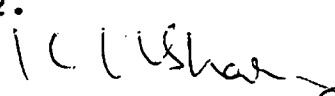
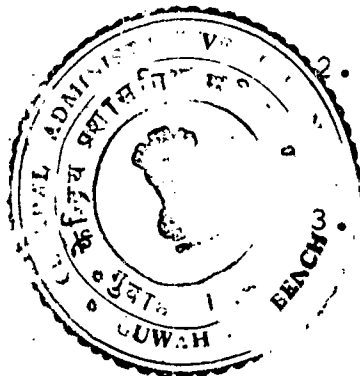
5. Shri R.S.Lal,
C.C.F.,
Manipur, Imphal.

6. Shri Rohmingliana Lushai,
C.C.F.,
Tripura, Kanjaban,
Agartala.

7. Dr. Ashbindu Singh,
C/O Principal C.C.F.,
Manipur, Imphal.

8. Sri Seibar Singsit
C.C.F.,
Manipur.

. . . Respondents.

By Advocate Sri A.Deb Roy, Sr.C.G.S.C for
respondents No.1 & 2.



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K.K.SHARMA, ADMN.MEMBER,

The only relief claimed in this application is the benefit of promotion to Indian Forest Service (IFS) from the year 1976.

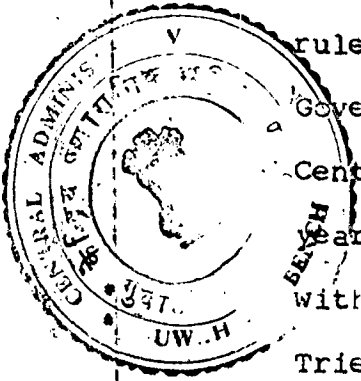
2. Mr J.L.Sarkar, learned counsel appearing for the applicant submitted that the applicant is a appointee to the Tripura Forest Service having joined on 1.4.1967. At present the applicant is working as Chief Conservator of Forests (CCF), Agartala, Tripura. The applicant became eligible for promotion to IFS with effect from 1.4.75. However, no meeting of the Selection Committee for Manipur-Tripura cadre was held for selection to IFS in 1975. Four officers senior to the applicant were appointed to the IFS by Notification dated 13.4.1977. No Selection Committee meetings were held for the years 1977, 1978 and 1979. The meeting of the Selection Committee was held in 1980. The applicant's name was approved for appointment to IFS and he was appointed to IFS with effect from 14.5.1981. The applicant was allotted the year of allotment 1975 vide letter dated 15.1.1985 (Annexure-7 to the O.A). One Dr. Ashbindu Singh, direct recruit to IFS of 1977 made a representation against the applicant's year of allotment 1975 and claimed seniority. On the basis of this representation the year of allotment of the applicant was revised to 1977. The recruitment quota considered by the Ministry of Environment and Forests while fixing the cadre strength at that time was based on notifications dated 20.1.72, 3.1.74 and 20.4.77. The applicant has referred to the order of the Jabalpur Bench of the Central Administrative Tribunal in O.A.394/90 and claimed that the number of posts to be filled by promotion is to be calculated 33 and 1/3 percent of the items No.1, 2 and 5 of the Cadre Schedule. The order

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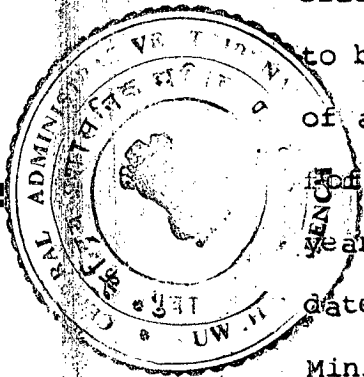
of the Central Administrative Tribunal in the aforementioned case was upheld by the Supreme Court by order dated 24.2.95 in SLP(C) No.3464 of 1995. Non consideration of item Nos.2 and 5 namely, deputation reserve caused irreparable loss to the service prospect of the applicant. The order of the Jabalpur Bench was also followed by Calcutta Bench of the Tribunal in O.A. 994/90. If deputation reserve posts were considered and the number of posts increased the applicant would have been within the zone of consideration for promotion to IFS. Under Rule 4 of the IFS Cadre Rules strength and composition of each cadre constituted under rule 3 shall be determined in consultation with the State Government. Rule 4(2) of IFS (Cadre) Rules state that Central Government shall at the interval of every three years re-examine the strength of each cadre in consultation with the State Government. Failure to hold the mandatory Triennial Cadre Review violated Rule 4(2) of the IFS (Cadre) Rules. If the Triennial cadre review had been held the same would have resulted in 2 more senior scale posts and the applicant could have got the advantage at the relevant time as the applicant was holding the cadre post. The year of allotment initially determined as 1975 had been subsequently re-determined as 1977 and the applicant has been placed below respondents No.5, 6, 7 and 8 because the deputation reserve was not taken into consideration while considering the promotion post of IFS. Only 8 posts were considered for promotion to IFS as against that 10 posts which would have been available on account of inclusion of deputation reserve post. The applicant had been placed below respondents No.5 to 8 because of non consideration of promotion of the applicant in the year 1976 due to wrong calculation of vacancy position. The applicant would have



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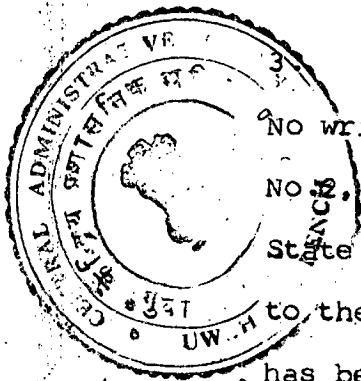
got promotion in the year 1976 if the authority had taken into consideration the posts under item 5 of the Cadre Regulation, namely, deputation reserve. This position has been accepted by the Calcutta and Jabalpur Benches of the Tribunal and the same has also been confirmed by the Supreme Court. Government of India by Notifications dated 31.12.97 & 12.11.90 (Annexure-11 to the O.A.) amended the rules of IFS (Fixation of Cadre Strength) Regulations on 31.12.97 by which a deputation reserve has been included for fixation of the cadre strength, and ~~whereby~~ State deputation reserve at the rate of 25% has been included in the Cadre Strength. This amended Notification had been given effect from 1.1.1998. It is submitted by the applicant that the same procedure deserved to be adopted with retrospective effect and the selection made in the year 1976 deserves to be reviewed by adopting the same method. By non adoption of avenues of promotion the applicant had been deprived of promotional benefit to the cadre of IFS during the year 1976. The applicant submitted his representation dated 14.9.99 to the Secretary to the Government of India, Ministry of Environment and Forests, New Delhi. The applicant had represented for re-determination of the year of allotment and consideration for appointment to IFS. It is stated that in the Central Government Notification No. 16016/29/75-AIS(IV) dated 26.2.77 of the Department of Personnel and Administration where 3 posts were shown under item No.5, namely, State deputation reserve. As per this Notification the senior posts had been shown as 25 and deputation reserve vacancy shown as 3. Three deputation reserve posts are added and the total number of posts came to 28 and promotional posts should be 9 against 8 posts shown in the cadre schedule and out of the 9 posts Tripura would have got 5 posts and the applicant would have become



J. C. Chakrabarty

eligible for promotion to IFS on 1.6.76 long before the revised cadre schedule from 26.2.77. Thus the applicant is entitled to be promoted to IES with effect from 13.4.77 i.e. the date his immediate senior in the State Forest Service Sri S.K.Mukherjee was promoted and the year of allotment ought to have been fixed as 1970. The applicant has challenged the selection and prays for revision of selection held in 1976. Learned counsel for the applicant relied on the Judgment of the Supreme Court in S.Ramanathan vs. Union of India & Ors., reported in 2001(2) SCC 118 and the judgment of the Central Administrative Tribunal, Jabalpur Bench in K.K.Goswami vs. Union of India & Ors. and also the judgment of the Calcutta Bench in O.A.994/90.

The respondent No.1 has filed a written statement. No written statement has been filed on behalf of respondent No.2, Union Public Service Commission and respondent No.3, State of Assam. Mr. A. Deb Roy, learned Sr.C.G.S.C referring to the written statement submitted that the vacancy position has been settled by the amendment of Rule 9 which was amended in the year 1989. With this amendment it is provided that the number of posts at any time should not exceed more than 33% of posts at serial No.1 and 2 of the Fixation of Cadre Strength Notification. As per this amendment only senior level posts and senior posts under Central Government are to be considered for the purpose of fixing the promotion quota. He also submitted that the applicant has filed the application at a very belated stage, when the recruitment rules had been amended with effect from 22.8.89 to exclude the state deputation reserve for calculation of promotion vacancies, the applicant cannot raise the issue at this belated stage. This issue has been considered by the Chandigarh Bench of the C.A.T in Vinod Kumar Jhajhria in



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O.A. No.1122/HR/96 dated 14.10.97. The respondents have also relied on the judgment dated 19.4.2000 of the Supreme Court in Tamilnadu Administrative Service Officers' Association vs. Union of India & Ors., reported in AIR 2000 S.C 1898.

4. We have given our anxious consideration to the submissions made on behalf of the parties and have also perused the documents submitted alongwith the application. The relief claimed by the applicant pertains to the year 1976. The applicant's case is that he should have been promoted to IFS from ~~x~~ the year 1976 instead of he was given promotion to IFS with effect from 13.4.1977. The application was filed on 6.12.2000. Under section 19 of the Administrative Tribunals Act 1985 limitation has been prescribed. Under sub-section 2 of Section 21 of the Act this Tribunal has been given power to look into grievances arising during the period 3 years preceeding the setting up of the Tribunal. The Administrative Tribunals Act came into operation in the year 1985. Thus this Tribunal can look into the grievances arising upto the year 1982 subject to other limitation. Prima facie applicant's case is barred by limitation of Section 21. Apart from this the judgment on the basis of which the applicant has made this application ^{was} also passed long back. O.A.No.394/90 - K.K.Goswami vs. Union of India & Ors. was decided on 29.6.94. The SLP arising from this judgment was decided on 24.8.95. The application on this ground itself is liable to be dismissed. Not only that the same issues have been considered by the Chandigarh Bench in Vinod Kumar Jhajhria - O.A.1122/HR/96 dated 14.10.97 and by the Supreme Court in Tamilnadu Administrative Services Officers' Association & another vs. Union of India & Ors.



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decided on 19.4.2000 and reported in AIR 2000 SC 1898. In this case the Members of Tamilnadu and Haryana State Administrative Service Officers sought direction from the Supreme Court to the respondents to encadre of State Deputation Reserve post, ex cadre post and temporary post manned by the IAS Officers for a continuous period of 3 years. Their plea was that some posts which have not been included in item No.1 of the schedule to the IAS (Fixation of Cadre Strength) Regulation were being manned by IAS Officer and these posts were in existence for decades together and such posts have not been encadred. Consequent to the failure of the respondents to encadre these posts, the petitioners were denied their legitimate right of being selected to the IAS. It was held by the Supreme Court as under :



"... It is a well-settled principle in service jurisprudence that even when there is a vacancy, the State is not bound to fill up such vacancy nor is there any corresponding right vested in an eligible employee to demand that such post be filled up. This is because the decision to fill up a vacancy or not vests with the employer who for good reason; be it administrative, economical or policy, decide not to fill up such post(s)..."

The Chandigarh Bench of the Tribunal in *Shri. Devinaod Kumar Jhajarhia's* case also held as under :

"... 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 senior duty posts as also Central Deputation Reserved 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 percent of the number of posts shown against items 1 and 2 of the Cadre Strength in relation to that State in the Schedule to that Cadre Strength Regulations.

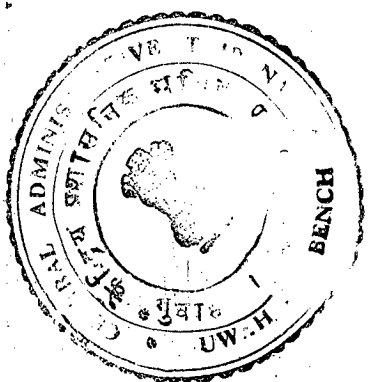
With ~~ref~~ the issuance of the aforesaid Notification, it was made known to all

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the State Forest Officers' serving in different States that the Notification of the Govt. of India was explicit not to provide promotion quota more than 33 1/3 percent of the number of posts shown against item 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 O.A. 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 Regulation. 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 1996. 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 respondents in the present O.A.



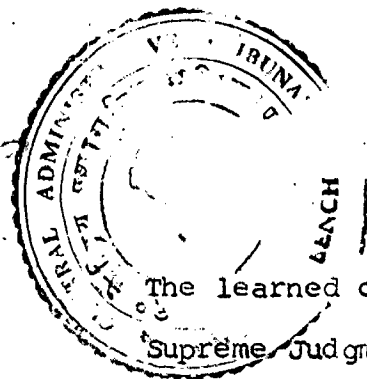
Similarly in Tamilnadu Administrative Service Officers' Case the Supreme Court has held as under :

"The petitioners further contend that similar relief was granted in the case of applicants who filed original applications before the Jabalpur Bench and Calcutta Benches of the Tribunal, and there is no reason why the petitioners should be denied such benefits. The Union of India has explained in the counter affidavit that those are isolated cases where promotions were given on the basis of the directions issued in the original applications as well as contempt petitions, and the same should not be treated as a binding precedent in every other case. We notice that as per the statutory provisions, the encadring of posts can be done only on certain fact situations existigg and further it will have to be done on a review to be conducted by the Central Government in consultation with the State Governments and on being satisfied

K. K. Sharma

that an enhancement in the cadre strength of encadring of certain posts is necessary in the administrative interest of the States concerned. Until such encadrement takes place, nobody including the petitioners could stake a claim to consider their case for promotion to those ex-cadre posts. Therefore, such right to be considered for promotion, in our considered view, would arise only from the date of encadrement which having been done with effect from 1998 only, we do not think that as a matter of right the petitioners are entitled for retrospective seniority.

In light of the above, we are of the opinion that the petitioners are not entitled to the twin reliefs sought for by them i.e. for a writ of mandamus to encadring the ex-cadre/temporary posts, so also for a writ of mandamus for the retrospective seniority in regard to the posts already included in the State IAS cadre strength by virtue of 1997 amendments."



The learned counsel for the applicant has referred to the Supreme Judgment in S.Ramanathan vs. Union of India & Ors., reported in (2001) 2 SCC 118 for the submission that ~~the~~ statutory power is given to a authority, duty is cast on the authority to comply with the requirement of law and a relief due to an applicant could not be denied on the plea of administrative chaos, unless based on materials on record. He submitted that in view of this judgment, as the statutory duty was cast on the respondents to properly consider the case of the applicant in the light of the judgment in K.K.Goswami's case and the judgment of the Calcutta Bench of the Tribunal.

5. We have perused the judgment of S.Ramanathan's case. In this case the triennial review under Rule 4(2) of IPS Cadre Rules, ^{which} ~~it~~ was due in 1987 but was initiated in 1989 and was completed in 1991. The applicant in that case had approached the Central Administrative Tribunal for appropriate directions. There also a plea was taken that the applicant

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had approached the Tribunal beyond limitation. It was held in that case as under :

" We are not persuaded to accept this submission inasmuch 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. . . ."

In the case referred to by the learned counsel the issue was alive as the applicant had taken steps to move the Central Administrative Tribunal in time. Here in this case we find no reason for the belated filing of the application. Considering all the facts the application is liable to be dismissed. Accordingly the same is dismissed. There shall, however, be no order as to costs.



Sd / VICE CHAIRMAN
Sd / MEMBER (A)

TRUE COPY
प्रतिलिपि

[Handwritten Signature]
30/11/02

Section Officer (A)
उपनिवेश अधिकारी (अ) / उपनिवेश शाखा
Central Administrative Tribunal
उपनिवेश शाखा (अ) / उपनिवेश
Guwahati Bench, Gauhati-0
गुवाहाटी न्यायपीठ, गुवाहाटी-0

[Handwritten Signature]
29/11/2002