

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Applications Nos. 261 and 379 of 1999

Jabalpur, this the 7<sup>th</sup> day of April, 2004.

Hon'ble Mr. M.P. Singh, Vice Chairman  
Hon'ble Mr. Madan Mohan, Judicial Member

(1) Original Application No. 261 of 1999

M.F.K. Khokhar, aged about 54 years  
son of Shri M.W.K. Khokhar, Asstt.  
Conservator of Forest, presently  
posted as Sub Divisional Officer,  
Champa, Janjgir.

APPLICANT

(By Advocate - Shri K.S. Wadhwa)

VERSUS

1. Union of India, through the Secretary  
Forest and Environment Department,  
New Delhi.
2. Union Public Service Commission, through  
the Secretary, Dholpur House,  
Shahjahan Road, New Delhi.
3. State of Madhya Pradesh, through the  
Principal Secretary Forest Department,  
Mantralaya, Bhopal

RESPONDENTS

(By Advocate - Shri B.da.Silva for respondents 1 & 2  
Shri Om Namdeo for respondent No.3)

(2) Original Application No. 379 of 1999

C.M. Shakeel, aged about 55 years  
son of late Shri C.M. Jameel,  
Asstt. Conservator forest,  
presently posted as Sub  
Divisional Officer, Raipur Sub  
Division, Raipur

APPLICANT

(By Advocate - Shri K.S. Wadhwa)

VERSUS

1. Union of India Through the  
Secretary Forest and Environment  
Department, New Delhi.
2. Union Public Service  
Commission, Through the  
Secretary, Dholpur House,  
Shahjahan Road, New Delhi.
3. State of Madhya Pradesh,  
through the Principal Secretary,  
Forest Department, Mantralaya,  
Bhopal.

RESPONDENTS

(By Advocate - Shri P.Shankaran for respondent No.1  
Shri Harshit Patel on behalf of Shri  
S.C. Sharma for respondent No.3)

COMMON ORDER

By M.P.Singh, Vice Chairman -

As the issue involved in both the aforementioned Original Applications is common, and the facts involved and grounds raised are identical, these OAs are being disposed of by this common order.

2. The brief facts of the case are that the applicants are members of State Forest Service of erstwhile State of Madhya Pradesh. In due course, they were promoted to the post of Assistant Conservator of Forests. In these OAs the applicants have prayed for two main reliefs - one is regarding the quashing of the letter dated 27.2.1998 whereby the Central Government has decided to fill up the vacancies in the cadre of Indian Forest Service (for short 'IFS') consequent to the increase in the cadre strength in a phased manner. The contention of the applicants is that these vacancies should not be filled up in a phased manner and all the vacancies which became available due to increase in the cadre strength should be filled up on 1.1.1998 so that they could be included in the zone of consideration for promotion to the IFS. The second relief claimed by the applicants is to increase the age of 54 years to 56 years for consideration of State Forest Service officers for promotion to IFS as per Sub-regulation 5(3) of the IFS(Promotion)Regulations. Since the applicants have already crossed the age of 54 years, their name could not be included in the zone of consideration for promotion to IFS.

3. The learned counsel for the applicant has stated that as per the rule position, the respondents had only two options; one either to fill up the substantive vacancies<sup>as</sup> existed on 1st January of the year in which a meeting of the selection committee is to convene for selection of

State Forest Service Officers for promotion to the IFS, or (ii) not to fill up those substantive vacancies existed as on 1st January of the year. As per the Promotion Regulations, the respondents do not have ~~option~~ ~~reason~~ to split up the vacancies existed as on 1st January to be filled up in the subsequent years in phased manner. The respondents in their reply have stated that the IFS (Fixation of Cadre Strength) Regulations, 1966 was amended enabling additional number of posts in the promotion quota with corresponding entries for enabling decrease in the number of posts that could be filled from direct recruit quota, to conform to the requirement of Rule 9(1) of the Recruitment Rules. Even while circulating the draft amendments to all the State Governments including the State of Madhya Pradesh, it was made clear that it would not be possible to fill additional posts in the promotion quota immediately as there was no corresponding increase in the authorised cadre strength envisaged by the Cadre Strength Regulations and further the fact that the additional posts in question were held by incumbent direct recruit officers who could not be wished away overnight. Recruitment against the additional posts by promotion without looking to this factor would lead to an unwieldy cadre composition with actual incumbency becoming far in excess of the authorised cadre strength in each State cadre. For instance, in the Madhya Pradesh cadre of the IFS with the increase in promotion post by 22 (93 + 22), there was a corresponding decrease in the number of Direct Recruit posts (292-22). The result was that against 270 sanctioned posts of direct recruits, there were 287 direct recruit officers in position in Madhya Pradesh cadre in 1998. It was, therefore, proposed to all the State Governments even while introducing the amendments to the Recruitment Rules that the additional posts enabled in the promotion quota would be filled in a phased manner

over a period of 3 to 5 years against posts vacated by incumbent-direct recruit officers due to retirement/death etc., by a process of attrition. The Department of Legal Affairs in the Central Government were also consulted in the matter and the legal opinion was that there was no objection to the proposal and it was legally in order. It was further observed that the purpose and object of recruitment by promotion from among State Forest Service Officers in terms of Regulation 5(4) of the Promotion Regulations is to recruit officers in the order of their merit-cum-seniority. The Regulations envisage inclusion in the select list of such officers who are graded as 'outstanding', 'very good' and 'Good' on an overall relative assessment of their service records in the same order. It was observed that recruitment against the large number of additional posts at a stretch in the same year, would enable officers of relatively lesser merit also enter the service <sup>which would not</sup> be in tune with the object of the Promotion Regulations. Keeping the genesis of the recruitment by promotion as also the statutory provisions in view, it was decided to make the recruitment against the additional posts in the promotion quota (that were enabled by the amendments dated 31.12.1997) over a period of three years from 1998 to 2000 and to invoke the provisions of Rule 4(2)(b) of the Recruitment Rules to the required purpose. Accordingly, all the State Governments were advised by the Govt. of India's letter dated 27.2.1998 (which has been impugned in this OA) for determining the ceiling on the promotion post upto which recruitment may be permitted during 1998, invoking Rule 4(2)(b) of the Recruitment Rules.

4. We find that the contention of the applicants that the cut off age of 54 years as on 1st January for consideration for promotion of State Forest Service Officers to IFS should be increased to 56 years in view of the increase of age in retirement from 58 to 60 years, is not acceptable as it is a policy matter to increase the age of the State Forest

Service Officers for consideration by the Government, and as per the settled legal position the Courts or Tribunals cannot interfere in the policy matters taken by the Government, unless it is against the provisions of the Constitution. The respondents-Union of India in their reply have specifically stated that "the Union of India does not feel it necessary to increase the eligibility age for promotion to the IFS by two years, ~~as suggested by the applicants~~". Since the Union Government did not find it necessary to increase the eligibility age for promotion of State Forest Service Officers to IFS, we cannot interfere with this issue.

5. As regards the <sup>other</sup> relief of the applicants that the respondents be directed not to fill up the vacancies in a phased manner as has been directed by the impugned letter dated 27.2.1998, we may reproduce the relevant provisions of the IFS (Promotion) Regulations, as under-

"5. Preparation of a list of suitable officers:-

- (1) Each Committee shall ordinarily meet every year and prepare a list of such members of the State Forest Service as are held by them to be suitable for promotion to the Service. The number of members of the State Forest Service to be included in the list shall be determined by the Central Government in consultation with the State Government concerned, and shall not exceed the number of substantive vacancies as on the first day of January of the year in which the meeting is held, in the posts available for them under rule 9 of the recruitment rules. The date and venue of the meeting of the committee to make the selection shall be determined by the Commission;

Provided that no meeting of the Committee shall be held, and no list for the year in question shall be prepared when:-

- (a) there are no substantive vacancies as on the first day of January of the year in the posts available for the members of the State Forest Service under Rule-9 of the recruitment rules; or
- (b) The Central Government in consultation with the State Government decides that no recruitment shall be made during the year to the substantive vacancies as on the first day of January of the year in the posts available for the members of the State Forest Service under rule 9 of the recruitment rules; or

- (c) The Commission, on its own or on a proposal made by either the Central Government or the State Government, after considering the facts and circumstances of each case, decides that it is not practicable to hold a meeting of the Committee to make the selection to prepare a select list".

Although the existing rules do not specifically provide to fill up substantive vacancies as existed on the first day of January of the year, in a phased manner, however, in view of the practical difficulties explained by the respondents in their reply, as mentioned above, particularly the fact that total cadre strength has not increased and with increase in the number of promotion quota vacancies, there has to be corresponding decrease in number of direct recruit vacancies. Therefore, the action of the respondents to fill up the vacancies in a phased manner cannot be faulted with. A similar issue had come before the Jaipur Bench of the Tribunal in OA No.206 of 1998, Govind Narain Purohit and another Vs. Union of India & Ors. wherein on 23.7.1998 the Tribunal has held that it is in the domain of the Central Government to lay down a policy as to how and in what manner the enhanced vacancies in the promotion quota have to be filled up. Rule 4(3) of the Recruitment Rules speaks as under -

"4(3)(a) the method or methods of recruitment to be adopted for the purpose of filling up any particular vacancy or vacancies as may be required to be filled up during any particular period of recruitment, shall be determined by the Central Government in consultation with the Commission and the State Government concerned.

(b) the number of persons to be recruited by each method shall be determined on each occasion by the Central Government in consultation with the State Government concerned".

In view of the aforesaid provisions, the Central Government has to determine on each occasion, the number of persons to be recruited. Thus, the Government is competent to take a policy decision to fill up the additional vacancies

which became available due to increase in the number of posts in promotion quota in a phased manner. We do not find any ground to interfere in this matter.

6. In the result, for the reasons recorded above, the O.A. is bereft of merits and is accordingly dismissed, however, without any order as to costs.

*Sd/-*

(Madan Mohan)  
Judicial Member

*Sd/-*

(M.P. Singh)  
Vice Chairman