

FORM NO. 4

(See Rule 42)

In The Central Administrative Tribunal

GUWAHATI BENCH : GUWAHATI

ORDER SHEET

Review APPLICATION NO. 15/98
CA. 15/98

OF 199


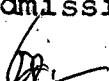



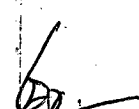
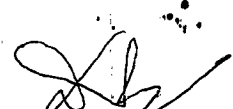




Applicant(s) Union of Dega and ors.

Respondent(s) Sri Bobi Singh

Advocate for Applicant(s) Mr. A. Deb Roy
M.C.G.S.C.

Advocate for Respondent(s) Mr. B. K. Sharma.

Notes of the Registry	Date	Order of the Tribunal
The Learned Mr. C.G.S.C. has linked this Review Application against the order of 20-1-99 passed by this Honble Tribunal passed in CA 15/95. The Revised Appli- cation is time barred. The applicant has filed a petition of delay before Honble Tribunal for further orders.	15.10.99 pg 10-11-99 1m 29.11.99 1m	On the prayer of Mr B.C.Pathak on behalf of Mr A.Deb Roy, learned Sr. C.G.S.C the case is adjourned to 10.11.99 Member Vice-Chairman Let this case be listed alongwith M.P.No.282 of 99 on 29-11-99 for orders. Member Vice-Chairman Let this case be listed alongwith M.P.No.282 of 99 on 16.12.99 for orders. Member Vice-Chairman
Section Officer 14/11/99		

Notes of the Registry	Date	Order of the Tribunal
	16.12.99	In view of the order passed in M.P.No.282/99 the Review Application is treated to be filed in time. List it on 5.1.2000 for admission. <div style="text-align: right;"> Vice-Chairman</div>
nkm 5-1-2000		The other side to file if any. Let this case be listed on 31-1-2000. for admission. <div style="display: flex; justify-content: space-between;"><div> Member</div><div> Vice-Chairman</div></div>
lm		
	31.1.2000	On the prayer of the learned counsel for the parties the case is adjourned to 1.2.2000 for admission. <div style="display: flex; justify-content: space-between;"><div> Member</div><div> Vice-Chairman</div></div>
pg		
	1.2.00	On the prayer of Mr A. Deb Roy, learned Sr. C.G.S.C. the case is adjourned till 9.2.00. <div style="display: flex; justify-content: space-between;"><div> Member</div><div> Vice-Chairman</div></div>
nkm		
	9.2.2000	On the prayer of Mr S.Sarma on behalf of Mr B.K.Sharma, learned counsel for the opposite party the case is adjourned to 8.3.2000. Mr A.Deb Roy, learned Sr.C.G.S.C has no objection. <div style="display: flex; justify-content: space-between;"><div> Member</div><div> Vice-Chairman</div></div>
pg		
	8.3.2000	On the prayer of Mr.A.Deb Roy, Sr.C.G.S.C. case is adjourned to 10.3.2000. <div style="display: flex; justify-content: space-between;"><div> Member(J)</div><div> Member(A)</div></div>
lm		

(3)

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Notes of the Registry	Date	Order of the Tribunal
<p>23-3-00</p> <p>objection is not seen b/w</p> <p>23/3</p>	<p>10.3.2000</p> <p>lm</p>	<p>Mr.S. ^Sarma learned counsel submits that he may be allowed to file objection/ reply.</p> <p>List for consideration of Admission on 24.3.2000.</p> <p>Mr.Sarma learned counsel may file objection, if desire, with copy to the other counsel.</p> <p>Member(J)</p> <p>Member(A)</p>
	<p>24.3.00</p> <p>lm</p>	<p>Division Bench is not available. Case is adjourned to 2.5.00 for hearing.</p> <p>Member</p>
	<p>2.5.00</p>	<p>There is no D/B. Adjourned to 23.6.00.</p> <p>Mo by</p>
<p>objection has not been filed.</p> <p>23/3</p> <p>23.6.00</p>	<p>23.6.00</p>	<p>There is no Bench today, adjourned to 8.9.00.</p> <p>Mo by</p>
	<p>8.9.00</p>	<p>no Bench, To be listed on 12.1.01.</p> <p>Mo by</p>
	<p>12.1.2001</p>	<p>Adjourned to 22.1.2001.</p> <p>Mo by 12/1</p>
<p>7.2.2001</p> <p>Copy of the order has been sent to the D/Sec. for filing in the appeal as well as to the R.C. by the D/Sec.</p> <p>Mo</p>	<p>22.1.01</p> <p>lm</p>	<p>Heard Mr.A.Deb Roy, learned Sr. C.G.S.C. for the Review Petitioner at some length and also Mr.S.Sarma learned counsel for the respondents/ applicant.</p> <p>Review Application is dismissed by reasoned order in separate sheets.</p> <p>Member</p> <p>Vice-Chairman</p>

Notes of the Registry	Date	Order of the Tribunal

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

R.X./R.A. No. 15 of 1999 (In O.A.15/95)

DATE OF DECISION 22-1-2001.

Union of India & Ors.

PETITIONER(S)

Sri A.Deb Roy, Sr.C.G.S.C.

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Shri Ibobi Singh

RESPONDENT(S)

Shri S. Sarma, Advocate.

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N.CHOWDHURY, VICE CHAIRMAN.

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

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

Judgment delivered by Hon'ble Vice-Chairman.

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Review Application No. 15 of 1999 (In O.A.15/95)

Date of Order : This the 22nd Day of January, 2001.

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

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

Union of India & Others

. . . Petitioner

By Shri A.Deb Roy, Sr.C.G.S.C.

- Versus -

Shri Ibobi Singh

. . . Opposite party.

By Advocate Sri S.Sarma.

_O_R_D_E_R_

CHOWDHURY J.(V.C)

This is an application under Section 22(3) (f) of the Administrative Tribunals Act 1985 praying for review of the judgment and order dated 20.1.1999 passed by this Tribunal in O.A.15/95. The opposite party/applicant submitted an application under Section 19 of the Administrative Tribunals Act 1985 praying inter alia for a direction on the respondents to assign the applicant 1984 as his year of allotment and place him just above the respondent No.5. The aforementioned O.A was adjudicated upon and disposed of by the Tribunal on 20.1.1999 with a direction on the respondents for allotting the year of allotment earlier than 1986 and to compute the cadre strength of the promotional quota after giving deputation reserve quota and to provide the benefit of promotional quota to the applicant in the manner he was entitled to. The Tribunal considering the facts and circumstances set out in the pleadings and taking note of the relevant rule, more particularly sub-rule 2 of Rule 4 of IFS Cadre Rules found that the rule of Triennial Cadre Review of the cadre strength is mandatory in nature and for that purpose referred to the

decision of the Ernakulam Bench of the Tribunal in the case of Jacob P.Thomas vs. Union of India & Ors., reported in SLJ (CAT) 1992 (3) 85. The Tribunal also relying upon the decision of the Calcutta and Jabalpur Bench of the Tribunal and on the facts and circumstances of the case also expressed opinion that a deputation reserve quota were to be computed for the purpose of determining the strength of the promotion quota. The Union of India hence preferred this Review Application with a petition for condonation of delay. The delay was condoned in a separate Misc.Petition. This review application has been filed questioning the legality of interpretation of the cadre rules by the Bench, the correctness of the inferences drawn in the light of the decision of the Ernakulam Bench of the Tribunal in Jacob P.Thomas (supra). The counsel for the petitioner submitted that the aforementioned decision is not a good law and the Apex Court expressed its misgivings. The learned counsel submitted that the judgment rendered by the Ernakulam Bench in O.A.138/91 was challenged by the Union of India by way of a SLP, which was numbered as SLP(Civil) No.432 of 1993 and the Hon'ble Supreme Court in its order dated 14.7.1994 expressed its fervid reservation as to the correctness of the view taken by the Tribunal in the matter. However, since the respondent has retired on 28.2.94, the Hon'ble Supreme Court refrained from going into the merit of the matter leaving the Union of India to agitate the question of law in some appropriate proceeding in future. Mr A.Deb Roy, learned Sr.C.G.S.C next submitted that the claim of the applicant for computation of promotion vacancy by taking into account State deputation reserve was not pleaded in the Original Application and even otherwise the aforementioned claim was patently time barred in view of the judgment

rendered by the Chandigarh Bench of the Tribunal in O.A. 1122-HR of 1996, Vinod Kumar Jhanjhria vs. Union of India & Ors. disposed of on 14.10.97. Mr Deb Roy also referred to the decision of the Supreme Court in Civil Appeal No. 2370-2371 of 1987, K.J.Singh vs. State of Manipur and others dismissed and disposed of by the Supreme Court on 8.2.1995 refusing to interfere in the decision of the Tribunal rejecting the claim of those applicants there for antidating the year of allotment.

2. We have heard the learned counsel for the petitioner aswell as Mr S.Sarma, learned counsel appearing for the opposite party at length but we do not find any scope for exercising the power conferred on the Tribunal under Section 22(3) (f) of the Act. The procedure and powers of the Tribunal are indicated at Section 22. Sub-section 3 of Section 22 provides that a Tribunal shall have, for the purpose of (discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the matters enumerated in clause (a) to (1) of sub-section 3. Under sub-section 3(f) of Section 22 the Tribunal is vested with the power of reviewing its decision. The power of review of the Tribunal is therefore, not absolute or unfettered. It is restricted to the powers conferred to the same powers as are vested in the Civil Court under the Code of Civil Procedure. The power of the civil court for reviewing its decision is enumerated in Section 14 read with Order XLVII. A decree or an order may be reviewed from which no appeal has been preferred though an appeal is allowed, or from which no appeal is allowed and who, from the discovery of new and important matter or evidence which, after the exercise

of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason. The grounds canvassed in this application are against the correctness of the decision rendered by the Tribunal and for that purpose Mr Deb Roy, the learned Sr.C.G.S.C referred to the decisions mentioned above. It is not a question of discovery of new and important evidence, which were not available to the applicant after exercise of due diligence when the order was passed. Mr Deb Roy however, submitted that it is a case of an error apparent on the face of the record. Since the decision rendered by the Bench earlier is contrary to the decisions rendered by the Supreme Court as well as by the Tribunal. No one is free from error. Under our legal system erroneous decisions can be corrected in the appropriate forum but the same cannot be labelled as error apparent on the face of the record. An error apparent means a manifest error which stares on the face of the record without requiring any elaborate argument on the issue. The distinction between an erroneous decision and an order vitiated by error apparent on the face of the record is ~~real~~ and not chimerical. An erroneous decision can only be corrected by the superior court either on appeal, revision or otherwise and not by the same court in exercise of review. In M/s Thungabhadra Industries Ltd. vs. Government of Andhra Pradesh, reported in AIR 1964 SC 1372, it was held that 'there is a distinction between a mere erroneous decision and a decision which could be characterised as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an

erroneous decision is reheard and corrected, but lies only for patent error. The aforementioned decision is followed in a number of subsequent decisions by the Supreme Court and still holds the field. In Ajit Kumar Rath vs. State of Orissa and others, reported in (1999) 9 SCC 596 citing the provisions under Section 22(3) (f) of the Act the Supreme Court observed as follows :

"The provisions extracted above indicate that the power of review available to the Tribunal is the same as has been given to a court under Section 114 read with Order 47 CPC. The power
the power of review can be exercised only for correction of a patent error of law or fact which stares in the face without any elaborate argument being needed for establishing it. It may be pointed out that the expression "any other sufficient reason" used in Order 47 Rule 1 means a reason sufficiently analogous to those specified in the rule.

Any other attempt, except an attempt to correct an apparent error or an attempt not based on any ground set out in Order 47, would amount to an abuse of the liberty given to the Tribunal under the Act to review its judgment."

3. Mr Deb Roy next submitted that a review can also be made for any other sufficient reason, for the ends of justice. The expression is wider in terms and to attain the ends of justice the Tribunal is competent to review its decision in the light of the decisions referred to him before the Tribunal. We are afraid such interpretation will defeat the scheme of Order 47. The expression "sufficient reason" is to be read in the light of two other conditions set out in Order 47. In other words the "sufficient reason" is to be read ejus dem generis i.e. analogous to those specified in Order 47 Rule 1. Ejus dem generis rule is a tool relied upon in the construction of Laws. Where general words follow

and enumerating a person or thing by words of particular or specific meaning such general rules are not to be construed in the widest extent but are to be held as applying to persons for things of the same general kind or class those are specifically mentioned. As far back as 1992 the Privy Council in Chhajju Ram vs. Neki and others, reported in AIR 1922 Privy Council 112, while interpreting Order 47 Rule 1 of the CPC held that "Rule 1 of Order 47 must be read as in itself definite of the limits within which review is to be permitted and that reference to practice under former and different statutes is misleading. So construing if they interpret the words "any other sufficient reason" as meaning a reason sufficient on grounds at least analogous to those specified immediately previously."

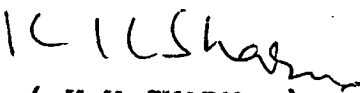
4. The cadre rules are framed by the Central Government in exercise of powers under sub-section 1 of Section 3 of the All India Services Act 1951. The rules are statutory in nature and character. In this context it would not be improper to recall the decision of the Supreme Court in S.Ramanathan vs. Union of India & Ors., reported in 2000 AIR SCW 4549 and disposed of on 7.12.2000. In that case the Supreme Court observed as follows :

" it cannot be denied that if there has been an infraction of the provisions and no explanation is forth coming from the Central Government, indicating the circumstances under which the exercise could not be undertaken, the aggrieved party may well approach a Court and a Court in its turn would be well within its jurisdiction to issue appropriate directions, depending upon the circumstances of the case. When certain power has been conferred upon the Central Government for examining the cadre strength, necessarily the same is coupled with a duty to comply with the requirements of the law and any infraction on that score cannot be withheld down on the hypothesis that no vested right of any employee is being jeopardised.
That apart when Rules and Regulations provide for certain things to be done at a certain

period, the same should normally be observed and if there has been a failure, the Court should compel the performance of that duty."

5. We have given our anxious consideration on the matter. From the discussion made above, we are of the considered opinion that this is not a case for exercising the review jurisdiction of the Tribunal conferred under Section 22 (3)(f) of the Act. The application is accordingly dismissed.

There shall, however, be no order as to costs in the facts and circumstances of the case.


(K.K.SHARMA)
ADMINISTRATIVE MEMBER


(D.N.CHOWDHURY)
VICE CHAIRMAN

11 OCT 1999

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH

R.A. NO. 15 OF 1999
O.A.NO. 15 OF 1995

Filed by

11/10/99
(A. DEB ROY)

Sr. C. G. C.

C. A. T., Guwahati Bench

Union of India Applicant

Versus

Shri Ibobi Singh Respondents

S.No.	Description	Page No.
01	Review Application	1 to 11
02	Annexure A.1	12 to 21
03	Annexure A.2	22
04	Annexure A.3	23 to 36
05	Annexure A.4	36 to 38
06	Annexure A.5	39 to 41
07	Annexure A.6	42 to 43

R 3(2)(6) & IFS Regn & Seniority Rules, 1957

THROUGH

IFS (Tirunelveli District) Regn 1957

R 4(2) & IFS Cadre Rules, 1966

(A. Deb Roy)

Sr. Central Govt. Standing Counsel,
Hengrabari Housing Colony,
L.I.G. - 3 (Top Floor)
Guwahati - 781 006.

Re examine the order regarding composition

Triennial Review & Cadre Rules

3) State Agents Order, 1966

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

R.A. NO. OF 1999

O.A.NO. 15 OF 1995

IN THE MATTER OF

A Review Application under section 22(3) of the
Central Administrative Tribunal Act, 1985.

-AND-

IN THE MATTER OF

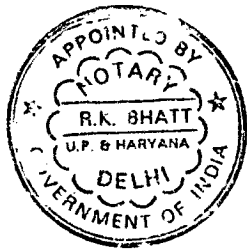
Judgment and order datd 20.1.99 passed by the Hon'ble
Tribunal in O.A.No. 15/95.

-AND-

IN THE MATTER OF

Union of India,

represented by A. Deb Roy, Sr. C.G.S.C.,



R. Sanehal

(रवीश सनेहवाल)
(R. SANEHWAL)

जवनर सचिव/Under Secretary
पर्यावरण वन मंत्रालय
Ministry of Env. & Forests
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

PETITIONERS

RESPONDENTS

-VS-

SHRI Ibobi Singh

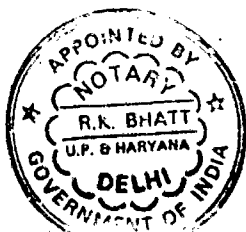
...Opposite Party

Applicant

The humble petition of the above
named petitioners.

MOST RESPECTFULLY SHEWETH :

1. That the opposite party as applicant filed O.A.No. 15/95 before this Hon'ble Tribunal claiming that his year of allotment ought to be 1984, but his year of allotment was given as 1986.
2. That the respondents/petitioners contested the O.A. by filing written statements and advancing oral arguments in the case.
3. That after hearing both sides the Hon'ble Tribunal disposed of the O.A. vide judgment and order dated 20.1.1999 with a direction that the year of allotment should be computed relating to the year of allotment earlier than 1986 and to compute the cadre



R. Sanehwale
(रवीश सनेहवाल)
(R. SANEHWAL)
अवर सचिव/Under Secretary
पर्यावरण एवं वन विभाग
Ministry of Env. & Forests
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

strength promotional quota after giving deputation reserve quota to the applicant in the manner he is entitled to. The Hon'ble Tribunal also observed that the triennial cadre reviews ought to have been held at the interval of three years. A true copy of the Hon'ble Tribunal's order dated 20.1.1999 received on 16.8.1999 is hereby annexed (Annexure-A.I).

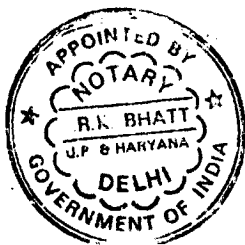
Being highly aggrieved by and dissatisfied with the aforesaid judgment and order dated 20.1.1999 the petitioners prefer this Review Application on the following grounds :

G R O U N D S

1. For that there is error apparent on the face of the records and as such, the impugned judgment is liable to be reviewed.

2. For that the judgment referred to by the Hon'ble Tribunal in the case of Jacob P. Thomas was challenged by the Union of India by way of filing SLP (Civil) No.432/93 in the Hon'ble Supreme Court. The Apex Court in their order dated 14.7.94 observed as under:-

"We have a strong doubt about the correctness of the view taken by the Tribunal in the matter. However, since the respondent has retired on 20th February, 1994, we do not propose to go



R. Sanehwal
(रविश सनेहवाल)
(R. SANEHWAL)

अवर सचिव/Under Secretary

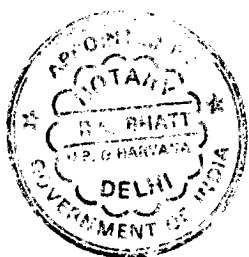
पर्यावरण वन मंत्रालय

Ministry of Env. & Forests

भारत सरकार/Govt. of India.

नई दिल्ली/New Delhi

quota more than 33 1/3 percent 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."



The case of Shri Ibobi Singh is thus barred by limitation. A true copy of order dated 14.10.97 and the two notifications dated 22.2.89 referred to therein are hereby annexed (Annexures A-3, A-4 & A-5).

4. For that the question of giving seniority to promotee IFS officers of Manipur from an earlier date on the ground that the Select List during 1977-79 had not been prepared, came up for discussion before the Hon'ble Supreme Court in Civil Appeal No.2370-2371 of 1987 : K.J. Singh Vs. State of Manipur and Others. The Apex Court decided the case on 8.2.95.

The order in verbatim is reproduced below:

"The appellants, in the appeals herein, are members of the Indian Forest Service (IFS). They were appointed to the IFS by way of promotion from the State Service. It is not

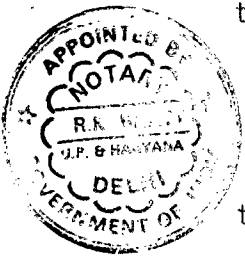
Chander

(Signature)
(Name)
(Designation)
(Date)
(Place)

disputed that during the period from 1977-79, the Selection Committee did not meet and as such no selections were held for promotion to the IFS., The appellants were selected in the year 1980 and were appointed to the IFS in 1981. They were given the year of allotment as 1977. The grievance of the appellants is that had there been selection during the period 1977-79, they were sure to be selected, and as a consequence would have got earlier year of allotment. The Central Administrative Tribunal by a detailed judgment, rejected the contention of the appellants. It is no doubt correct that ordinarily the Selection Committee should meet every year to revised 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 conclusion reached therein. The appeals are dismissed. No costs."

The present case of identical nature. A true copy of the said order dated 8.2.95 is hereby annexed as Annexure A-6).

5. For that the expression "at the intervals of every three years" means that the cadre strength be reviewed at intervals of about 3 years and it cannot be interpreted to mean that it should be done before the expiry of three year.



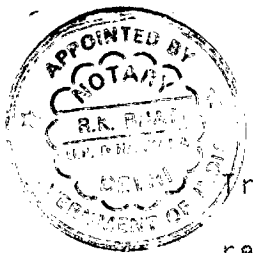
6. For that a plain reading of Rule 4(2) of the IFS (Cadre) Rules, 1966 implies that the cadre strength shall be re-examined at the interval of every three years. It does not further say that such review should be done immediately on completion of three years of the earlier review. Rule 4(2) of the IFS (Cadre) Rules, 1966, is reproduced below:-

Chander
(R. CHANDER)
Secretary (IFS) Ministry
of Home Affairs
Government of India
New Delhi

"4(2) - The Central Government shall, at intervals of every 3 years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alteration therein as it deems fit."

7. For that after examination of the cadre strength on the recommendations of the State Government concerned, a considerable period is involved for completion of the formalities before the issue of notification. In practice, no review in respect of all the three All India Services is ever conducted immediately on expiry of 3 years, although there is an identical provision for review in the IAS, IPS and IFS (Cadre) Rules.

8. For that in all the three All India Services, the revised cadre strength comes into effect from the date of publication of Notification in the Gazette of India. At the outset of every Notification it is clearly stated that it shall come into force on the date of its publication in the official Gazette. The previous Cadre Review in respect of Manipur-Tripura Joint Cadre was notified vide Notification No.16016/3/85-AIS(II)-A dated 29.3.85. There has been no challenge to the date of issue of the Notification.



9. For that in case the orders of the Tribunal are implemented, it will amount to giving retrospective effect to the notification for which there is no provision whatsoever. Amendments to Rules/Regulations generally come into effect from the date of issue of Notification.

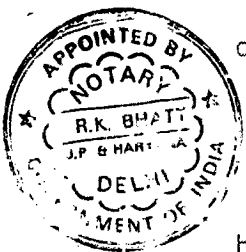
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10. For that there has been a time-lag of more than three years between two cadre reviews in respect of all the three All India Services. So, if the directions of the Hon'ble Tribunal are implemented, it will have far-reaching and wide-spread consequences not only in the IFS Cadre of Manipur-Tripura Joint Cadre but also in all the three All India Services. Consequently, delay in holding a Triennial Review does not confer any right on an individual officer to get a particular review ante-dated nor is there any such provision in the Rules.

11. For that if the notification in question is given retrospective effect, the promotion quota would also increase retrospectively. The Triennial Review depends upon certain consideration and circumstances prevailing in the particular cadre at a particular point of time. If for some reasons, the Triennial Review is not held for a long period, it becomes very difficult to identify the number of additional promotional posts for a particular cadre review. The Triennial Review Committee considers and takes into account the position as a whole and then comes to a final decision.

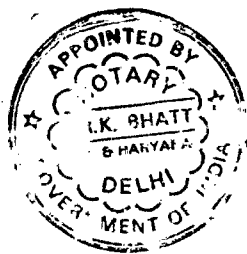
12. For that in this connection it may also be stated that the Select Lists of all the three all India Services are prepared by the Selection Committee




(R. SANEHWAL)
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सरकार भारत
नई दिल्ली/New Delhi

after taking into account the likely number of vacancies in the next 12 months. It is not possible for the Selection Committee to visualise the proposed increase in the number of posts under promotion quota. If we take into consideration the additional vacancies likely to arise due to the Triennial Review in the promotion quota, a fresh Select List would be required to be prepared, and with the increase in the promotion posts the size of the Select List would also increase. As a result of this, zone of consideration would automatically increase and officers who may not have been considered earlier by the Selection Committee, might go to the Tribunal for their claim to be considered by the said Selection Committee. This would lead to further litigation and a status of chaos would be created in the Service.

13. For that with the increase in the additional vacancies in the promotion quota as envisaged above, the additional officers to that extent would have to be promoted to IFS from a back date. This would also create resentment amongst the officers already appointed to IFS in accordance with the recommendations of the Selection Committee. In case such officers are appointed to IFS retrospectively, they will also claim higher seniority in the IFS on the basis of their ante-dated appointment to the Service. Thus, it would not only have effect on promotion to IFS but at the same time



(Signature)
(रवीश सनेहवाल)
(R. SANEHWAL)
अवर सचिव/Under Secretary
पर्यावरण व वन विभाग
Minister of Env. & Forests
भारत Govt. of India
नई दिल्ली New Delhi

it will also disturb the seniority of IFS officers as already decided. The change in year of allotment of the officers would be a further consequential effect due to promotion with retrospective effect. Thus, by giving retrospective effect to the Notification of cadre strength there would be enlargement of the consideration zone for Select List, promotion of State Forest Service officers with retrospective date and revision in the year of allotment in the IFS.

14. For that at any rate the impugned judgment is liable to be reviewed. It is, therefore, respectfully prayed that the Hon'ble Tribunal be pleased to admit the Review Application; call for the records and issue notices to the opposite party and after hearing the parties, review the impugned judgment and decide the Original Application in accordance with law.

And for this act of kindness the petitioners as in duty bound shall ever pray.



Place : New Delhi

Date : 6.10.99

Ch Anand
(रवीण मानेहवाल)
(DEPONENT)
अवर सचिव/Under Secretary
संयोजक एवं वन संचालक
Minister of Env. & Forests
भारत सरकार Govt. of India
नई दिल्ली New Delhi

A F F I D A V I T

I Shri R. Sanehwal, Under Secretary to the Government of India, Ministry of Environment & Forests, New Delhi, do hereby solemnly affirm and state as follows :

1. That I am acquainted with the facts and circumstances of the case and I am competent to swear this affidavit.

2. That the statements made in paras 2 to 4 are true to my knowledge and those made in paras 5 to 13 are true to my information and the rests are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this 6th day of October, 1999 at New Delhi.

Chander
6/10/99



Chander

(DEPONENT)

Solemnly affirmed by the deponent Shri R. Sanehwal, who is identified by Shri Harkesh Chander, Assistant in the Ministry of Environment & Forests, before me on this 6th day of October, 1999.

ATTESTED
6/10/99
NOTARY DELHI



CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 15 of 1995.

Date of decision : This the 20th day of January 1999.

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

Hon'ble Shri G.L.Sanglyine, Administrative Member.

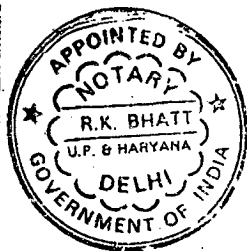
Th. Ibobi Singh,
Divisional Forest Officer,
Northern Forest Division,
Kangpokpi, Manipur

Applicant.

By Advocate Mr. B.K.Sharma.

-versus-

1. Union of India, represented by the Secretary to the Government of India, Ministry of Environment and Forests, Paryavaran Bhavan, C.G.O. Complex, New Delhi.
2. Union Public Service Commission, represented by the Chairman, U.P.S.C. Dholpur House, Shahjahan Road, New Delhi.
3. The State of Manipur, represented by the Secretary, Department of Forests, Government of Manipur, Imphal, Manipur.
4. The State of Tripura, represented by the Secretary, Department of Forests, Government of Tripura, Agartala, Tripura.
5. V. Ramkanta, Dy. Conservator of Forests (Presently on Deputation to the State of Karnataka), C/o Principal Chief Conservator of Forests, Karnataka, Bangalore.
6. A Kumar, Dy. Conservator of Forests, (Presently on deputation to the Govt. of India), C/o Ministry of Environment & Forests, Paryavaran Bhavan, C.G.O. Complex, New Delhi.
7. G.Krishnan, Divisional Forest Officer, Tripura, C/o PCCF, Tripura, Agartala.



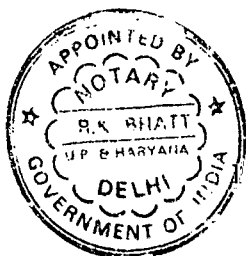
(Signature)
(R. SANERWAL)
अवर सचिव/Under Secretary
पर्यावरण एवं वन मंत्रालय
Ministry of Env. & Forests
संघ सरकार/Govt. of India
नई दिल्ली/New Delhi

Contd....

8. Balbir Singh, Divisional Forest Officer, Tripura, C/o PCCF, Tripura, Agartala.
9. G.S. Kadu, Divisional Forest Officer, Tripura, C/o PCCF, Tripura, Agartala.
10. Surender Kumar, Divisional Forest Officer, Tripura, C/o PCCF, Tripura, Agartala.
11. P.N. Prasad, Divisional Forest Officer, Chandel, Manipur.
12. R.K. Srivastava (Presently on deputation to the Govt. of India), Asstt. Inspector General of Forests, Ministry of Environment & Forests, Paryavaran Bhavan, C.G.O. Complex, New Delhi.
13. Jagabandhu Mishra, Divisional Forest Officer, Tamanglong, Manipur.
14. Koroilhouvi, Divisional Forest Officer, Social Forestry Division I, Manipur, Imphal.
15. A.K. Roy, Divisional Forest Officer, on deputation to the, TFDPC Ltd., Tripura, C/o PCCF, Tripura, Agartala.
16. A. Rastogi, Divisional Forest Officer, Tripura, on deputation to the Govt. of India, Ministry of Environment & Forests, Paryavaran Bhavan, C.G.O. Complex, New Delhi.
17. P.K. Pant, Divisional Forest Officer, Tripura, C/o PCCF, Tripura, Agartala.
18. B.N. Mohanty, Divisional Forest Officer, Manipur, presently on deputation to Orissa as DCG, Office of the Regional CCF, Bhubaneswar.
19. D.J.N. Anand, Divisional Forest Officer, Jaribam, Manipur.

Respondents.

By Advocate Mr. A. Deb Roy, Sr. C.G.S.C.



[Signature]

[Signature]
(रविश सनेहवाल)
(R. SANEHWAL)

अवर सचिव/Under Secretary...
पर्यावरण व वन विभाग
Ministry of Env. & Forests
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

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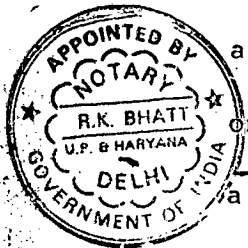
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ORDER

-6-

BARUAH J.(V.C.)

The applicant at the material time was a member of Manipur Forest Service and was holding the post of Assistant Conservator of Forests. In the year 1985 he became eligible for consideration for promotion to Indian Forest Service (for short the IFS). However he was not considered for promotion due to the non-availability of post in that year. For the subsequent years namely for the years 1986, 1987, 1988 and 1989 he was not recruited. In the year 1989 the applicant was a lone member selected for appointment to the IFS by way of promotion. This year also he could not be appointed due to non-availability of post. In the next year he was selected and promoted to IFS by Annexure-IV Notification dated 30.8.1990. By Annexure VI Order dated 6.9.1992 his year of allotment was given as 1986 and the same was communicated to the applicant on 29.8.1993. Prior to that the applicant submitted a representation in the year 1991 apprehending that the authority might give incorrect year of allotment. He claimed that his year of allotment ought to be 1984. After the Annexure-VI order the applicant submitted yet another representation (Annexure-VII A) dated 16.3.1993. This representation was not disposed of. Thereafter in the month of



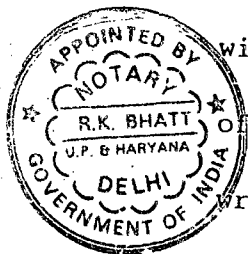
Sanjay
(R. SANJAY)
Under Secretary

Ministry of F. & Forests
Govt. of India
New Delhi

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November/December 1993 he visited Delhi Office and he came to know that his said representations had not yet been forwarded to the Head Office for taking step in the matter. Accordingly Delhi Office advised the applicant to file a fresh representation. On being so advised he submitted a fresh Annexure-VIII representation dated 17.1.1994. Even after submission of Annexure-VIII representation nothing had been done. Hence the present application.

2. In due course respondents have entered appearance. Union of India, respondent No.1 has filed written statement. In the written statement respondent No.1 has refuted the claim of the applicant. According to the respondent No. 1 the year of allotment was rightly assigned in strict compliance with the provision of Rule 3(2) (6) of IFS Regulation of Seniority Rules 1968. In paragraph 10 of the written statement respondent No.1 has stated regarding the Triennial Cadre Review. We quote the relevant portion of the paragraph 10 :



"10. After the proposals have been received, these are examined by the Cadre Review Committee which, among others, is represented by State officials also. Based on the recommendations of the Cadre Review Committee, necessary changes are made in the strength and composition of a particular cadre. It is admitted that the last Review of the strength and composition of the Manipur-Tripura cadre of the IFS was notified on 22.11.90. It is submitted that the issue of Triennial Cadre Review having not been held during 1985-1990, cannot be agitated by the applicant at this belated stage."

Sanjay
(R. SANJAY)
अवर सचिव/Under Secretary
प्रयोजन एवं जन प्रसार
Ministry of Env. & Forests
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

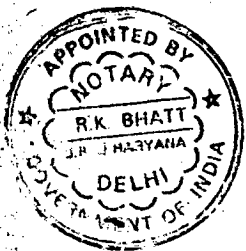
In paragraph 14 of the said written statement it is stated that there could be some reasons beyond the control of the State Government for not holding meetings in consultation with the Union Public Service Commission on regular yearly basis. In any case, this matter could not be agitated at this belated stage.

The other respondents including the State of Manipur have not filed any written statement. Besides these, the applicant also claimed about the 33.33% deputation reserve quota. This was however not done in spite of the claim of the applicant. A specific averment has been made in the Original Application but there has been no reply to the same. The respondent No.1 in its written statement remained silent in the matter. The other respondents as stated hereinbefore have not filed any written statement.

3. We have heard Mr. B.K.Sharma, learned counsel appearing on behalf of the applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C.

4. Mr. Sharma submits that it has not been explained as to why after 1985 when the applicant became eligible for promotion he had not been considered for promotion to IFS for the subsequent years viz. 1986, 1987, 1988 and 1989. The written statement filed by the respondent No.1 has not dealt with

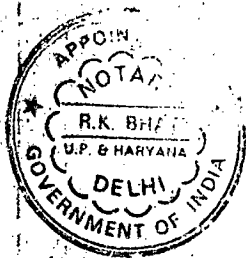
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R. SANEHAL
(R. SANEHAL)

Ministry of Env. & Forests
Govt. of India
New Delhi

this matter. Only in paragraph 14 of the written statement the respondent No.1 has stated that there could be some reasons beyond control of the State Government for not holding meetings for selection during those years as quoted above. The respondent No.1 may not have proper knowledge in the matter. It is the State Government who have such knowledge. Unfortunately the State Government has not taken steps for filing any written statement. Except that nothing has been mentioned. Mr. Sharma on this point submits that because of non-selection in those years the applicant was deprived of his promotion. The second submission of Mr. Sharma that last Triennial Cadre Review was held on 29.3.85 and the next Cadre Review ought to have been on 29.3.88 i.e. after 3 years as contemplated in Rule 4(2) of IFS Cadre Rules but no proper reason has been assigned for not doing so thereby the applicant was deprived of his legitimate due. On this ground Mr. Sharma submits that at least as per the above Rule 4(2) of the IFS Cadre Rule, Cadre Review ought to have been in March, 1988. The State Government had in fact sent proposals on 7.4.1987. The third submission of Mr. Sharma is that the promotion quota was not fixed as required against the 33.33% on deputation reserve against item 5 of IFS (Fixation of Cadre Strength) Regulations, 1966. In this connection Mr. Sharma has drawn our attention to a decision



(R. SANEHWAL)
(R. SANEHWAL)

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भारत सरकार/Govt. of India

नई दिल्ली/New Delhi

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reported in 1987 (4) SLJ (CAT) (K.K.Goswami Vs. Union of India & Ors.). and another decision of Calcutta Bench of the Tribunal (Dhuti Kr. Basu & Anr. Vs. Union of India & Ors.). Mr. Sharma submits that against both the judgements SLPs had been filed before the Apex Court and both the SLPs were dismissed by the Apex Court by Annexure-XI and XII orders dated 24.8.95 and 18.4.88. Mr. Sharma therefore submits that the decision of those Benches of the Tribunal have become final. As per the decisions of the Calcutta and Jabalpur Bench of the Tribunal, 33.33% promotion quota against deputation was required to be fixed. By the aforesaid two decisions the Tribunal gave direction to the respondents to compute the promotion quota in the State Forest Service. As this was not done according to Mr. Sharma the applicant was made to suffer. Had this been done the applicant would have been promoted much earlier.

5. Mr. Deb Roy on the other hand tries to support the action of the respondents. According to him the year of allotment has been rightly fixed. Regarding Cadre Review, Mr. Deb Roy submits that this could not be done by the State Government because the reasons beyond control of the State Government.

On the rival contention of the parties now it is to be seen whether the applicant is entitled to relief as claimed for as per the provision of

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[Signature]
(R. SANEHWAL)

Joint Secretary
Ministry of Forests & Wildlife
Government of India
New Delhi



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Rule 4(2) of Indian Forest Service (Cadre) Rules 1966. Under the said Rules, the Central Government is required to re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit. This must be done at the interval of 3 years. The sub-Rule (2) of Rule 4 of IFS (Cadre) Rules, 1966 is quoted below :

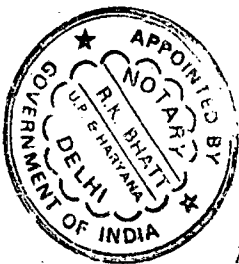
" (2) The Central Government shall at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit :

Provided that nothing in this sub-rule shall be deemed to effect the power of the Central Government to alter the strength and composition of any cadre at any other time :

Provided further that the State Government concerned may add for a period not exceeding one year, and with the approval of the Central Government for a further period not exceeding two years, to a State or Joint Cadre one or more posts carrying duties of responsibilities of a like nature to a cadre posts."

A mere reading of sub-Rule (2) of Rule 4 of IFS (Cadre) Rules, 1966 it appears that Central Government is required to re-examine the strength and composition of each such cadre in consultation with the State Government at an interval of 3 years and may make alteration therein. The word 'shall' has been used

in the said sub-Rule. This suggests that the provision is mandatory in nature. In this connection, Mr.



Chand
(R. SANEH WAL)
Under Secretary
Ministry of Env. & Forests
Govt. of India
New Delhi

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Sharma has drawn our attention to a decision of Ernakulam Bench of this Tribunal in the case of Jacob P. Thomas Vs. Union of India & Ors. reported in SLJ (CAT) 1992 (3) 85. In the said judgement in para 14 the Tribunal observed as follows :

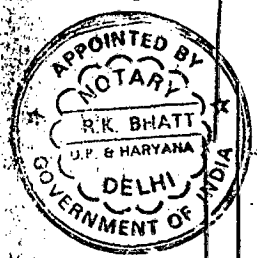
"14. Having considered the instructions of Government of India, one has now to consider whether the language used in Rule 4(2) compels one to reach a conclusion that the notification as a result of the triennial review should be effective from the thrid anniversary of the earlier notification. The expression used in Rule 4(2) is "at intervals of every three years" which mean that the interval between one fixation of cadre strength and another shall be three years, no more or no less. This is due to the fact that the expression "interval" is defined to mean intervening time or space in Concise Oxford Dictionary."

From the reading of this sub-rule 2 of Rule 4 of the Cadre Rules we also feel that the Rule suggests that it should be done immediately at the interval of 3 years and it is of mandatory nature. In that matter we are in respectful agreement with the decision of the Ernakulam Bench in this regard.

Regarding the computation of the deputation reserve quota as has been held by the Jabalpur and Calacutta Bench the deputation reserve quota are to be computed for the purpose of determining the strength of the promotion quota. Unfortunately this has not been done. We are also of the same view.

Therefore in view of the above, we find sufficient force on the contention of Mr. Sharma

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Sanjay
(R. SANEHWAL)

Under Secretary
Ministry of Env. & Forests
Govt. of India
New Delhi

and we are of the opinion that the Triennial Cadre Review ought to have been held at the interval of 3 years as this was not done as held by the Ernakulam Bench the year of allotment should be computed relating to the year of allotment earlier than 1986. Regarding deputation reserve quota as this was not done we give direction to the respondents to compute the cadre strength promotional quota after giving deputation reserve quota and give the benefit of promotion quota to the applicant in the manner he is entitled to.

With the above direction the Original Application is allowed. Considering the facts and circumstances of the case we, however make no order as to costs.

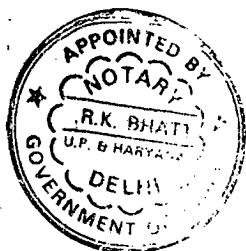
Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

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प्रतिलिपि

trd



Deputy Registrar (A)
Central Administrative Tribunal,
Guwahati Bench

C. Sanehal
(रविशंकर सनेहवाल)
(R. SANEHWAL)
ज्येष्ठ सचिव/Under Secretary
पर्यावरण संरक्षण प्रभाग
Ministry of Env. & Forests
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

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ANNEXURE-A.2

ITEM No.

20

COURT No.

SECTION

XIA

SUPREME COURT OF INDIA RECORD OF PROCEEDINGS

Petition (s) for Special Leave to Appeal (Civil) No. (s)

432/93 (AN)

(From the judgment and order dated 19.3.92
Ernakulam Bench in OA No.138/91.

of the HONOURABLE C.A.T.

U.O.I.

Petitioner (s)

Versus

Jacob F. Thomas & Ors.

Respondent (s)

(With appln. for stay)

Date: 14.7.94

This/these petition (s) was/were called on for hearing today.

CONAM:

Hon'ble Mr. Justice P.B. Sawant
Hon'ble Mr. Justice G.N. Ray
Hon'ble Mr. Justice

For the petitioner (s) Mr. V.R. Reddy, A.S.G.
Mr. P. Parneshwaran, Mr. Krishnan Mahajan, Adv.
for Ms. A. Subhashini, Adv.

For the respondent (s) Mr. R.F. Meriman, Sr. Adv.
Mr. K.K. Pillai, Adv.

UPON hearing counsel the Court made the following
ORDER

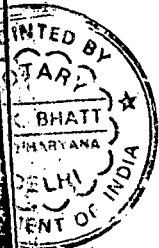
We have a strong doubt about the correctness of the view taken by the Tribunal in the matter. However, since the respondent has retired on 20th February, 1994, We do not propose to go into the matter and express our opinion on the view taken by the Tribunal. It will be open for the petitioners to agitate the question of law in some appropriate proceedings in future.

Shri Hariman, learned counsel appearing for the respondent No.1, contended that the appellant have withheld 3 increments which were earned by the respondent as a member of the I.P.S. after the decision of the Tribunal. The appellant be, therefore, directed to pay the said increments as well as pension on the basis of the said increments. In the circumstance of the case, we are of the view that no such direction should be given. The S.L.P. is dismissed subject to the above observations.

Ganga

Chandul
(रवीश सनेहवाल)
(R. SANEHWAL)
अवर सचिव/Under Secretary
पर्यावरण एवं वन मंत्रालय
Ministry of Env. & Forests
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

(A. Hirwani)
Court Master



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ANNEXURE-A.3 (23)
ANNEXURE-H

पञ्जाब प्रशासनिक न्यायालय (न्यायाधीश) विद्वत्
के विषय में शरीर निरुद्ध प्रतिनिधि]
CENTRAL ADMINISTRATIVE TRIBUNAL, U/R 22 of C.A.T.
CHANDIGARH BENCH

OA No. 1122-CH of 1996

Decided on 14-10-97.

Vinod Kumar Jhanjhria,
Dy. Chief Wild Life Warden, Haryana
H.No. 864, Sector 11, Panchkuka.

... Applicant

Versus

1. Union of India through Secretary
Ministry of Environment and Forests,
CGO Complex, Paryavaran Bhavan,
Lodhi Road, New Delhi;
2. Union Public Service Commission, through
Secretary, Dholpur House, Shahjahan Road,
New Delhi,
3. State of Haryana through Secretary Forests and
Wild Life, Haryana Civil Secretariat,
Chandigarh.

... Respondents

CORAM: Hon'ble Mr. Justice R.K. Nehru, Vice-Chairman
Hon'ble Mr. S.C. Vaish, Administrative Member

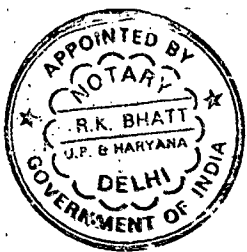
Present: Mr. Gurnam Singh, counsel for the applicant
Mr. Arun Walia, counsel for Respondents 1 and 2
Mr. H.P. Verma, counsel for Respondent No. 3

J U D G M E N T

(delivered by Hon'ble Mr. Justice R.K. Nehru, VC)

In this OA, the applicant has sought the following
reliefs:

- i) to direct the respondents to appoint him in promotion quota of Indian Forest Service cadre of Haryana State;
- ii) to direct Respondent No. 1 to increase the promotion quota posts from 16 to 18 in the IFS cadre of Haryana State and appoint him w.e.f. 17.3.1994 when other 8 officers were so appointed and also to grant him all consequential benefits like salary and seniority.



Chandigarh
(शरीर निरुद्धवाला)
(R. SANEHWAL)

अवर सचिव/Under Secretary
पर्यावरण व वन मंत्रालय
Ministry of Env. & Forests
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

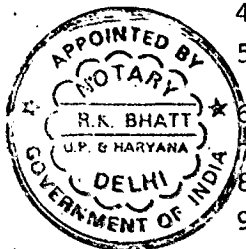
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iii) to direct the respondents to reconvene a meeting of the Selection Committee during 1989 and 1990 and appoint those officers so brought on the select list of 1989 and 1990 to the IFS and grant them all consequential benefits in terms of salary and seniority.

2. The grouse of the applicant as projected in this Original Application, in brief, is as follows:

4. The applicant was inducted in Haryana Forest Service (Class II) (hereinafter called 'HFS') on 1.10.1980. He was confirmed in this service w.e.f. 21.4.1983. On completion of 8 years service, he became eligible for promotion to Indian Forest Service (hereinafter called 'IFS'). In accordance with the provisions of Indian Forest Service (Appointment by promotion) Regulations, 1966 (hereinafter called '1966 Regulations'). According to the applicant, a select list of Haryana Forest Service Officers for the year 1993, for appointment against 8 anticipated vacancies in IFS was prepared in terms of 1966 Regulations. This select list initially comprised of the following 9 officers including the applicant:-

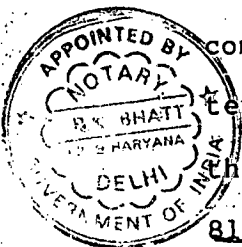
1. Shri Brij Bhushan
2. Shri Sher Singh Shikariwal
3. Shri R.S.Joshi
4. Shri K.R.Batla
5. Shri M.S.Sangwan
6. Shri R.C.Trigotra
7. Shri R.S.Lamba
8. Shri Sher Singh Panwar
9. Shri Vinod Kumar Jhanjhria (Applicant).



C. S. Anand
(विशेष सचिव)
(R. SANGHAWAL)
अवर सचिव/Under Secretary
पर्यावरण व वन विभाग
Ministry of Env. & Forests
भवन परका/Govt. of India
नई दिल्ली/New Delhi

5. However, in compliance of the judgment of the Punjab & Haryana High Court passed in a Writ Petition filed by one Shyam Lal Kaushik, the above select list was reviewed on 1.2.1994, and Shyam Lal Kaushik was also included in the select list which finally comprised of 10 officers.

8 officers out of the aforesaid select list who were admittedly placed above the applicant, were accordingly appointed to the IFS. According to the applicant, his name was also considered by the Selection Committee in March, 1993 as also in January, 1994, conditionally in view of the fact that some charge-sheet was allegedly pending against him, although the same had actually been dropped on 24.3.1993 as per Haryana Government order dated 18.3.1993 (Annexure A-1) of which intimation was sent to the UPSC by the Haryana Government vide its letter dated 9.8.1996, but the UPSC had not taken note of the said information in the right perspective, and no select list had been prepared after the select list of 1993 (as reviewed in January, 1994). Therefore, according to the applicant, the same list still continues to be valid and operative and he was entitled for appointment against the subsequent available vacancy occurring on 1.7.1996 on the retirement of Shri Sher Singh Panwar, a promotee, on 30.6.96. It is further averred that the meeting of the Selection Committee was convened on 23.3.1996, but on account of the seniority dispute of HFS officers, no fresh select list was prepared. The applicant has also pleaded that the State Deputation Reserve posts should also be counted for computing 1/3rd posts to be filled by promotion to IFS in terms of the judgment of the Jabalpur Bench of the C.A.T. in the case of K.K.Goswami & Others vs. Union of India in TA No. 81 of 1986 (which attained finality after the SLP filed by Union of India was dismissed by the Apex court), in consequence of which the promotion quota of IFS officers in Madhya Pradesh was increased by the Union of India whereas such increase had not been made for other states including the State of Haryana. According to the applicant,



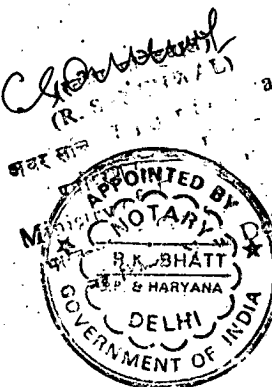
(R. SANEIHWAL)
 (R. SANEIHWAL)

Secretary
 Ministry of Env. & Forests
 Govt. of India

there were 6 posts in the State Deputation Reserve in Haryana Cadre of IFS and thus two more posts could have been added in the promotion quota, thereby taking into account 11 posts instead of 9 and the applicant who was appointed to HFS on 1.10.1980 was eligible for consideration for promotion to the IFS on or after 1.10.1988.

6. On notice, the respondents filed their respective written statements contesting the claim of the applicant, inter-alia, pleading that the Govt. of Haryana vide their letter dated 25.9.92 had intimated 8 vacancies in the promotion quota. Accordingly, under Regulation 5(I) of the 1966 Regulations, the size of the select list was determined as 10 strictly as per rules against the above requisition of 8 vacancies. The select list for 1993 for promotion from HFS to IFS cadre was prepared on 31.3.1993. The applicant was placed at No.9 in this select list. According to the respondents, a select list is prepared keeping in view only those substantive vacancies as would occur in a course of period of 12 months commencing from the date of its preparation as per the mandate of Regulation 5(I) of 1966 Regulations, which reads as under:-

"5(I) Preparation of list of suitable officers. Each committee shall ordinarily meet at intervals not exceeding one 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 calculated as the number of substantive vacancies anticipated in the course of period of 12 months, commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules plus twenty per cent of such number or two, whichever is greater"



7. To dislodge the claim of the applicant, the

respondents have also placed reliance on Regulation 7(4) of 1966 Regulations which is reproduced below:-

"7(4) The select list shall ordinarily be in force until its review and revision, effected under sub-regulation (4) of regulation 5 is approved under sub-regulation (I), or as the case may be, finally approved under sub-regulation (2).

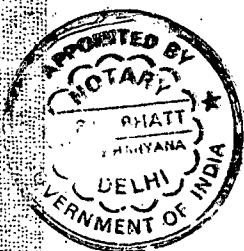
Provided that no appointment to the service under Regulation 9 shall be made after the meeting of fresh committee to draw up a fresh list under regulation 5 is held"

8. The respondents have further averred that since the fresh selection committee had again met on 23.3.1996, no further appointments could be made from the previous list and from the combined reading of the above extracted provisions of 1966 Regulations, it can safely be inferred that a select list is ordinarily prepared to fill up the substantive vacancies occurring within a period of 12 months and the life of such a select list cannot be extended beyond that period.

9. We have heard the learned counsel for the parties at length and examined the relevant records as also the various authorities cited before us.

10. In our view, two issues arise in this OA for our adjudication:-

- (i) whether the respondents can be directed to appoint the applicant to IFS cadre against the promotion quota on the premises that the name of the applicant appeared on the select list in 1993 (and as reviewed/revised on 1.2.1994), against vacancy becoming available on 1.7.1996.



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(R. SANEIHWAL)
अवर सचिव/Under Secretary
प्रयोजन एवं संचालन
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भारत सरकार Govt. of India
नई दिल्ली New Delhi

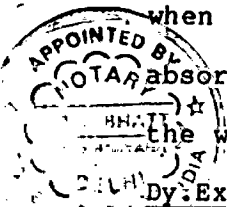
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(ii) whether this Tribunal can direct the respondents to amend the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 qua the Haryana State so as to add posts of State Deputation Reserve also to items 1 and 2 for calculating the promotion quota as against the existing regulation where promotees get share only against Senior Duty posts under the State Govt. as per item No.1, and against the Central Deputation Reserve posts as per item no. 2, and if the applicant can be considered for such a promotion/appointment with retrospective effect in terms of the judgment of K.K.Goswami (supra)]

11. We will take up the above issues one by one.

The admitted position is that only 8 clear vacancies existed during the year 1993-94 which were to be filled up by promotion to Indian Forest Service cadre of Haryana State out of the select list prepared in March, 1993 (and as revised/reviewed in January, 1994 in terms of the directions of the High Court of Punjab & Haryana). It is also an admitted fact that 8 vacancies were actually filled up by appointing 8 officers who were admittedly placed above the applicant in the said list. The applicant and one Shri Shyam Lal Kaushik being placed at Nos 9 and 10 respectively, were at the bottom on the waiting list. It is well settled proposition of law that a candidate placed in the waiting list cannot claim appointment as of right. This is more so when all the selected candidates had actually joined and were absorbed. With regard to the position of the candidates on the waiting list, the Apex court in the case of Gujarat State Dy.Executive Engineers Association vs State of Gujarat & Others, reported as 1994 Suppl.(2) SCC 59, has held that a waiting list prepared in an examination conducted by the commission does not furnish a source of recruitment; it is operative only for the contingency that if any of the selected candidates does not join, then the persons from the waiting list may be pushed up and appointed in the vacancy so caused



Ch. G. S. (Goswami)

Ministry of Forests, Government of India
at New Delhi

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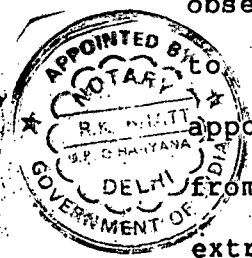
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or if there is extreme exigency the Government may, as a matter of policy decision, pick up persons in the order of merit from the waiting list. Similar view was taken by the Apex court in the case of Prem Singh & Others vs Haryana State Electricity Board and others, reported as (1966) 4 SCC 319, by holding that the selection process could be started for clear and anticipated vacancies and not for future vacancies. The above view has again been reiterated by the Apex court in their recent judgment in Surinder Singh & Others vs. State of Punjab & Others, reported as 1997 (5) SCALE 567, by holding that a candidate in the waiting list in the order of merit has a right to claim appointment after one or the other selected candidate does not join, but once the selected candidate joins and no vacancy arises due to resignation etc., or for any other reasons within the period the list is to operate under the rules or within the reasonable period, where no specific period is provided, then a candidate from the waiting list has no right to claim appointment but to any vacancies which may arise in future unless the selection was held for it. The Apex court further observed that such a candidate has no vested right except the limited extent indicated above or when the appointing authority acts arbitrarily and makes appointment from the waiting list by adopting pick and choose method for extraneous reasons.

12. On scanning the material on record, we are of the considered view that none of the contingencies warrant the appointment of the applicant against a vacancy of 1996 year. The select list is prepared under Regulation 5(I) of 1966 Regulations. It cannot operate for an indefinite period. Such operation, if permitted, would clearly violate the mandate of the statutory Regulation. In any case, the



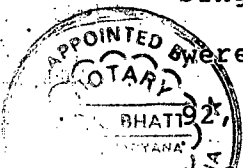
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(रवि साहसवाल)
(R. SAHAWAL)

भारत सरकार/Ministry of Industries and Commerce
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भारत सरकार/Ministry of Industries and Commerce
राज्य सरकार/Ministry of Industries and Commerce

stretched to confer a right of appointment on the applicant against a vacancy which occurred on 1.6.1996. During this long period of 3 years, there must have been more State Forest Officers having become eligible and entitled for consideration for appointment to IFS.

13. In support of his claim, the learned counsel for the applicant has relied upon two judgments, one of the Apex court in the case of Nepal Singh Tanwar etc. vs. Union of India & Others, Civil Appeal No. 16769-16771 of 1990, and the other in the Case of M.S. Rao vs. Union of India in CA No. 165 of 1997 decided on 14th May, 1997. However, we must say that the applicant cannot take benefit from the law laid down in the aforesaid judgments.

In Nepal Singh Tanwar's case (supra) no meeting of the Selection Committee in the year 1992 as scheduled on 26.3.1992, was convened, rather it was cancelled and Nepal Singh Tanwar who was the last candidate on the select list in 1991-92 had been offered the appointment by the State Govt. itself on 12.8.92 and it was held by the Apex court that there were sufficient reasons for the State Govt. not to convene the meeting of the Selection Committee in the year 1992 and it was under these circumstances that the appointment of Nepal Singh Tanwar against the vacancy beyond the vacancies which were the subject matter of the select list for the year 1991-92, was upheld by the Hon'ble Supreme Court. The applicant before us was admittedly placed below those 8 candidates in the select list of 1993 (revised in January, 1994) and was considered by the selection committee. It is neither the stand of the applicant nor can it be said by any stretch of imagination that the applicant was not promoted in terms of the select list of 1993 simply because of the fact that some charge sheet was pending against him at that time. The applicant could have a valid grouse in case he had been



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Joint Secretary

Ministry of Env. & Forests

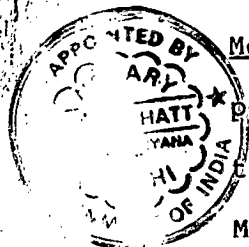
situation, this Tribunal could legitimately direct the respondents to review/reconsider his case for promotion against the 8 clear /anticipated vacancies of 1993 by ignoring the factum of any charge sheet pending against him at that point of time. It is not the case of the applicant that his promotion was not made by the selection committee/UPSC because of the charge sheet allegedly pending against him. As observed earlier, he was definitely placed at No.9, below 8 anticipated and clear vacancies against which the 8 candidates were considered and appointed on the basis of their records. In M.S.Rao's case (supra), the Govt. had justified non convening of the meeting of the Selection Committee in 1995-96 and the name of the applicant was on the select list of 1994-95. However, in that case, the respondents were under a wrong impression that a vacancy caused on account of the retirement of R.S.Malik, IAS on 31.3.1995, was not available within the year for which the select list of 1994-95 was in operation, and the said vacancy was not taken into consideration for the preparation of the select list. While disposing of that OA, this Tribunal took the view that the vacancy caused on account of the retirement of R.S.Malik, IAS on 31.3.95 was available in the year in view of the judgment of the Apex court rendered in Union of India vs Mohan Singh Rathore, reported as 1997(1) SLJ 231. The

position of the applicant in the present case before us is totally different and the ratio of the judgment in the case of M.S.Rao (supra) is of no avail to him. The provisions of appointment by promotion Regulations both for IAS and IFS are

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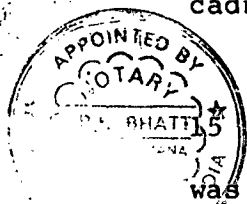
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(R. SANEHWAL)
(R. SANEHWAL)
अवर सचिव/Under Secretary
पर्यावरण एवं वन मंत्रालय
Ministry of Env. & Forest
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi



14. So far as the second relief sought by the applicant i.e. direction to amendment of cadre rules and to increase 2 posts in promotion 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, (Annexures 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 Reserve, 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 No. 1 and 2 of the cadre strength in relation to that state in ^{the} schedule to the cadre strength regulations.

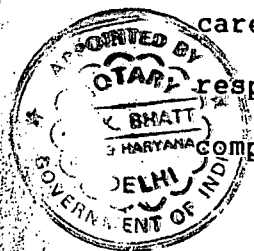
With the issuance of the aforesaid notification, it was made known to all the State Forest Officers serving in different states that the notification of the Govt. of India was explicit to not to provide promotion quota more than 33-1/3 percent of the number of posts shown against items No. 1 and 2 of the cadre strength in the schedule. Thus, if any member of the State Forest Service had any grievance, he



Sanjay
(R. SANEHWAL)
Minister, Forests & Environment
Govt. of India

15 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 filled 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.

16 We are, however, of the view that non acceptance of the claim of the applicant by us should not clothe the respondents with an absolute right to cause frustration amongst the the State Forest Officers by stagnating their career. Adhering to their performance as a welfare state, the respondents are duty bound to ensure faithfully the compliance of the statutory provisions of 1966 regulation by

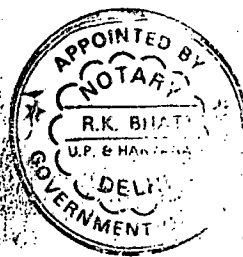


(R. SANERHWAL)
(R. SANERHWAL)
अवर सचिव/Under Secretary
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नई दिल्ली/New Delhi

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holding annual meetings of the Selection Committee, so long as the State Govt. has no valid and justifiable reasons for postponing the same. This is what precisely the Hon'ble Supreme Court has authoritatively held in H.R. Kasturi Rangan & Ors. vs. Union of India & Others, Civil Appeal Nos. 3891-3894 of 1993 decided on July 28, 1993 and in Nepal Singh Tanwar (supra). Except some inter-se disputes of some members of HFS (Class-II), there appears to be no reason shown by the State Govt. for not convening the meeting of the Selection Committee for the year 1995-96. It was this reason which presumably prompted the postponement of the meeting of the Selection Committee convened on 23.3.1996. This, in our view, cannot be said to be a valid or justifiable reason for not convening the meeting of the selection committee. It can only be interpreted as a self created reason by the State Govt., more so when there was no bar imposed by any judicial forum on the issue of inter-se seniority. We have held more than once that such seniority disputes do not and cannot furnish a valid ground for delaying meetings of the selection committees. Long delays/interruptions in holding of the meetings, definitely deprives the eligible State Forest Officers of their due promotion to IFS in time. Besides, their fixation of seniority, pay etc. in the IFS is also adversely affected. In the present case, if the seniority list of the year 1995-96 had been finalised in time, the applicant could/might have been inducted to IFS alongwith other eligible candidates against the available vacancies without any delay.



Chammy
(विजय सानेहवाल)
(R. SANEHWAL)
अवर सचिव/Under Secretary
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Ministry of Env. & Forests
संयुक्त सरकार/Govt. of India
नई दिल्ली/New Delhi

In the light of what has been discussed and observed by us, we dispose of this OA with the directions to

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that the respondents shall take immediate steps to prepare the select list for the year 1995-96 and finalise the appointment of all the eligible officers including the applicant w.e.f. the dates the vacancies became available in IFS promotion quota of Haryana, within 2 months of the receipt of a copy of this judgment. We hope and expect that the respondents shall faithfully follow the observations made by us in this OA in order to avoid any discrimination/frustration to the promotees in the matter of selections/appointments in the present case as well as while dealing with such cases in future.

No costs.

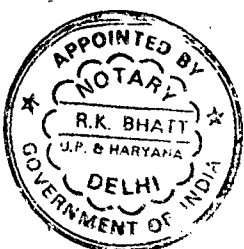
(R.K.NEHRU)J
Vice-Chairman

(S.C.VALLABH)
Member (A)

Dated: 14-10-97 Certified True Copy/प्रमाणित प्रतिलिपि

व्युपाय अधिकारी (जा. नि. Section Officer (Judl))
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
चण्डीगढ़ पीठ/Chandigarh Bench
चण्डीगढ़/CHANDIGARH
20/10/97

चान्दवाल
(रवीण सानेहवाल)
(R. SANEHWAL)
अवर सचिव, Under Secretary
पर्यावरण एवं वन विभाग
Ministry of Env. & Forests
भारत सरकार Govt. of India
नई दिल्ली New Delhi



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ANNEXURE A

36

NOTIFICATION

New Delhi, the 22nd February, 1989.

GSR 117(E) :- In pursuance of sub-rules (1) and (2) of rule 4 of the Indian Forest Service (Cadre) Rules, 1966, the Central Government, in consultation with the Government of Madhya Pradesh, hereby makes the following regulations to amend the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 namely :-

1. (1) These regulations may be called the Indian Forest Service (Fixation of Cadre Strength) Amendment Regulations, 1989.
- (2) They shall be deemed to have come into force on the 11th July, 1989.

2. In the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966, under the heading 'Madhya Pradesh for item number 3 to 6, the following shall be substituted, namely :-

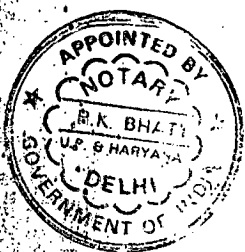
"(1) For the period commencing from 11th July, 1989 and ending with 20th May, 1990 :

3. Reputation reserve	44
4. Leave Reserve	20
5. Junior posts	36
6. Training Reserve	10
Direct Recruitment posts & promotion posts.	284
	<u>310</u>
Total authorised strength	<u>389</u>

Dated...

R. Santhwal
(रवीण सन्धवाल)
(R. SANETHWAL)

उपरि सचिव/Under Secretary
पर्यावरण वन एवं जल
Ministry of Env. & Forest
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi



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"(ii) For the period commencing from 21st May, 1988 and ending with 21st February, 1989 :

3. Deputation reserve	57
4. Leave Reserve, Junior posts and Training Reserve	68
Direct Recruitment posts	287
Promotion posts	109
Total authorised strength	396

"(iii) For the period commencing from 22nd February, 1989 onwards :

3. Posts to be filled by promotion in accordance with rule 8 of the IFS (Recruitment) Rules, 1966	90
4. Posts to be filled by direct recruitment	181
5. Deputation Reserve 325% of item above	57
6. Leave Reserve junior posts and Training Reserve at the rate of 30% of item 1 above	68
Direct Recruitments posts	306
Promotion posts	90
Strength authorised	396

(No. 15016/1/89-AIS(II))
Y. P. CHINRA, DESK OFFICER.

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R. Santhwal

(रवीश सनिहवाल)
(R. SANEHWAL)

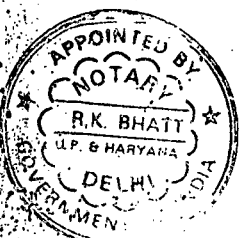
अवर सचिव/Under Secretary

प्रयोग एवं संयोजन

Ministry of P.W. & P.

भारत सरकार/Govt. of India

नई दिल्ली/New Delhi



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N O T E

The principal regulations were notified vide notification No. 6/1/66-AIS(IV) dated 31.10.66 as GSR No. 1672 in the Gazette of India - Extraordinary of 31.10.1966 and the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 have been amended vide notifications given below :-

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EXPLANATORY MEMORANDUM

In their judgement dated 9th June, 1987 in T.A.No. 81 of 1986 titled K.K. Goswami & anr. Versus Union of India & another, the Central Administrative Tribunal-Jabalpur Bench directed that the number of posts meant for being filled by the method of promotion in the Madhya Pradesh cadre of the Indian Forest Service should include the 1/3rd share from the State Deputation Reserve, as well. The retrospective amendments are being introduced in compliance with the judgement.

2. It is certified that no officers would be adversely affected by the amendments to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966 being given retrospective effect.

C. S. Chandel
(रविश साहेवाल)
(R. SANCHWAL)

अवर सचिव
प्रमुख सचिव

Ministry of Forests & Environment
Government of India
New Delhi



(PUBLISHED IN PART II SECTION 3, SUB-SECTION (1) OF THE
GAZETTE OF INDIA, EXTRAORDINARY ON 22.2.1989)

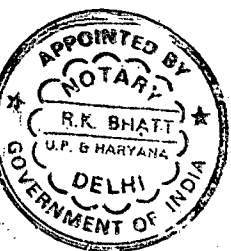
No. 14015/6/89-AIS(I).
Government of India
Ministry of Personnel, P.G. & Pensions.
Department of Personnel & Training.

New Delhi,
22nd February, 1989.

Notification.

GSR 116 (B) In exercise of the powers conferred
by sub-section (1) of section 3 of the All India
Services Act, 1951 (61 of 1951), the Central Govern-
ment, after consultation with the Governments of
States, hereby makes the following rules further to
amend the Indian Forest Service (Recruitment) Rules,
1966, namely :-

1. (1) These rules may be called the Indian Forest
Services (Recruitment) Amendment Rules, 1989.
- (2) They shall come into force on the date of their
publication in the Official Gazette.
2. In the Indian Forest service (Recruitment) Rules,
1966 for the existing sub-rule (1) of rule 9, the follow-
ing sub-rules shall be substituted, namely :-



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(रवीश सनेहवाल)

(R. SANEHWAL)

Contd.

अवर सचिव/Under Secretary

पर्यावरण एवं वन विभाग

Ministry of Env. & Forests

सर्वतंत्र शासन/Govt. of India

नई दिल्ली/New Delhi

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"(1) The number of persons recruited under rule 8 in any State or group of States shall not, at any time, exceed 33 1/3 per cent of the number of posts as are shown against items 1 and 2 of the cadre in relation to that State or the group of States, in the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966."

N O T E

The principal rules were notified vide Ministry of Home Affairs notification No.2/6/64-AIS(IV) dated the 1st September, 1966 and the Indian Forest Service (Recruitment) Rules, 1966 have been amended vide notifications given below :-

Notification No.	Date of notification	Date of Publication	GSR NO.
2	3	4	5
3/2/67-AIS(IV)	15.03.1967	20.04.1967	312
3/8/66-AIS(IV)	08.06.1967	01.08.1967	938
3/8/67-(1)-AIS(IV)	14.06.1968	18.08.1968	1084
3/8/67-(1)-AIS(IV)	14.08.1968	16.10.1968	938
3/6/69-AIS(IV)	31.08.1970	15.10.1970	435
3/3/70-(1)-AIS(IV)	01-03-1970	04.05.1971	810
3/13/70-(1)-AIS(IV)	26.04.1971	05.06.1971	928
3/6/71-(1)-AIS(IV)	07-10.1971	08.12.1971	1823
3/6/71-(1)-AIS(IV)	19.07.1971	11.09.1971	1271
13/4/71-(1)-AIS(IV)	11.01.1972	03.03.1972	948
3/14/72-AIS(IV)	22.09.1973	06.10.1973	1086
11027/1/75-AIS(I)U	29.08.1976	07.11.1976	1831
16012/7/78-AIS(IV)	13.07.1978	12.09.1978	1086

(R. SANEHWAL)
Under Secretary
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Delhi

(T.K. Trehan)
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R. Santhwal
(R. SANHWAL)

अवर सचिव/Under Secretary

पर्यावरण व वन
Ministry of Environment & Forests

भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

(M.K. Trehan)
Desk Officer.



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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2371 OF 1987

WITH

CIVIL APPEAL NO. 2370 OF 1987

Rhayumther Joychandra Singh & Anr.

Appellants

versus

The State of Manipur & Ors.

Respondents

ORDER

The appellants, in the appeals herein, are members of the Indian Forest Service (IFS). They were appointed to the IFS by way of promotion from the State service. It is not disputed that during the period from 1977-79, the Selection Committee did not meet and as such no selections were held for promotion to the IFS. The appellants were selected in the year 1980 and were ^{appointed} to the IFS in 1981. They were given the year of allotment as 1977. The grievance of the appellants is that had there been selection during the period 1977-79, they were sure to be selected and as a consequence would have got earlier year of allotment. The Central Administration Tribunal by a detailed judgment, rejected the contention of the appellants. It is no doubt correct that ordinarily the Selection Committee should meet

(Sd/-)
S. R. SANDESHWAL
Under Secretary

1
New Delhi

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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. No costs.

.....J
(KULDIP SINGH)

.....J
(N. VENKATACHALA)

New Delhi
February 8, 1995.

C. S. Anand

(रवीश सनेहवाल)
(R. S. NEHWAL)
अवर सचिव/Under Secretary
पर्यटन एवं वाणिज्य
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