Central Administrative Tribunal
Principal Bench

OA No. 4073/2011

Order pronounced on: 06.05.2016

Hon'ble Mr. V. N. Gaur, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

1. Rambir Singh aged about 49 years,
Son of Late Shri Rattan Singh
Presently working as Director,
Ministry of Home Affairs, GOI,
North Block, New Delhi.

2. Rajbir Singh aged about 56 years,
Son of Late Shri Har Narain,
Presently working as Senior Deputy Director,
Regional Office, Forest Survey of India,
Shimla.

- Applicants

(By Advocate: Sh. D.P.Singh with Sh. Salil Bhattacharya)

Versus

1. Union of India through
Secretary to Government of India,
Ministry of Environment and Forest,
Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi.

2. The Chief Secretary,
State of Haryana,
Haryana Civil Secretariat,
Chandigarh.

3. The Financial Commissioner cum Secretary,
Government of India,
Forests Department,
New Secretariat, Haryana,
Sector-17, Chandigarh.

4. Navdeep Hooda, aged about 42 years,
Deputy Conservator of Forests,
Territorial, Karnal.

5. Ganshyam Shukla, aged about 41 years,
Deputy Conservator of Forests,
Territorial, Panipat.

- Respondents

(By Advocate: Dr. Shamsuddin Khan for respondent no.1 and
Sh. AjeshLuthra for respondents no.4 & 5)

ORDER

Hon'ble Shri V.N.Gaur, Member (A)

The two applicants in the present OA are members of Indian Forest Service (IFS), inducted from Haryana Forest Service (HFS), and given the allotment year 1993 in the IFS. They have filed this OA challenging the year of allotment assigned to them which according to them should be 1992. The prayer made in the OA in para 8 reads thus:

> "(i) To set aside impugned order dated 18.02.2010 (Annexure A-1) whereby the representation of the applicants has been illegally and arbitrarily rejected;
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> (ii) To direct the respondent No.1 to correct the anomaly in the seniority list of the applicants and assign 1992 as year of allotment to the applicants;
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> (iii) To pass such other and further orders by this Hon'ble Tribunal as deemed fit and proper."

2. Relevant undisputed facts in the present controversy are that the applicants who were members of HFS, were inducted in the IFS by notification dated 23.03.1999. By another notification dated 31.08.2006 following the order of CAT Chandigarh dated 29.06.2004 in OA 51/2002, the date of induction of the

applicants was revised to 31.12.1997, implying that the applicants were granted Senior Time Scale (STS) of the IFS with effect from that date. In terms of Rule 3 (2) (c) of IFS (Regulation of Seniority) Rules, 1968 (Rules 1968), the year of allotment of the applicants was determined by respondent no.1 as 1993. It was done onconsideration that on the date of induction of the applicants the junior-most among the Direct Recruit (DR) officers in the STS, respondent no. 4 & 5, having been given STS on 22.05.1997, were of 1993 batch. It is the case of the applicants that the STS could not have been granted to respondents no.4 & 5 with effect from 22.05.1997 in terms of the rules and regulations governing the release of STS to IFS officers.

3. Learned counsel for the applicants submitted that earlier in the Haryana Government order dated 22.03.2000 the year of allotment of respondents no.4 & 5 was shown as 1994 but later it was modified as 1993 by letter dated 15.06.2000. Learned counsel for the applicants referred to Rule 3 (2) (a) of the Rules 1968 which provides that "*where an officer is appointed to the Service on the results of a competitive examination, the year following the year in which such examination was held*" would be the year of allotment. In the case of respondent nos.4 & 5, though the advertisement for the IFS Examination, 1992 was issued on 13.06.1992 and the examination was to be held in the month of December 1992, for some reasons this examination was

postponed and held on 28.02.1993. The respondent nos.4 & 5 were selected on the basis of the examination conducted in February 1993 and went for training in 1994 along with the candidates selected on the basis of IFS Examination 1993. According to the learned counsel for the applicants, the language used in the Rules 1968 is very clear that the allotment year will be the year following the year in which the examination was held, and therefore, the respondent nos.4 & 5 should have been given the allotment year 1994 and not 1993. The year of allotment of the applicants will then be fixed below the 1992 batch officers who were the junior most to hold the STS on the date of induction of the applicants. He further argued that the interpretation of the statute must be understood in its natural, ordinary or popular sense and cannot be given any meaning to suit the convenience of any party.In this case, the respondents have rejected the representation of the applicants by letter dated 18.02.2010 reaffirming the year of allotment to respondents no.4 & 5 without applying the relevant rules governing the year of allotment, i.e., Rule 3 (2)(a) of the Rules 1968.

4. Learned counsel further submitted that there was also an anomaly in granting STS to the respondents no.4 & 5. According to the IFS (Pay) Rules, 1968 STS can be granted only after completion of four years of service. Since the respondents no.4 & 5 joined service only in 1994 they would complete four years of

service only in 1998 and, therefore, the STS could not have been released to them before 01.01.1998. Learned counsel also quoted three precedents where the promoted officers were made senior to the direct recruit IFS officers in their respective cadres with the same year of allotment. Sh. D.P.Sane and Sh. S.R.Dorle of Maharashtra cadre, both 1982 IFS promotee officers, were made senior to Sh. M.Karunakaran who was a direct recruit of Maharashtra cadre of 1982 batch of the IFS. Similarly, Sh. B.K.Swain and Sh. S.K.Mishra of Orissa cadre (both 1987 promotees) were made senior to Sh. Ajay Raizada, a direct recruit of Orissa cadre of 1987 batch of the IFS. Sh. P.Prakashan and Sh. P.A.Mani of Tamil Nadu cadre (both 1982 IFS promotees) were also made senior to one Sh. K.Pannerselvam, a direct recruit of Tamil Nadu cadre of 1982 batch of the IFS. He further submitted that it was a settled principle of law that direct recruit officerscannot claim appointment from the date of vacancy in DR quota,even before their selection. A direct recruit can claim seniority only from the date of his regular appointment. The learned counsel relied on:

(1) **Gurudevdatta Vksss Maryadit & others vs. State of Maharashtra & others**, (2001) 4 SCC 534

(2) **Bhavnagar University vs. Palitana Sugar Mill Ltd. &ors.**, (2003) 2 SCC 111

(3) **Illachi Devi vs. Jain Society protection of Orphans India**, (2003) 8 SCC 413

(4) **Dayal Singh & others vs. Union of India & others**, (2003) 2 SCC 593

(5) **M.Venugopal vs. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. and another**, (1994) 2 SCC 323

(6) **H.S.Atwal and others vs. Union of India and others**, (1994) 5 SCC 341

(7) **Muraleedharan vs. Union of India**, WP (C) No.11158/2005 of Kerala High Court.

5. Sh. Shamsuddin Khan, learned counsel appearing for respondent no.1 raised the preliminary objection of limitation stating that the order under challenge in this OA was passed on 18.02.2010 while the OA was filed on 15.11.2011. There is no application filed by the applicants for condonation of delay. He also raised the objection of non-joinder of parties stating that the applicants had earlier approached the Chandigarh Bench of this Tribunal where he had impleaded three more private respondents who have now been dropped. Notwithstanding that, the prayer of the applicants is to change the year of allotment of respondents no.4 & 5 from 1993 to 1994 on the ground that the IFS Examination of 1992 was actually held in 1993. If that prayer is

granted this will apply to all those who were selected on the basis of that examination and allotted to different cadres all over India in 1993 batch. Therefore, the applicants should have impleaded all those officers who will be affected by the outcome of this OA. He further submitted that UPSC conducts competitive examination for recruitment to the IFS in accordance with Rule 7 (1) of the IFS (Recruitment) Rules, 1966. The competitive examination for the year 1992 was notified in the normal course on 13.06.1992 and it was to be held in December 1992. However, due to certain fortuitous circumstances beyond the control of the respondent no.1, the examinations were postponed to February 1993. In such a situation where the postponement had taken place for the reasons beyond the control of the agency conducting the examination, and there was another competitive examination for the year 1993, which was also conducted in 1993, it would be anomalous to treat the postponed examination of 1992 as of 1993 for the purpose of fixing year of allotment. The official respondents have given the normal and harmonious interpretation to the rules by assigning 1993 as the year of allotment to the candidates selected on the basis of the aforesaid examination. Thereafter, it is only a natural corollary that four years of service for the purpose of STS would be counted from the year of allotment in 1993 and, therefore, there was nothing wrong

in granting the Senior Time Scale to respondents no.4 & 5 on 01.04.1997.

6. Learned counsel for respondents no.4 & 5 also raised the issue of limitation stating that the dispute regarding the seniority was raised by the applicants in the year 2007, i.e., after the lapse of 14 years. Respondents no. 4 & 5 have been getting their STS, Junior Administrative Grade (on completion of 9 years) and Selection Grade (on completion of 13 years) on the basis of allotment year 1993 but none of these actions has ever been challenged by the applicants. According to the learned counsel, the OA was liable to be rejected on this ground alone, citing **B.S.Bajwa vs. State of Punjab**, 1998 (1) SCALE 78. Learned counsel stated that the candidates who emerged successful on the basis of IFS examination, 1992 along with respondents no.4 & 5 are serving in the State cadres all over the country and the applicants cannot challenge the year of allotment of only two officers of 1993 batch serving in Haryana Cadre. Refuting the argument that direct recruit officers cannot claim seniority even before they are born in the cadre the learned counsel stated that had that been the case the officers inducted from the State Services would not get year of allotment much before they are actually born in the IFS. The date of induction of the applicants was 23.03.1999 which was challenged in the earlier OA filed before the Chandigarh Bench and on the basis of the order of this

Tribunal, their date of appointment was revised to 31.12.1997. Applicants were recruited to Haryana State Forest Service in 1989 with the assignment of allotment year 1993 in the IFS the applicants got the STS of the IFS after serving only 4 years in the State Forest Service at par with the DR of the IFS. Thus, the applicants have already got the maximum available benefit and in case they are allowed the benefit of allotment year of 1992, they will be getting STS on completion of only 3 years in the State Service which will not be in harmony with the provisions contained in the IFS Pay Rules or the State Forest Service Pay Rules. He also contested the submission of the learned counsel for the applicants that the fact that respondents no.4 & 5 underwent training along with the regular batch of 1994, would suggest that their seniority would also be fixed as 1994. According to the learned counsel, in the Seniority Rules 1968 the year of allotment had nothing to do with the year in which the selected candidate undergoes training. The proviso to Rule 3(1) of Seniority Rules 1997 relied upon by the applicants which provides that "if a direct recruit officer is permitted to join probationary training under sub-Rule (1) of Rule 6 of Indian Forest Service (Probation) Rules 1968 with the direct recruit officers of subsequent year of allotment, then he shall be assigned subsequent year as year of allotment", was inserted as an amendment to the Seniority Rules in 1997 and has only

prospective effect i.e. w.e.f. 01.01.1998 while the seniority of respondents no.4 & 5 was fixed in the year 1993. Further, the deferment of the examination and consequent delay could not be attributed to respondents no.4 & 5. Learned counsel relied on:

(1) **Ganesh Prasad Sah Kesari and anr. Vs. Lakshmi Narayan Gupta**, (1985) 3 SCC 53

(2) **Girdhari Lal and sons vs. Balbir Nath Mathur and ors.**, 1986 AIR 1499.

7. Heard the learned counsels and perused the record. At the centre of the entire controversy is the date on which respondents no.4 & 5 were given STS because the seniority of the applicants would be fixed below the junior-most direct recruit officer of the IFS in the cadre working in the STS on the date of induction of the applicants.

8. The year of allotment of officers appointed to IFS, directly recruited and inducted from the State Forest Service, is regulated respectively by Rule 3 (2)(a) and Rule 3 (2)(c) of the Seniority Rules, 1968 reproduced below:

> "3(2)(a) where an officer is appointed to the Service on the results of a competitive examination, the year following the year in which such examination was held."
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> "3(2)(c) where an officer is appointed to the Service by promotion in accordance with Rule 8 of the Recruitment Rules, the year of allotment of the junior-most among the officers recruited to the Service in accordance with Rule 7 or if no such officer is available the year of allotment of the

junior most among the officers recruited to the Service in accordance with Rule 4 (1) of these Rules who officiated continuously in a senior post from a date earlier than the date of commencement of such officiation by the former."

9. The Rule 4 of IFS (Recruitment) Rules provides for recruitment through:

(a) by a competitive examination; and

(b) by promotion of substantive members of the State Forest Service.

10. According to Rule 7 of the Recruitment Rules, the competitive examination for recruitment to the Service shall be held at such intervals as the Central Government may in consultation with the Commission from time to time determine. From the submissions of respondent no.1, which is not disputed by the learned counsel for the applicants, the competitive examinations are held for direct recruitment for IFS on annual basis by the UPSC. It was during the course of such exercise that the UPSC issued notification for holding IFS competitive examination in the year 1992, the examination date being in December 1992. Due to certain law and order situation, the UPSC had to take an extraordinary decision to postpone the examination to February 1993 and the respondents no.4 & 5 were selected on the basis of that examination. It is also an admitted fact that the annual examination for direct recruitment to the IFS for the year 1993 was also held in the year 1993. In such a

situation, the question that arises is whether the year of allotment of respondents no.4 & 5 would be 1993 since the examination in which they participated related to 1992, or 1994, given the rule that the year of allotment shall be the year following the year in which the examination was held. Once this question is answered, the grant of Senior Time Scale to respondents no.4 & 5 would automatically follow i.e. 4 years afterthe year of allotment in terms of the IFS (Pay) Rules, 1968.

11. The other arguments taken by the counsel for applicants that the private respondents should have actually served for 4 years or, should have completed 2 years after the probation period, etc. would not carry much weight because the same yardstick is followed in granting of Junior Administrative Grade, Selection Grade etc. to IFS officers of which the applicants would have been beneficiary while getting JAG, Selection Grade etc. as for the purpose of releasing these scales the number years are counted with reference to a fixed date of the calendar year and not the actual date of joining.

12. The entire edifice of the argument of the learned counsel for the applicants is based on enforcement of Rule 3 (2) (a) of Rules 1968 in fixing the year of allotment of respondents no.4 & 5. He has argued that the words used in the Rules have to be given a natural meaning and the respondents cannot attach to it such

meaning which is not warranted by any stretch of imagination. The rule envisages the year of allotment to be the year following the year in which the competitive examination was held. There is no ambiguity or uncertainty created by the phrase used in the rule. In support of his contention the learned counsel has relied on a number of judgments of Hon'ble Supreme Court which we will now examine.

13. In Illachi Devi (supra) while discussing the principle of law behind the interpretation of a Statute, the Hon'ble Apex Court observed thus:

> "40. It is well settled principles of law that a plain meaning must be attributed to the Statute. Also, a statute must be construed according to the intention of the legislature. The golden rule of interpretation of a statute is that it has to be given its literal and natural meaning. The intention of the legislature must be found out from the language employed in the statute itself. The question is not what is supposed to have been intended but what has been said. [See Dayal Singh v. Union of India [(2003) 2 SCC 593] : 2003(1) RCR(Civil) 787 (SC)].
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> 41. In Padma Sundara Rao (Dead) and Others v. State of T.N. and Others [(2002) 3 SCC 533], it was held :
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> > "The rival pleas regarding rewriting of statute and casus omissus need careful consideration. It is well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the legislature itself. The question is not what may be supposed and has been intended but what has been said. "Statutes should be construed, not as theorems of Euclid", Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them". (Lenigh Valley Coal Co. v. Yensavage (218 FR 547). The view was reiterated in Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama (AIR 1990 SC 981 : (1990) 1 SCC 277)."
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> 42. This Court again in Harbhajan Singh v. Press Council of India and Others [(2002) 3 SCC 722] stated the law thus :

"7. Clearly, the language of sub-section (7) of Section 6 abovesaid, is plain and simple. There are two manners of reading the provision. Read positively, it confers a right on a retiring member to seek renomination. Read in a negative manner, the provision speaks of a retiring member not being eligible for renomination for more than one term. The spell of ineligibility is cast on "renomination" of a member who is "retiring". The event determinative of eligibility or ineligibility is "renomination", and the person, by reference to whom it is to be read, is "a retiring member". "Retiring member" is to be read in contradistinction with a member/person retired sometime in the past, and so, would be called a retired or former member. "Re" means again, and is freely used as a prefix. It gives colour of "again" to the verb with which it is placed. "Renomination" is an act or process of being nominated again. Any person who had held office of member sometime in the past, if being nominated now, cannot be described as being "again nominated". It is only a member just retiring who can be called "being again nominated" or "re-nominated". No other meaning can be assigned except by doing violence to the language employed. The legislature does not waste its words. Ordinary, grammatical and full meaning is to be assigned to the words used while interpreting a provision to honour the rule - the legislature chooses appropriate words to express what it intends, and therefore, must be attributed with such intention as is conveyed by the words employed so long as this does not result in absurdity or anomaly or unless material - intrinsic or external - is available to permit a departure from the rule.

9. Cross in Statutory Interpretation (3rd Edn., 1995) states :

"The governing idea here is that if a statutory provision is intelligible in the context of ordinary language, it ought, without more, to be interpreted in accordance with the meaning an ordinary speaker of the language would ascribe to it as its obvious meaning, unless there is sufficient reason for a different interpretation. ..... Thus, an `ordinary meaning' or `grammatical meaning' does not imply that the Judge attributes a meaning to the words of a statute independently of their context or of the purpose of the statute, but rather that he adopts a meaning which is appropriate in relation to the immediately obvious and unreasearched context and purpose in and for which they are used. By enabling citizens (and their advisers) to rely on ordinary meanings, unless notice is given to the contrary, the legislature contributes to legal certainty and predictability for citizens and to greater transparency in its own decisions, both of which are important values in a democratic society."

43. Yet again in M/s Grasim Industries Ltd. v. Collector of Customs, Bombay [JT 2002(3) SC 551], it is stated :

"10. No words or expressions used in any statute can be said to be redundant or superfluous. In matters of interpretation one should not concentrate too much on one word and pay too little attention to other words. No provision in the statute and no word

> in any section can be construed in isolation. Every provision and every word must be looked at generally and in the context in which it is used. It is said that every statute is an edict of the legislature. The elementary principle of interpreting any word while considering a statute is to gather the mens or sententialegis of the legislature. Where the words are clear and there is no obscurity, and there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to take upon itself the task of amending or altering the statutory provisions."

44. It is equally well settled that when the Legislature has employed a plain and unambiguous language, the Court is not concerned with the consequences arising therefrom. Recourse to interpretation of statutes may be resorted only when the meaning of the statute is obscure. The Court is not concerned with the reason as to why the Legislature thought it fit to lay emphasis on one category of suitors than the others. A statute must be read in its entirety for the purpose of finding out the purport and object thereof. The Court, in the event of its coming to the conclusion that a literal meaning is possible to be rendered, would not embark upon the exercise of judicial interpretation thereof and nothing is to be added or taken from a statute unless it is held that the same would lead to an absurdity or manifest injustice. It is well-established that a disabling legislation must be characterized by clarity and precision. In the present instance, the prohibitions laid down by Sections 223 and 236 of the Act are categorical and comprehensive, and leave no scope for creative interpretation.

45. The Court, it is trite, cannot supply casus omissus. Reference in this regard may be made on Dr. Baliram Waman Hiray v. Mr. Justice B. Lentin and others [AIR 1988 SC 2267], wherein it was observed :

> "27. Law must be definite, and certain. If any of the features of the law can usefully be regarded as normative, it is such basic postulates as the requirement of consistency in judicial decision-making. It is this requirement of consistency that gives to the law much of its rigour. At the same time, there is need for flexibility. Professor H.L.A. Hart regarded as one of the leading thinkers of our time observes in his influential book "The Concept of Law', depicting the difficult task of a Judge to strike a balance between certainty and flexibility :
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> 'Where there is obscurity in the language of a statute, it results in confusion and disorder. No doubt the courts so frame their judgments as to give the impression that their decisions are the necessary consequence of predetermined rules. In very simple cases it may be so; but in the vast majority of cases that trouble the Courts, neither statute nor precedents in which the rules are legitimately contained allow of only one result. In most important cases there is always a choice. The Judge has to choose between alternative meanings to be given to the words of a statute or between rival interpretations of what a precedent amount to. It is only the tradition that judges `find' and do not `make' law that conceals this, and presents their decisions as if they were

> deductions smoothly made from clear pre-existing rules without intrusion of the judge's choice."
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> [See also Kanta Devi (Smt.) v. Union of India and Another [(2003) 4 SCC 753]].

46. In Shrimati Tarulata Shyam and Others v. Commissioner of Income-tax, West Bengal [(1977) 3 SCC 305], it was held that if there be a casus omissus, the defect, can be remedied only by legislation and not by judicial interpretation."

14. Taking a similar view in Dayal Singh (supra), the Hon'ble Supreme Court stated thus:

> "37. It is a well-settled principle of law that the Court cannot read anything into the statutory provision which is plain and unambiguous. The Court has to find out legislative intent only from the language employed in the statutes. Surmises and conjectures cannot be resorted to for interpretation of statutes. (See Union of India and others v. Filip Tiago De Gama of Vedem Vasco De Gama, (AIR 1990 SC 981).
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> 38. This Court in Bhavnagar University v. Palitana Sugar Mills Pvt. Ltd. and others, (2002 (9) Scale 102), has observed :-
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> > "Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute."

15. While interpreting a word or phrase in a Statute, the Hon'ble Supreme Court in Bhavnagar University (supra) emphasized on the need to read the Statute as a whole, then chapter by chapter, section by section and word by word. The effort must be made to give effect to all parts of the statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant. The relevant portion of the judgment is reproduced below:

> "23. It is the basic principle of construction of statute that the same should be read as a whole, then chapter, section by section and words by words. Recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity, or inconsistency therein and not otherwise. An effort must be made to give effect to all parts of statute and unless absolutely necessary, no part thereof shall be rendered surplusage or redundant.
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> 24. True meaning of a provision of law has to be determined on the basis of what provides by its clear language, with due regard to the scheme of law.
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> 25. Scope of the legislation on the intention of the legislature cannot be enlarged when the language of the provision is plain and unambiguous. In other words statutory enactments must ordinarily be construed according to its plain meaning and no words shall be added, altered or modified unless it is plainly necessary to do so to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute.
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> 26. It is also well settled that a beneficent provision of legislation must be liberally construed so as to fulfil the statutory purpose and not to frustrate it."

16. In M.Venugopal (supra) the Hon'ble Supreme Court went to the extent of saying that legislature could introduce a statutory fiction and the courts have to proceed on the assumption that such state of affairs exist on the relevant date. The relevant portion of the judgment reads thus:

> "11. The effect of a deeming clause is well-known, Legislature can introduce a statutory fiction and courts have to proceed on the assumption that such state of affairs exists on the relevant date. In this connection, one is often reminded of what was said by Lord Asquith in the case of East End Dwellings Co. Ltd. v. Finsbury Borough Council, (1952) AC 109 (B), that when one is bidden to treat an imaginary state of affairs as real, he must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, inevitably have flowed from-one must not permit his "imagination to boggle" when it comes to the inevitable corollaries of that state of affairs."

17. In H.S.Atwal (supra) the Hon'ble Supreme Court focused on the legislative intent and for the purpose for which a provision

was made in the statute while interpreting the same. The relevant portion of the judgment is reproduced below:

> "9. To decide as to which of the contentions merits our acceptance we have to know the purpose for which the benefit had been given. The same apparently is to see that the persons who joined military service to defend the country from external aggression which took place in 1962 do not suffer from disadvantage as regards their seniority in civil services which they had joined after demobilisation. It may be pointed out that before the Rules at hand came into existence, there had been similar administrative circulars, the first of which seems to be one which was issued in July, 1963 which has been noted in K. C. Arora's case, (AIR 1987 SC 1858). The benefit sought to be conferred however was hedged by the condition mentioned in clause (a).
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> 10. A Full Bench of the Punjab and Haryana High Court had occasion to deal with the question under examination, though in a different context. That was in the case of Khusbash Singh v. State of Punjab, (1981) 2 Serv LR 576: (1981 Lab IC 1004). In that case the incumbent claimed the benefit of similar rule from 1964, in which year the first examination for the purpose of recruiting the member for the Service in question was held, though by that year he was not qualified to appear in the examination. The Full Bench held that the rule did not permit the benefit of the military service to be given for the purpose of seniority, the incumbent being not qualified to appear in the examination which was held in 1964. It was observed in paragraph 10 that the opportunity of which the rule speaks of, though presumptive, has to satisfy the conditions prescribed by the Rules. It was also stated that Rule 4(l)(a) does not tend to make the opportunity fictional and it does not relax the rigours imposed; one of which was the necessity of having required qualification before one could be accepted as eligible for appearing in the examination.
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> 11. We may point out that when a fiction is created by a legal provision, it cannot be carried beyond the purpose for which it has been created, as pointed out by this Court in K. S. Dharmadatan v. Central Government, (1979) 4 SCC 204: (AIR 1979 SC 1495). This view had been taken after noting some important Indian and English decisions to which reference was made in paragraphs 11 to 13."

18. The learned counsel for respondents no.4 & 5 while arguing that the postponement of IFS Examination 1992 was an extraordinary event and had to be distinguished from normal conditions, submitted that the rule has to be interpreted in a manner that would promote consistency and meet the situation

that could not have been foreseen by the framers of the legislation. He had referred to Girdhari Lal (supra) in this regard. The relevant portion of Girdhari Lal (supra) is reproduced below:

> "12. In Seaford Court Estates Limited v. Ashor [1949] 2 All E.R. 155 Lord Denning, who referred to Plowden's Reports already mentioned by us, said :
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> > "Whenever a statute comes up for consideration, it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity..... A Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do this not only from the language of the statute, but also from a construction of the social conditions which gave rise to it and of the mischief which it was passed to remedy and then he must supplement the written word so as to give force and life to the intention of the legislature. Put into homely metaphor, it is this: A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the contexture of it they would have straightened it out? He must then do what they would have done. A judge should not alter the material of which the Act is woven, but he can and should iron out the creases."

19. In Ganesh Prasad Sah Kesari (supra) the Hon'ble Supreme Court made a reference to the interpretation of the word "shall" while dealing with situations that may arise due to technical, fortuitous, unintended or on account of circumstances beyond the control of the defaulter wherein it is not possible to abide by the mandatory directions of the Court. The Hon'ble Supreme Court held that the intendment of the legislature and consequences flowing from its own construction of the word "shall" have to be kept in view while the Court ascertains whether the mere use of

word “shall” would make the provision imperative. Para 8 of the judgment reads thus:

> “8. Ordinarily the use of the word 'shall' prima facie indicates that the provision is imperative in character. However, by a catena of decisions, it is well established that the court while considering whether the mere use of the word 'shall' would make the provision imperative, it would ascertain the intendment of the legislature and the consequences flowing from its own construction of the word 'shall'. If the use of the word 'shall' makes the provision imperative, the inevitable consequence that flows from it is that the Court would be powerless to grant any relief even where the justice of the case so demands. If the word 'shall' is treated as mandatory, the net effect would be that even where the default in complying with the direction given by the Court is technical, fortuitous, unintended or on account of circumstances beyond the control of the defaulter, yet the Court would not be able to grant any relief or assistance to such a person. Once a default is found to be of a very technical nature in complying with the earlier order, the Court must have power to relieve against a drastic consequence all the more so if it is satisfied that there was a formal or technical default in complying with its order. To illustrate, if the tenant while he was on the way to the Court on the 15th day to deposit the rent for the just preceding month as directed by an order under Sec. 11A, met with an accident on the road and could not reach the Court before the Court hours were over, should he be penalised by his defence being struck off. Even if the Court is satisfied that he was on the way to the Court to make the necessary deposit, that he had the requisite amount with him, and that he started in time to reach the Court within the prescribed Court hours and yet by circumstances beyond his control, he met with an accident, would the Court be powerless to grant him relief. This illustration would suffice to disclose the intendment of the legislature that it never used the word 'shall' to make it so imperative as to render the Court powerless.”

20. Learned counsel for the applicants has strenuously tried to convince us that there can be no other meaning to the words used in Rule 3 (2) (a) of Rules, 1968 except that the year of allotment shall be the year following the passing of the year of competitive examination. According to him the factors like those given below cannot justify any other meaning given to the aforementioned clause:

(a) It has been the practice to hold direct recruitment IFS every year and for the year 1992 the IFS competitive examinationwas notified by the UPSC in June 1992.

(b) Such annual examination is in consonance with the Rule 7 (1) (a) of the IFS (Recruitment) Rules, 1966.

(c) The examination had to be postponed because of law and order situation arising due to unforeseen circumstances.

(d) There were two competitive examinations conducted in the year 1993, one in February 1993 and the other in December 1993, respectively for the years 1992 and 1993.

(e) The assignment of year of allocation to the respondents no.4 and 5 was made treating the competitive examination through which they were selected to be of 1992.

(f) The grant of STS is dependent on completion of 4 years' service starting from the year of allotment, which in the case of respondents no.4 & 5 can only be 1993; and, on the day of the induction of the applicants in IFS in 1997, respondents no.4 & 5 were already in the Senior Time Scale.

21. The purpose of enumerating the above factors is to refer once again to the judgments cited by the learned counsel for the applicants mentioned above. In Illachi Devi (supra) the Hon'ble Supreme Court has stated that the "*golden rule of interpretation of a statute is that it has to be given its literal and natural meaning. The intention of the legislature must be found out from the language employed in the statute itself. The question is not what is supposed to have been included but what has been said.*" While emphasising on the literal and natural meaning of the words used, the Apex Court has also highlighted the need to look at the intention of the legislature from the language employed in the statute itself. Rule 3 (2) (a) of Rules 1968 is to link the year of allotment to the year of holding the competitive examination and competitive examination has been defined in Rule 3 (2) (c) ibid as "the examination referred to under Rule 7 of the Recruitment Rules". Rule 7 (1) of the Recruitment Rules reads thus:

> "A competitive examination for recruitment to the Service shall be held at such intervals as the Central Government may, in consultation with the Commission, from time to time, determine."

22. None of the parties have placed on record any decision of the Central Government or Commission fixing the intervals at which such competitive examination is going to be held. However, it has been mentioned by learned counsel for respondent No.1 during the arguments, which has not been challenged by the learned

counsel for applicants, that the competitive examination for direct recruitment to IFS is held annuallyand there has been no exception to that so far. That being so, from the practice followed by the Central Government and the Commission it can be concluded that the interval at which the competitive examination is held is one year. "Competitive examination" referred to Rule 3 (2) (a) of Rules, 1968, therefore, means the annual competitive examination for direct recruitment to the IFS. It will also follow that there cannot be two annual competitive examinations in the same year and if due to certain extraordinary situations and fortuitous circumstances two competitive examinations have been held in calendar year, they cannot be attributed or assigned to the same year. In the present context the examination held in February 1993 and in December 1993 cannot be assigned to the same year of 1993 under the statutory rules. They have to be assigned to different years and logically candidates selected from February 1993 examination will have to be assigned to 1992, the year when it was advertised and meant to be held. In Bhavnagar University (supra) the Hon'ble Supreme Court elaborated the basic principle of construction of statute stating that *"the same should be read as a whole then chapter by chapter, section by section and word by word."* Hon'ble Apex Court went on to say that recourse to construction or interpretation of statute is necessary when there is ambiguity, obscurity or any

inconsistency therein and not otherwise. The question therefore arises whether there is any ambiguity or obscurity or inconsistency in Rule 3 (2 (a) of Rules 1968. On a plain reading of the aforesaid Rules apparently there is no ambiguity. However, the ambiguity arises when this rule is applied to a situation where two competitive examinations happened to be held due to fortuitous circumstances. In such a scenario there is a necessity to interpret the rule to resolve the apparent conflict and while doing so the basic principles of construction, as reiterated by Hon'ble Supreme Court mentioned earlier, have to be followed.

23. Learned counsel for the applicants, quoting M.Venugopal (supra), has argued that even if the legislature has introduced a statutory fiction, Courts have to proceed on the assumption that such a state of affairs existed on the relevant date. He would argue that by application of Rule 3 (2) (a) of Rules 1968, if candidates appointed on the basis of two competitive examinations held in the same year have to be given the same allotment year, which in this case would mean assigning 1994 as allotment year to two batches, the court has to accept such a legal fiction. However, in H.S.Atwal (supra) the Hon'ble Supreme Court has given a perspective in which the provision with regard to legal fiction has to be viewed. It was observed that:

> "11. We may point out that when a fiction is created by a legal provision it cannot be carried beyond the purpose for which it has been created as pointed out by this Court in K.S.Dharmadatan vs.

> Central Govt.". This view had been taken after noting some important Indian and English decisions to which reference was made in paragraphs 11 to 13."

24. We have to see the purpose for which a legal fiction has been created. But in the present case, we cannot even say that Rule 3 (2) (a) of Rules 1968 gives rise to any legal fiction. The two IFS competitive examinations were held in the same year i.e. 1993, but the first competitive examination was actually notified on 13.06.1992 and labelled "Indian Forest Service Examination 1992". In our view, therefore, the two examinations have to be treated according to the label given to them.

25. In Girdhari Lal (supra) the Hon'ble Supreme Court has gone a step further while laying down the parameters within which Court must confine itself while interpreting a statute. It was stated that it is not within human power to foreseethe manifold sets of facts which may arise, and even if it were, it is not possible to provide for them free from all ambiguity.In Para 9 of the judgment the Apex Court further observed that *"the primary and foremost task of a Court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from*

the rule that plain words should be interpreted according to their plain meaning". The relevant para reads thus:

> "9. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no neck and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing, the written word if necessary."

26. After considering the aforementioned judgments, we come to the conclusion that the law requires that the meaning or interpretation of a Rule has to be based on the intention of the legislature, the purpose for which the Rules have been made, the interpretation should promote the objective, the statute has to be read as a whole and the interpretation should lead to a harmonious situation between different rules and regulations governing the subject. In this background the Rule 3 (2) (a) has to be given a meaning that the year of allotment of an officer will be the year following the year for which such examination was held when the examination was notified in time but not when it had to be deferred at the last moment due to extraordinary circumstances beyond the control of the respondents.

27. Another dimension of the controversy is that if the year of allotment of respondents no.4 & 5 is fixed as 1994 following the interpretation given by the applicants, its consequences will lead to a lot of inconsistencies and conflicts. The first and foremost to which the learned counsels for the respondents have referred also, is the fact that it will change the year of allotment not only for respondents no.4 & 5 but the officers of entire batch of IFS Examination 1993, who have already been serving throughout the country for the last 23 years. Applicants have not challenged the year of allotment communicated by the respondent no.1 vide notification dated 30.11.1994 by which the respondents no.4 & 5 were appointed on the basis of IFS examination 1992, or notification dated 31.08.1995 which allots cadre on the basis of their selection in the IFS examination 1992, or the gradation list of IFS officers that shows respondents no.4 & 5 belonging to 1993 batch. This would raise the question whether this OA can be entertained in the absence of all necessary parties. The learned counsel for the applicants has feebly countered this argument by saying that he is not challenging the year of allotment of other officers of the 1992/1993 examination, without dealing with the consequences that would follow. This would also raise a question whether after nearly 23 years a settled position of seniority can be disturbed through this OA. In **B.S. Bajwa** (supra) the Hon'ble Supreme Court held thus:

> "Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of latches because the grievance made made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the order aforesaid persons and the rights inter se had crystalised which ought not to have been re-opened after the lapse of such a long period. At every stage the others were promoted before B.S. Bajwa and B.D.Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be re- opened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

28. We do not find any justification for reopening the settled seniority of 1993 batch officers of IFS working different cadres in the country.

29. The prayer of the applicants can also be viewed from the viewpoint of any gross injustice suffered by them because of the interpretation given by the official respondents to Rule 3 (2) of Rules 1968. It can be seen that the applicants were earlier given the seniority on induction in the IFS w.e.f. 23.03.1999 which was later revised to December 1993. It is undisputed that induction of the State Service Officers in the IFS is done in the STS. It is relevant to note here that the applicants are from 1989 batch of State Forest Service and in 1993 they had completed 4 years of service in the State Service. By induction to the senior scale of IFS in 1993, in effect, they got the STS of IFS by serving for 4

years in State Forest Service. If their prayer is granted, their year of allotment in IFS would shift to1992; in that case they would end up getting the senior scale of IFS after serving for 3 years in State Forest Service. This itself is anomalous and contrary to the rules that provide that an IFS officer would get STS after four years of service. We, therefore, conclude that the interpretation of Rule 3 (2) (a) of Rules 1968 giving the respondents 4 & 5 does not cause any injustice to the applicants.

30. Having come to the conclusion that there is no error in assigning 1993 as the year of allotment to Respondents no.4 & 5 it follows, as clarified by the DOP&T letter no.11030/15/92-AIS (II) dated 15.10.1997, the Respondents no.4 & 5 will be eligible for grant of Senior Time Scale in 1997. There is no merit in the contention of the applicants that they should be shown as senior to Respondents no. 4 & 5 and thereby eligible for fixation of seniority of 1992 below the junior-most officer of that batch in the Senior Time Scale.

31. Taking the entire conspectus into account and for the reasons discussed in the preceding paras, we do not find any merit in the OA and the same is dismissed. No costs.

(Brahm Avtar Agrawal)
Member (J)

(V.N. Gaur)
Member (A)

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