

OAs.No.170/00098&00100/2016/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00098 & 00100/2016

DATED THIS THE 6th DAY OF DECEMBER, 2017

HON'BLE SHRI DR.K.B.SURESH, MEMBER (J)

HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

1. Sri V.Ramalenge Gowda
S/o.Late Venkatesh Gowda
Aged about 55 years
Working as Deputy Conservator of Forests
Kolar Division, Kolar.

2. Sri H.R.Kumar
S/o.Late Rame Gowda
Aged about 55 years
Working as Deputy Conservator of Forests
Social Forestry, Bangalore.Applicants

(By Advocate Sri M.S.Bhagwat, Sri K.Satish & Sri M.K.Prithveesh)

Vs.

1. Union of India
Represented by its Principal Secretary
Department of Personnel and Training
Central Secretariat
North Block, New Delhi-110 001.

2. Union of India
Represented by its Principal Secretary
Department of Environment and Forests
Central Secretariat, Indira Paryavaran Bhavan
6th Floor, Prithvi Block
Jor Bagh Road, Ali Ganj, New Delhi-110 003.

3. Union Public Service Commission
Represented by its Secretary
Dholpur House, Shahjahan Road, New Delhi-110 069.

4. The State of Karnataka
Represented by its Chief Secretary
Vidhana Soudha, Bangalore-560 001.

5. The State of Karnataka
Represented by its Principal Secretary
Department of Personnel Administration and Reforms
Vidhana Soudha, Bangalore-560 001.Respondents

(By Advocates Sri M.V.Rao-R1&2, M.Raja Kumar-R3 & Sri T.S.Manthesh- R4&5)
ORDER

(PER HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (ADMN))

The applicants have filed the OA seeking the following relief:

- i. *Call for records from the respondents pertaining to the order dated 11/01/2016(Annexure-A8);*
- ii. *Issue writ or order in the nature of mandamus directing the respondent No.1 to 3 to notify the unfilled vacancy of 3 against the Select of 2008-A to 2012, along with 3 for the year 2013 in consultation with the respondent No.5, in the interest of justice and equity;*
- iii. *issue writ of order in the nature of mandamus directing the respondent No.5 to restore the eligibility list of State Forest Service officers for posting to Indian Forest Service cadre posts at Deputy Conservator of Forests level as at the list prepared on 16/11/2015(Annexure-A7) in so far as the applicants are concerned and consequently direct the respondent No.1 to include the name of the applicants in the panel prepared on 11/01/2016 by the State Government(Annexure-A8);*
- iv. *Issue writ of order in the nature of mandamus directing the respondents No.4 and 5 to forward the names of the applicants to the 2nd and 3rd respondents for consideration of their case for promotion to the post of Indian Forest Service under the provisions of Indian Forest Service (Appointment by Promotion) Regulations, 1966 and appoint the applicants to the said post, in the interest of justice and equity.*

2. Earlier one Sri M.N.Vijay Kumar had also joined the applicants in OA.No.99/2016. However, he had filed a memo of withdrawal of his application on 23.2.2016 and hence OA.No.99/2016 was dismissed as withdrawn.
3. Both the applicants in OAs.No.98/2016 & 100/2016 belong to the State Forest Service and are aspiring for promotion to the Indian Forest Service under Indian Forest Service (Appointment by Promotion) Regulations 1966. They submit that for the year 2013, there are three vacancies to be filled up by promotion of State Forest Service Officers of Karnataka Cadre in terms of the provisions of Rule 5 (1) of Indian Forest Service Rules 1966. Three vacancies

OAs.No.170/00098&00100/2016/CAT/Bangalore Bench that arose for the year 2013 was communicated vide letter dated 4.7.2014 by Govt. of India(Annexure-A4). According to the applicants, for preparation of select list for the years 2008-A to 2012, 11 persons figured in the select list in terms of notification issued on 13.10.2015(Annexure-A5). However only 8 persons were appointed to the posts of Indian Forest Service by order dated 26.11.2015. Out of the 11 names in the select list, Sri D.Yathish Kumar was overlooked since a departmental enquiry was pending against him. Two other persons namely Sri S.P.Raju and Sri K.L.Raghavendra had retired from service on attaining the age of superannuation before the appointment to the post of Indian Forest Service. Therefore, further three vacancies are also available. Pursuant to the direction issued by the Tribunal in OA.No.237/2013, the State Govt. prepared the list of eligible and competent officers for posting against Indian Forest Service cadre posts. In the said list dated 16.11.2015(Annexure-A7), the applicants figured at Sl.No.17 & 23. However, at the time of preparing the list, only 9 names were shortlisted against the 3 vacancies occurred in the year 2013(Annexure-A8) and the applicants were not placed in the said list. According to the applicants, the respondents should have taken into consideration 3 vacancies that have already arisen and prepared the list for 6 vacancies and hence should have include 18 names instead of 9. Therefore, they made representation(Annexure-A9) to the 4th respondents to include 18 names instead of 9 names in the list dated 11.1.2016. However, the respondents did not consider the same. They contend that exclusion of 3 unfilled vacancies is contrary to the Indian Forest Service(Cadre) Rules, 1966 and sought a direction to be given to the respondents to notify unfilled 3 vacancies against the select of 2008-A to 2012 and prepare the list of eligible officers for promotion to the post of Indian Forest Service accordingly. Therefore, they prayed for granting the relief as

sought for.

4. The applicants in the OA have also referred to various Court orders regarding equality and upholding rule of law and submit that non-inclusion of 3 vacancies along with three vacancies already notified for 2013 is discriminatory and unjustified.
5. The respondent No.1 & 2, the Govt. of India and respondent No.3, the UPSC have not filed any reply statement. During the hearing, Ld.Counsels for R1 to 3 submit that the matter is now with the State Government only and they have nothing to say in the matter. On behalf of respondents No.4&5 i.e. the State Government, the reply statement is filed in which it was submitted that in pursuance of the directions of the Hon'ble High Court of Karnataka dated 05.03.2014 in W.P.No.5539/2014 clubbed with others and in pursuance of para 04 of the operative portion of the order dated 28.06.2013 of the Tribunal in OA.No.237/2012 and connected matters, the Govt. of Karnataka prepared the seniority lists of IFS officers based on the available officers in the zone of consideration for select lists 2008A to 2012 and further listed them according to seniority for posting them against vacant cadre posts at DCF level. The Department of Forests, Ecology and Environment subsequently submitted a proposal dated 16.05.2014 recommending the names of 23 IFS officers who figured in the zone of consideration for the select list 2013 & 2014 for sending a proposal to respondent No.3. Accordingly, after examining the proposal and as per the operative portion of the Hon'ble Tribunal's order dated 28.06.2013 in OA.No.237/2012 and connected matters and the Hon'ble High Court of Karnataka order dated 05.03.2014 in WP.No.5539/2014, they issued notification No.DPAR 157 SFP 2015 dated 16.11.2015 drawing up a seniority list of 23 competent eligible SFS officers and a further list of 12 SFS officers

OAs.No.170/00098&00100/2016/CAT/Bangalore Bench among them according to seniority for posting them into vacant IFS cadre post of DCF level after obtaining the approval of the competent authority. As the applicant figured in the seniority list and as he was entitled to hold the cadre post of IFS, he was posted against the cadre post of DCF, Kolar Division.

6. The respondents further submitted that consequent on the publication of Notification dated 26.11.2015 by the GOI, MOEF appointing 8 SFS officers to IFS on the basis of select list for the years 2008A to 2012, the FEE department vide its communication dated 09.12.2015 forwarded the revised list of eligible 09 officers for consideration for promotion to IFS for the select list 2013 and a list of 06 officers for consideration for promotion to IFS for the select list of 2014 by deleting the names of 14 SFS officers including the names of 06 officers who are already promoted to IFS vide Notification dated 26.11.2015. As per the revised list sent by the 2nd respondent, the name of the applicants did not figure in the zone of consideration for the select lists 2013 & 2014. So, as already traversed above, as per para 4 of the order dated 28.06.2013 of the Tribunal and the Hon'ble High Court of Karnataka order dated 05.03.2014, the State Government vide Notification dated DPAR 157 SFP 2015 dated 11.01.2016 prepared the seniority list of 09 SFS officers of select lists 2013 and 2014 for posting them against vacant IFS cadre posts at DCF level. As 02 SFS officers out of the 09 SFS officers were already serving in IFS cadre posts, in the same notification, a further list of 04 officers was drawn up for posting them against the vacant IFS cadre posts at DCF level. Since, the name of the respondent did not find a place either in select list 2013 or select list 2014, he was not included in the Notification dated 11.01.2016.

7. The respondents further submit that in regard to the contention of the applicants for taking into account three unfilled vacancies from the select lists 2008A to 2012, they submit that the issue of re-determination of vacancies for promotion to IFS is concerned, it is in the exclusive domain of Govt. of India, Min., of Environment & Forests and they have requested them as to how to reckon the three unfilled vacancies for the select years 2008A to 2012. And therefore, they will examine the proposal for re-determination of vacancies for the select year 2013 and the contention made by the applicants is too premature.
8. During the hearing, reiterating the submission made in the reply statement, the Learned Counsel for the State Government and also departmental representative mentioned that for 3 unfilled vacancies from the list of 2008A to 2012, 2 applicants namely Sri S.P.Raju and Sri K.L.Raghavendra were granted notional promotions against the select list of 2009 based on a direction by this Tribunal. Regarding the remaining vacancy (since two of three unfilled vacancies have already been filled up), the Govt. of India, Min. of Environment and Forests informed that it should be treated as provisional vacancy since the departmental proceedings against Sri D.Yatish Kumar is still pending. The State Government is in the process of preparing eligibility list for the vacancy years 2013 to 2016 for sending the same to the Govt. of India for the purpose of further selection and appoint to the IFS cadre.
9. We have carefully considered the facts of the case and submissions made by either side. The only issue that has been raised by the applicants in the present OA is to take into consideration three unfilled vacancies from the select list years of 2008A to 2012 and add them to the three vacancies determined for 2013 and prepare the eligibility list accordingly. If these 3

OAs.No.170/00098&00100/2016/CAT/Bangalore Bench vacancies are added then list will be of 18 officers in place of 9 as notified on 11.1.2016(Annexure-A8). However, as submitted by the State Government, two persons namely Sri S.P.Raju and Sri K.Raghavendra who were initially not included for promotion as they retired on superannuation were given promotion against the select list of 2009 based on direction by this Tribunal. Hence that list has only one vacancy left unfulfilled which was due to non-consideration of Sri D.Yatish Kumar in view of the departmental proceedings pending against him. It is also mentioned by the Ld.Counsel for the State Government that the Min. of Environment and Forests, the Govt. of India has directed to treat it as provisional vacancy in addition to the three vacancies already notified and they are preparing eligibility list accordingly. They are also in the process of finalising the eligibility list for the subsequent years 2014, 2015 and 2016 and based on the vacancies for those years.

10. In view of the stated position, the contention made by the applicant does not merit any further consideration. The State Government is however directed to prepare the eligibility list for the year 2013 taking into consideration one provisional vacancy as intimated by the Govt. of India in addition to the three vacancies already notified as per rules.

11. The OA is accordingly disposed of in terms of the aforesaid direction. No order as to costs.

(P.K.PRADHAN)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicants in the OAs.170/00098&00100/2016

Annexure-A1: Copy of the order dtd.01/02/2010
Annexure-A2: Copy of the order dtd.31/05/2010

Annexure-A3: Copy of the Office Memorandum dtd.25/08/2010
Annexure-A4: Copy of the letter dtd.04/07/2014
Annexure-A5: Copy of the select list dtd.13/10/2015
Annexure-A6: Copy of the notification dtd.26/11/2015
Annexure-A7: Copy of the list dtd.16/11/2015
Annexure-A8: Copy of the list dtd.11/01/2016
Annexure-A9: Copy of the representation dtd.06/01/2016
Annexure-A10: Copy of the Indian Forest Service (Cadre) Rules, 1966

Annexures with reply statement:

-Nil-
