

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/00008/2016

AND

ORIGINAL APPLICATION NO. 170/00009/2016

DATED THIS THE 24TH DAY OF NOVEMBER, 2017

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

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

O.A. No. 170/00008/2016

Shri Jagadeesh A,
S/o Sri Nanjunadaiah (Late),
Aged about 59 years,
Deputy Conservator of Forests
Kolar Division, Kolar
(Under orders of Transfer)
R/at Forest Officers Quarters
Kolar, Kolar District.

.....Applicant

(By Advocate Shri B.B. Bajentri)

Vs.

1. Union of India,
Represented by Secretary,
Ministry of Environment, Forests &
Climate Change, Indira Paryavaran Bhavan
6th Floor, Prithvi block, Jor Bagh Road,
Aliganj, New Delhi – 110 003.

2. The Union Public Service Commission,
Represented by its Secretary,
Dholpur House, Shahajan Road,
New Delhi – 110 011.

3. The State of Karnataka,
Represented by its Chief Secretary,
Department of Personnel and Administrative
Services, Government of Karnataka,
Vidhana Soudha,
Bangalore – 560 001.

4. The State of Karnataka,
Represented by its Additional Secretary,
Department of Forests, Environment & Ecology,

Vikasa Soudha, Bangalore – 560 001.

5. Sri S.P. Raju,
Retired Deputy Conservator of Forests,
Yadagir Division, Yadagir,
Yadagir District.

6. Sri K L Raghavendra,
Retired Deputy Conservator of Forests,
Gokak Division,
Belgaum District.

....Respondents

(By Shri S. Prakash Shetty, Senior Panel Counsel for Respondent No.1,
Shri M. Rajakumar, Counsel for Respondent No.2
Shri S. Mahanthesh, Counsel for Respondent No. 3 & 4 &
M/s Subbarao & Co, Counsel for Respondent No. 5 & 6)

O.A. No. 170/00009/2016

Shri H T Rajendra,
S/o Late H P Jayakar,
Aged about 59 years,
Deputy Conservator of Forests
Haveri Division, Haveri
R/at. Forest Quarters
Administrative Block Complex,
Devagiri, Haveri
Haveri District

.....Applicant

(By Advocate Shri B.B. Bajentri)

Vs.

1. Union of India,
Represented by Secretary,
Ministry of Environment, Forests &
Climate Change, Indira Paryavaran Bhavan
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5. Sri S.P. Raju,
Retired Deputy Conservator of Forests,
Yadagir Division, Yadagir,
Yadagir District.

6. Sri K L Raghavendra,
Retired Deputy Conservator of Forests,
Bangalore

....Respondents

(By Shri S. Prakash Shetty, Senior Panel Counsel for Respondent No.1,
Shri M. Rajakumar, Counsel for Respondent No.2 &
Shri S. Mahanthesh, Counsel for Respondent No. 3 & 4)

ORDER

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

Since both the OA No. 170/0008/2016 & OA No. 170/0009/2016 filed by the applicants have sought similar reliefs, they have been taken together for consideration and passing a common order. OA No. 170/0008/2016 has been considered for reference purposes. The relief sought is as follows:

- (i) *call for records relating to issue of the impugned notification bearing no. 17013/20/2013-IFS.II dated 13.10.2015 (Annexure-A6) and after perusal set aside the notification in so far as it relates to inclusion of the names of 5th and 6th respondent in the select list – 2009;*
- (ii) *to direct the respondents to prepare the notional select list for the year 2009, from among the officers, who are within the zone of consideration and to fill up the two vacancies for the year 2009, as per the directions of the Apex Court in the judgment reported in 1996 (6) SCC 721, [Union of India and others Vs. Vipinchandra Hiralal Shah] within the time frame specified by the Hon'ble Tribunal and to include the name of the applicant in the notification no. 17013/20/2013-IFS.II dated 26.11.2015 (Annexure-A7)*

2. Both the applicants have challenged the non-inclusion of their names in the notification issued by the respondents for promotion of State Forest

Officers to the IFS. Referring to the Indian Forest Service (Appointment by Promotion) Regulation, 1966, the applicants submit that the Selection Committee for preparation of Select list of the State Forest Officer did not meet from 2008 to 2012. As per the vacancy position available, there were 2 vacancies for 2008, 4 vacancies for 2009, 1 vacancy for 2010, 1 vacancy for 2011 and 3 vacancies for 2012 as would be evident from the communication issued to the 3rd respondent dated 08.10.2013 (Annexure-A3). As per the 1966 Regulations, the number of eligible candidates in the provisional select list has to be in the ratio of 1:3. Accordingly the 3rd respondent prepared a provisional select list of 12 candidates to be recommended for selection by the Selection Committee for vacancies in 2009. The list of officers who are eligible for consideration for promotion to IFS in their order of seniority as on 1st January of the Select list year 2009 is at Annexure-A5. There are several correspondences between 2nd and 3rd respondent regarding finalization of the Select list for the year 2008, 2009, 2010, 2011 and 2012 respectively. On 13.10.2015, the 1st respondent on the basis of the selections made by the 2nd respondent, approved the Select list for promotion from SFS of Karnataka Cadre to IFS for the Select list year 2008 to 2012 (Annexure-A6). The said list shows the name of Shri S.P. Raju and Shri K.L. Raghavendra who had retired from service on attaining the age of superannuation as on the date of notification. As such 2 vacancies available in the year 2009 have remained unfilled though eligible candidates for the select list year 2009 including the applicants were available. The 1st respondent subsequently issued notification dated 26.11.2015 appointing 8 officers from

the State Forest Service to IFS from Karnataka (Annexure-A7). The said notification shows that only 2 vacancies for the year 2009 out of the 4 available vacancies have been filled. The applicants claim that they were qualified and eligible to be appointed in the said unfulfilled post for the select year 2009, and they were not included without assigning any reason. The applicants had stated that judgment of the Hon'ble Apex Court in Union of India and others Vs. Vipinchandra Hiralal Shah 1996 (6) SCC 721 had held that the Committee while making selection should prepare separate list for each year keeping in view number of vacancies in that year after consulting the State Forest Service Officers who are eligible and within the zone of consideration for selection that year. According to the applicants, the inclusion of officers already retired and had become ineligible for inclusion in the select list and non-considering the claim of the applicants who were eligible for the same is unjustified. Therefore the applicants have filed the present OAs seeking the above mentioned reliefs.

3. The 1st respondent in their reply statement had referred to the IFS (Appointment by Promotion) Regulations, 1966 and also mentioned that for the year 2009 against 4 available vacancies the name of the applicants were in the zone of consideration and were included in the list of assessment for the select list for the year 2009. However they could not be included in the select list due to the limited number of vacancies. Hence their contention that despite having seniority, good service record and eligibility their names were not considered is not tenable.

4. The State Government, Respondent No. 3 & 4, in their reply statement submits that they forwarded the name of 12 SFS officers including that of the

applicants in the ratio 1:3 for the 4 vacancies for the select year 2009. As per the concerned Regulation, the respondent has to submit proposal along with service particulars and documents relating to all the eligible candidates who are in the zone of consideration. As per the list provided by the State Government to Respondent No.2, the applicants are neither senior nor their grading merits selection. The Respondent No. 2, based on service particulars/documents, prepared the select list of officers for each year.

5. The 2nd respondent, the Union Public Service Commission, submitted a detailed reply statement in which they have elaborated on the Regulation 5 (1) of the Promotion Regulations and stated that for the Select list of 2009 which was to be prepared against 4 vacancies, names of 13 officers were considered wherein the name of one officer was considered in addition to the normal zone of consideration under 2nd proviso to the Regulation 5(4) of the Promotion Regulations. The names of Shri S.P. Raju, Shri K.L. Raghavendra and the applicants were considered at Sl. Nos. 3,7,10 and 12 respectively in the consideration zone. On an overall relative assessment of their service records, the Committee assessed Shri S.P. Raju and Shri K.L. Raghavendra as 'Very Good' and Shri H.T. Rajendra, applicant in OA No. 170/00009/2016 and Shri A. Jagadeesh, applicant in OA No. 170/00008/2016 as 'Good'. On the basis of the assessment, the names of Shri S.P. Raju and Shri K.L. Raghavendra were included in the Select list at Sl. Nos. 1 and 4 respectively. However, the name of the applicants could not be included in the Select list of 2009 due to availability of officers with better/similar grading and senior to them and statutory limit on the size of the Select list. The Select lists were approved by

the Commission on 05.10.2015 and notified by the Government of India, MoEF&CC, vide Notification dated 13.10.2015. The officers eligible for appointment and included in the Select lists unconditionally were appointed to the IFS of Karnataka Cadre, vide Notification dated 26.11.2015 issued by the GoI, MoEF&CC. However, Shri S.P. Raju (Date of Birth: 20.09.1955) and Shri K.L. Raghavendra (Date of Birth: 28.07.1955) whose names were included in the Select list of 2009 were not appointed to the IFS of Karnataka Cadre as they had retired on superannuation from the State Forest Service before the issue of the Notification dated 26.11.2015.

6. According to Respondent No. 2, Shri S.P. Raju and Shri K.L. Raghavendra were satisfying the eligibility criteria for consideration for promotion to IFS of Karnataka Cadre as on 1st January, 2009 and were available in the State Forest Service on 31st December, 2009. Therefore, their names were considered in the order of seniority in SFS by the Selection Committee for the Select list of 2009 for promotion to the IFS of Karnataka Cadre in terms of Regulation 5(2) of the Promotion Regulations. After consideration, their names were included in the Select list of 2009 in accordance with the Regulation 5(4) of the Promotion Regulations and as per the vacancies for 2009 determined by the Government of India. Therefore, consideration and inclusion of the names of Shri S.P. Raju and Shri K.L. Raghavendra in the Select list of 2009 were done strictly in accordance with the provisions of the Promotion Regulations which are statutory in nature and the Guidelines framed by the Commission which is uniformly applicable for all States/Cadres. Non-availability of the officers in the State Service after 31st

December of a vacancy year has nothing to do with the consideration of the officers for the Select list of the vacancy year.

7. Referring to the case of Union of India & Others Vs. Vipinchandra Hiralal Shah, the Respondent No.2, i.e., UPSC submit that the Hon'ble Apex Court in the said judgment directed for preparation of year-wise select list instead of combined select list which was prepared by clubbing vacancies for 7 years. It also submit that if after adjustment of officers promoted to IAS on the basis of All-India combined select list and the vacancy remain in the particular year, notional select list will be prepared separately against the said remaining vacancies for that particular year by considering all eligible officers falling within the zone of consideration. In the present case, the select list from 2008 to 2012 were prepared year-wise in consonance with the Promotion Regulations. The inclusion of Shri S.P. Raju and Shri K.L. Raghavendra was done in accordance with the provision of Promotion Regulations which are statutory. Further, the Promotion Regulations do not provide provision for preparation of notional Select list against the unfilled vacancies from a Select list due to non-appointment of officers included in the Select list due to any reason whatsoever. However, if a notional Select list is prepared against the likely unfilled vacancies of the Select list of 2009, it may lead to inclusion of the names of SFS officers in the Select list of 2009 in excess of the size of the Select list determined by the Government of India under the Regulation 5(1) of the Promotion Regulations. Therefore, the contention of the applicant is contrary to the provisions of the Promotion Regulations and the Judgement of the Hon'ble Supreme Court.

8. We have heard the learned counsel for the parties. All the learned counsels, both for the applicants and official respondents, practically reiterated the submission made in the OA and in the reply statement as outlined above. The learned counsel for the private respondents, i.e, Shri S.P. Raju and Shri K.L. Raghavendra, submitted that both of them had earlier approached this Tribunal in O.A. No. 170/00390-00391/2016 for effecting their promotion atleast on notional basis and this Tribunal vide order dated 09.01.2017 held that both Shri S.P. Raju and Shri K.L. Raghavendra, who are applicants in the said OAs, were entitled to proforma promotion with effect from the year 2009 though they will not get arrears in respect of the period from 2009 until they retired from service. They are entitled to retirement benefits and pension shall be refixed accordingly. He also indicated that they have been given benefits accordingly. The learned counsel submit that in the context above, the issue of inclusion of the private respondents in select list as raised by the applicants do not merit any consideration.

9. We have carefully considered the facts of the case and submissions made by either side. The basic issue raised by the applicants is inclusion of 2 private respondents Shri S.P. Raju, who retired on 30.09.2015 on superannuation, and Shri K.L. Raghavendra, who retired on superannuation on 31.07.2015, in the notification dated 13.10.2015 saying that they had already retired at that point of time and hence should not have been included in the said list. The applicants also submit that because they were qualified and eligible for the vacancy in 2009 they ought to have been considered

against those 2 unfulfilled vacancies. It is evident from the records that based on the proposal submitted by the State Government Respondent No. 2 constituted Selection Committee for considering State Forest Officers for promotion to the IFS for the year 2008 to 2012 against the vacancies for each of the years. For the year 2009, 13 officers were considered which include 12 officers in the normal zone of consideration and 1 officer who was considered in addition to the normal zone of consideration under the 2nd proviso to the Regulation 5(4) of the Promotion Regulations. On the overall assessment of the service records, Shri S.P. Raju and Shri K.L. Raghavendra who were rated 'Very Good' and were senior to the applicants were included in the select list on the issue that whether the persons who had already superannuated should have been included in the final list which was issued after their superannuation. The UPSC in their reply has elaborated the rule position. Further, as the matter stands, the promotion of two private respondents were agitated before this Tribunal in O.A. No. 170/00390-00391/2016 and the Tribunal had held that both the private respondents Shri S.P. Raju and Shri K.L. Raghavendra are entitled for proforma promotion with effect from the year 2009 for which they were selected. It has also been indicated by the learned counsel for the private respondents that they have been granted the benefits. Under the circumstances, the question of unfulfilled vacancies would not arise as all the 4 persons who were included in the select list 2009 have been given promotions. Therefore the contention of the applicants for the 2 unfulfilled vacancies a select list should have been prepared and they ought to have been considered does not arise any further.

10. On detailed consideration of all the facts of these cases we are of the view that the contention of the applicants in the aforesaid OAs does not merit any consideration. Accordingly, we hold that the OAs are devoid of merit and liable to be dismissed.

11. Accordingly, the OAs are dismissed. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

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

/ksk/

Annexures referred to by the applicant in OA No. 170/00008/2016

Annexure A1: True copy of the Government of Karnataka Notification No. DPAR 51 SFP 2014 dated 26.03.2014

Annexure A2: True copy of Indian Forest Service (Appointment by Promotion) Regulations, 1966, corrected upto 25th July, 2000

Annexure A3: True copy of letter dated 08.10.2013 from the Principal Chief Conservator of Forests addressed to the Principal Secretary, Forest, Environment and Ecology Department.

Annexure A4: True copy of the Government of Karnataka Notification No. DPAR 51 SFP 2014 dated 25.03.2014

Annexure A5: True copy of particulars of SFS officers who are eligible for consideration for promotion to the IFS in their order of seniority as on 1st January of the Select List Year (2009)

Annexure A6: True copy of the Notification No. 17013/20/2013-IFS.II dated 13.10.2015

Annexure A7: True copy of the Notification No. 17013/20/2013-IFS.II dated 26.11.2015

Annexure A8: True copy of the Government of Karnataka Notification No. DPAR 157 SFP 2015 dated 16.11.2015

Annexure A9: True copy of the Government of Karnataka Notification No. DPAR 201 SFP 2015 dated 30.11.2015

Annexure A10: True copy of the Notification No: AaPaJi 199 AaPaSe 2015 dated 08.12.2015

Annexure A11: True copy of details of disciplinary proceedings pending against eligible officers (2008)

Annexures with reply statement:

Nil

Annexures referred to by the applicant in OA No. 170/00009/2016

Annexure A1: True copy of the Government of Karnataka Notification No. DPAR 51 SFP 2014 dated 26.03.2014

Annexure A2: True copy of Indian Forest Service (Appointment by Promotion) Regulations, 1966, corrected upto 25th July, 2000

Annexure A3: True copy of letter dated 08.10.2013 from the Principal Chief Conservator of Forests addressed to the Principal Secretary, Forest, Environment and Ecology Department.

Annexure A4: True copy of the Government of Karnataka Notification No. DPAR 51 SFP 2014 dated 25.03.2014

Annexure A5: True copy of particulars of SFS officers who are eligible for consideration for promotion to the IFS in their order of seniority as on 1st January of the Select List Year (2009)

Annexure A6: True copy of the Notification No. 17013/20/2013-IFS.II dated

13.10.2015

Annexure A7: True copy of the Notification No. 17013/20/2013-IFS.II dated 26.11.2015

Annexure A8: True copy of the Government of Karnataka Notification No. DPAR 157 SFP 2015 dated 16.11.2015

Annexure A9: True copy of details of disciplinary proceedings pending against eligible officers (2008)

Annexures with reply statement:

Nil
