

OA.No.170/00987/2016/CAT/Bangalore Bench

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH**

ORIGINAL APPLICATION NO.170/00987/2016

DATED THIS THE 12th DAY OF OCTOBER, 2018

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

HON'BLE SHRI C.V.SANKAR, MEMBER (A)

Sri.K.M.Chandrashekar
S/o late K.Muniyappa
Aged about 58 years
Deputy Conservator of Forests
Social Forestry Division
Mandya-571 401.

(By Advocate M/s.Balaji & Assts.)

....Applicant

Vs.

1. Government of India
Represented by its Prl.Secretary
Ministry of Environment
Forests & Climate Change
Indira Paryavaran Bhawan
6th Floor, Prithvi Block
Jor Bagh Road, Ali Ganj
New Delhi-110 003.
2. The Secretary
Union Public Service Commission
Dholpur House, Shahjahan Road
New Delhi-110 069.
3. The Chief Secretary
State of Karnataka
Vidhana Soudha
Dr.Ambedkar Road
Bengaluru-560 001.
4. Addl.Chief Secretary & Prl. Secretary
Forests, Environment & Ecology
M.S.Buildings
Dr.Ambedkar Road
Bengaluru-560 001.
5. Prl.Chief Conservator of Forests
(Head of Forest Force)
Aranya Bhawan
18th Cross, Malleshwaram
Bengaluru-560 003.

...Respondents

(By Advocates Sri V.N.Holla, Sr.PC for R1, Sri Zulfikir Kumar Shafi for UPSC,
Sri Mahantesh for State Govt.)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) *Issue a writ of mandamus, declaring that Sub-Regulation (3) of Regulation 5 of Indian Forest Service (Appointment by Promotion) Regulation, 1966 as unconstitutional, discriminatory and arbitrary;*
- b) *Issue an appropriate writ, direction or order quashing the endorsement dtd.11.03.2016 issued by the Respondent No.2 vide Annexure-A8 and the order dtd.02.06.2016 issued by the 1st respondent vide Annexure-A6 as illegal, unconstitutional and violative of Articles 14 and 16 of the Constitution of India and the circular dtd.04.07.2014 may be read down subject to Article 14 and 16 of the Constitution of India;*
- c) *Further direct the respondents-Authorities to consider the case of the applicant as per his representation dtd.21.06.2016 (Annexure-A7) by selecting the applicant to the Indian Forest Service for the select year 2012/2013;*
- d) *Direct the respondents to treat the case of the petitioner as Eligible for vacancies of 2013 (3+1 vacancies) in 2014 (1 vacancy) in accordance with regulation 5(3) of Indian Forest Services (Appointment by Promotion) Amendment Regulations, 2015 and further direction to service record before the selection Committee for the purpose of consideration of IFS as per 5(3) Indian Forest Service (appointment by Promotion) Amendment Regulation, 2015 and pass appropriate order in the interest of justice and equity.*

2. According to the applicant, he was initially appointed as Range Forest Officer. Subsequently, he was promoted to the post of Deputy Conservator of Forests by order dtd.19.04.2013(Annexure-A1) with retrospective effect from 15.12.2008. Now he is working in the non-cadre division. He submits that earlier he worked in the cadre division from 02.04.2014 to 30.11.2015 vide order dtd.26.3.2014(Annexure-A2) issued by the DPAR(Services), Govt. of Karnataka. He has been transferred from the cadre post-DCF, Shivamogga to the non-cadre post (DCF, Social Forestry Division) vide order dtd.17.11.2015(Annexure-A3) by Prl. Secretary, Forest, Environmental and Ecology, Bengaluru. He submits that though he was holding the cadre post, he was not selected to IFS under Regulation 5(3) of Indian Forest Service

OA.No.170/00987/2016/CAT/Bangalore Bench
 (Appointment by Promotion) Regulation 1966. By the said Regulation, members of the State Forest Service who have attained the age of 56 years as on 1st January, 2015, shall not be considered and there is an amendment brought in for Regulation 1966 with retrospective effect vide notification dtd.20.03.2015(Annexure-A4) enhancing the age limit from 54 to 56 years. Applicant submits that if a Rule is introduced giving enhancement of age from 54 to 56, all those persons who are eligible from the previous date of meeting dtd.25.11.2014 shall be considered for consideration. He further submits that the enhancement of the age from 54 to 56 is based on the observation made by the Hon'ble Apex Court in WP(C).No.266/2008 dtd.07.08.2014 (Bhanwar Singh Nathawat vs. UOI & Ors.)(Annexure-A5) wherein it was strongly recommended that the fixation of age of 54 has to be re-considered by the Central Government. Thus, the amendment has been brought in to the above said Regulation. It is further submitted that even though persons who are not eligible to be considered for promotion from SFS to IFS because of crossing of age bar of 54, a direction has been issued by the Hon'ble Apex Court to consider all such cases also.

3. The applicant submits that as on 01.01.2012, he was well within the age limit of 54 years. But his case was not considered within the zone of consideration as against three unfilled posts. If the respondents had taken steps to fill up the said three unfilled posts, he would have been selected. It is further submitted that the Govt. of India by its order dtd.02.06.2016(Annexure-A6) have re-determined the backlog three vacancies for the select lists year 2013 and thus enhancing the number of vacancies from three to six. The last date of the meeting conducted by the respondents to consider the case of the applicants in respect of 2008 to 2012 for 11 vacancies was 25.11.2014. It is also an admitted fact that though 11 eligible persons were notified by the

UPSC, the selection process has not been proceeded with. All those members who were eligible as on the last date of the meeting of select committee and the amendment of 20.03.2015 enhancing the age from 54 to 56, their cases have to be considered otherwise Regulation 5(3) will lead to discrimination. The amendment dtd.20.03.2015 to the Regulation 5(3) though notified giving retrospective effect from 01.01.2015, the members who are eligible as against the posts as on the date of last meeting of the committee and all those persons who have crossed the age of 54 years as on 01.01.2015, would be deprived of the benefit of age relaxation. If the amendment was given effect to from 01.01.2015, all those persons who are in service and all those persons who are eligible as on the last meeting of the committee must also be given the benefit as on 01.01.2015. It is therefore, Sub-Regulation (3) of Regulation 5 should be declared as unconstitutional, discriminatory and arbitrary. The reason is that persons who are eligible as on the date of the last meeting of the select committee and the date on which amended regulation has been given effect to, would be left out and the benefit of two years of enhancement from 54 to 56 will be deprived of to those persons. The persons who are already in service can always avail the benefit of enhancement in the age limit. Otherwise, a block of people would be deprived of the benefit of enhancement. Therefore, as it has been very often re-iterated by the Hon'ble Supreme Court that if a classification is made to a different class of people, then the classification can be upheld.

4. The applicant further submits that the Hon'ble Apex Court has clearly laid down in the case of Banwar Singh Nathawat and others that persons who participated in the selection process, though they have attained the age of 54 on 01.01.2012, their cases will have to be re-considered as a special case. But those vacancies have been carried forward making those candidates

ineligible. Further the Hon'ble Apex Court has also directed the Union of India that the age must be revised from 54 to 56. When the Union of India while revising the age from 54 to 56, the revision must be given effect to from the date of the judgment of the Hon'ble Apex Court. Therefore, if the date of judgment is taken into consideration, then the applicant is eligible for 2013 and 2014 vacancies also. It is therefore, for the select years of 2013 and 2014 vacancies so far selection process has not been done. The applicant is eligible for backlog vacancies of 2012 and 2013. His case was not considered for those vacancies on the ground that he has crossed the age limit. But, now the Govt. of India has re-determined the backlog vacancies of 2012 to 2013 and declared the number of vacancies available for the select year 2013 as $3+3=6$. He submits that as on 01.01.2012 his case should have been considered not only against three posts notified by the Union of India but against three unfilled posts when the meeting was held on 25.11.2014. If the benefit of age relaxation has to be incorporated, the applicant is one of the eligible persons as on the date of the meeting for 2013 and 2014 vacancies. Since all the vacancies for the select years 2013, 2014 and 2015 have been notified including the unfilled posts to the select year 2013, his case has to be considered. He submits that Dept. has carried forward three vacancies for the purpose of re-determination of the vacancies which are unfilled in the year 2008 and 2009 because of non- appointment as per the Ministry letter dt.04.07.2014 but whereas carry forward cannot be made applicable to his case as he was the 5th candidate in the zone of consideration. The 1st, 2nd and 4th candidates were appointed and the 3rd candidate was not appointed since his service records were not as per the requirement. If there is a selection and non-appointment in the service jurisprudence, the appointing authority should go to the next merit person below in the list and as the applicant was the

immediate candidate, the question of carrying forward the vacancies for the year 2013 would not arise at all. Therefore, carrying forward vacancies of 2008 and 2009 to 2013 is totally arbitrary, unconstitutional and violative of Articles 14 and 16 of the Constitution of India. Since the last meeting of the selection committee was on 25.11.2014, list of those candidates who are eligible as on that day, must be considered as they are eligible as on 01.01.2015 because of the enhancement of the age from 54 to 56. If persons who are already in service, who have not attained the age of 54, can invoke the enhancement of age limit from 54 to 56. But the persons who have already crossed 54, should not be denied the benefit of enhancement of age limit from 54 to 56 provided such State Government Officers are in service. It is further submitted that no block period has to be created regarding eligibility due to enhancement of age from 54 to 56. Suppose, if an employee has already retired, then he is not entitled to claim the said benefit. But, all those persons who are in service are entitled to invoke for the benefit of enhancement of age from 54 to 56. When as on the date of the last meeting of the selection committee the applicant is eligible, he is entitled to be considered as on 01.01.2015. Thus, denial of the selection process so far as 3+3 vacancies of 2013 is bad in law.

5. The applicant has made a representation dtd.23.01.2016(Annexure-A7) to the respondents to consider his case for unfilled 3 posts for the year 2008 to 2012. The 2nd respondent i.e. UPSC has given an endorsement dtd.11.03.2016(Annexure-A8) saying that there is no provision in the Promotion Regulation to re-consider the case of officers already considered for a select list, against unfilled vacancies arising due to non-appointment of the officers from the select list due to any reason whatsoever. This reasoning given by UPSC cannot be sustainable because of a particular block period.

For unfilled vacancies if considered, if the person has literally crossed the age limit, but he was eligible as on 01st January of the year in which vacancy available, then the said State Officer's claim has to be considered by the respondents. Thus the reasoning given by the UPSC when State Govt. Officers were considered as against the posts available is patently illegal.

6. The applicant further submits that by virtue of the selection committee dtd.25.11.2014, candidates were considered for 11 posts from 2008 to 2012 and the first list which was provisional in character was published on 13.10.2015(Annexure-A9) subject to five conditions. Three persons could not be appointed or figured in the final list as five conditions were not satisfied. In respect of one person, the State Govt. could not issue integrity certificate and two persons retired before publishing the final notification on 26.11.2015 (Annexure-A10). He submits that for these three posts, the selection committee should have re-considered the eligibility of the applicant as he was the immediate eligible 5th candidate for the year 2012 (1st, 2nd and 4th candidates were selected).

7. It is further submitted that since the Indian Forest Service (Appointment by Promotion) Regulations, 1966 is amended by substitution which means repealing the earlier law i.e. erasing the old law from the statute and bring a new law in its original place, the applicant is eligible for the vacancies of 2013 and 2014. He submits that whenever an amendment is brought in, where it is prospective or retrospective, the guiding factor would be when certain rights/benefits are conferred by virtue of an Amendment then it has to be construed as retrospective in character. And when an amendment imposing certain obligations and duties, then such amendments are to be interpreted and treated as prospective only. Thus the notification dtd. 17.03.2015 by

which amendment was brought in repealing the old law has to be construed as retrospective in character. Hence the applicant prays that the respondents may be directed to place the service records of the applicant to the committee as and when meeting is convened for consideration of filling up vacancies of 3+1 for the year 2013 and 1 vacancy for 2014.

8. 1st respondent has filed reply statement wherein it is submitted that the promotions from the State Forest Service(SFS) to Indian Forest Service (IFS) are governed by the provisions of IFS (Appointment by Promotion) Regulations, 1966. The promotion from SFS to IFS involves various steps like determination of vacancies for a particular select year, preparation and forwarding of proposal by the State Govt. to the UPSC, holding of the Selection Committee Meeting (SCM) by the UPSC, concurrence of minutes, issue of order for confirmation of Select List and issue of Notification of Select List for appointment to IFS. The service records of the officers of the State Forest Service are maintained by the State Govt. On the basis of the seniority of officers as based on the service records, the State Govt. recommends names of officers to UPSC who are eligible for promotion to IFS. UPSC after receiving such recommendation from the State Govt. and after examination of the proposal sent by State Govt. for completeness, proposal is further placed before the Selection Committee Meeting convened and chaired by UPSC for their recommendation under provision 5(3AA) of IFS (Appointment by Promotion) Regulation, 1966 where it scrutinizes the records of the officers and prepares a Select List of the members of the State Forest Service.

9. It is submitted that total of 11 vacancies were determined by the Ministry for Select List(SL)-2008-A to Select List(SL)-2012 vide letters dtd.15.10.2014 (Annexure-R1), 26.07.2012 (Annexure-R2) and 03.06.2013 (Annexure-R3). Out of the 11 vacancies, 2 were for SL-2008A, 4 for SL-2009, 1 for SL-2010, 1

for SL-2011 and 3 vacancies were determined for SL-2012. It is submitted that the SCM for SL-2008A to SL-2012 was convened and chaired by UPSC on 25.11.2014(Annexure-R4) and SCM recommended a total of 11 officers against 11 vacancies which were determined for SL-2008A to SL-2012. It is submitted that the SCM did not recommend the name of the applicant for the SL-2008A to SL-2012. Out of the 11 SFS officers recommended by the SCM, 1 officer was recommended provisionally in SL-2008A vide notification dtd.13.10.2015(Annexure-R5) due to pendency of disciplinary proceedings. Out of the remaining 10 SFS officers recommended by SCM for appointment to IFS, the Ministry issued appointment notification dtd.26.11.2015(Annexure-R6) for 8 officers. The remaining 2 SFS officers of SL-2009 were notionally appointed by the Ministry vide notification dtd.14.03.2017(Annexure-R7) as these officers had superannuated. It is submitted that a total 3 vacancies were left unfilled from SL-2008A to SL-2012.

10. It is submitted that the State Govt. vide their letter dtd.19.05.2016(Annexure-R8) sent proposal on 19.05.2016 to determine 6 vacancies for the Select List year 2013. Out of those 6 vacancies, 3 had arisen due to retirement in 2013 and 3 were included as they were left unfilled from SL-2008A to SL-2012. The State Govt. send proposal for determination of one vacancy for the SL-2014 and 3 vacancies for SL-2015 arising due to the retirement of one in the year 2014 and three for the year 2015 respectively. The Ministry vide letter dtd.02.06.2016(Annexure-R9) agreed with the proposal of the State Govt. But SCM for SL-2013 onwards has not been convened and chaired by UPSC till date.

11. With regard to the contention of the applicant that the benefit of two years of enhancement in maximum age from 54 to 56 years for induction into All

India Services made effective from 01.01.2015 should be given effect to from the date of last SCM which is 25.11.2014 in the case of promotion to IFS of Karnataka Cadre, it is submitted that the DoP&T is the nodal Ministry for framing rules for All India Services including Indian Forest Services. The amendments to the provisions of the Promotion Regulations is within the exclusive domain of the DoP&T. The Ministry has no role to play in this regard. The claim of the applicant regarding 3 backlog vacancies included in SL-2013 is also false and baseless as the SCM which was convened and chaired by UPSC for SL-2008A to SL-2012 on the same date i.e. on 25.11.2014. Hence, the OA being devoid of any merit is liable to be dismissed.

12. The 2nd respondent i.e. UPSC has filed a reply statement wherein it is stated that as per Regulation 5(1) of the Promotion Regulations, the number of vacancies against which selection is made for a particular Select List for promotion to IFS of a State Cadre is determined by the Govt. of India(MoEF&CC) in consultation with the State Govt. concerned. Thereafter the State Govt. forwarded a proposal to the Commission along with the seniority list, eligibility list of the State Service Officers, Integrity Certificates, certificates regarding disciplinary/criminal proceedings, certificate regarding communication of adverse remarks, details of penalties imposed on the eligible officers etc. and complete ACR dossiers of the eligible officers. The documents received from the State Govt. after examination by the Commission for completeness and deficiencies resolved, are placed before the Selection Committee when they meet for selection for the Select List. In accordance with the provisions of Regulation 5(3AA) of the Promotion Regulations, the Committee duly classifies the eligible State Forest Service officers included in the zone of consideration as 'Outstanding', 'Very Good', 'Good' or 'Unfit', as the case may be, on an overall relative assessment of

their service records. Thereafter, as per the provisions of Regulation 5(4) of the Promotion Regulations, the Selection Committee prepares a list by including the required number of names first from the officers finally classified as 'Outstanding', then from amongst those similarly classified as 'Very Good' and thereafter from amongst those similarly classified as 'Good' and the order of names within each category is maintained in the order of their respective inter-se seniority in the State Forest Service.

13. The ACRs of eligible officers are the basic inputs on the basis of which eligible officers are categorized as 'Outstanding', 'Very Good', 'Good' or 'Unfit' in accordance with the provisions of Regulation 5(3AA) of the Promotion Regulations. The Selection Committee is not guided merely by the overall grading that may be recorded in the ACRs but makes its own assessment on the basis of in-depth examination of service records of eligible officers, deliberating on the quality of the officer on the basis of performance as reflected under various columns recorded by the Reporting Officer/Reviewing Officer/Accepting Authority in the ACRs for different years and then finally arrives at the classification to be assigned to each eligible officer in accordance with provisions of Promotion Regulations. While making an overall assessment, the Selection Committee takes into account the orders regarding appreciation for meritorious work done by the concerned officer. Similarly, the Selection Committee also keeps in view the orders awarding penalties or any adverse remarks communicated to the officer, which, even after due consideration of his representation, have not been completely expunged. As per the provisions of Regulation 6 and 6-A, the State Govt. and the Central Govt. are required to furnish their observations on the recommendations of the Selection Committee. After taking into consideration the observations of the State Govt. and the Central Govt. and the requisite

records received from the State Govt., the Commission takes a final decision on the recommendations of the Selection Committee with or without modifications in terms of the provisions of Regulation 7. The appointments to the IFS are made from the Select List by the Govt. of India, MoEF&CC. This procedure is being uniformly followed for all the States/Cadres in the matter of induction to the All India Services.

14. It is further submitted that a Selection Committee Meeting was held on 25.11.2014 for preparation of the year-wise Select Lists of 2008-A to 2012 for promotion to the IFS of Karnataka Cadre. For the Select List of 2008-A, the name of Shri D.Yatish Kumar was included at SI.No.2 provisionally subject to clearance in the disciplinary proceedings pending against him and grant of integrity certificate by the State Govt. However, he could not be appointed from the said Select List as his name could not be declared as 'Unconditional' and as no such proposal was received from the State Government within the validity period of the Select List. For the Select List of 2009, the names of Shri S.P.Raju and Shri K.L.Raghavendra were included at SI.No.1 & 4 respectively. However, they were not appointed from the said Select List as they retired from the State Forest Service before appointment notification dtd.26.11.2015 issued by the Govt. of India, MoEF&CC. The Select Lists were approved by the Commission on 05.10.2015 and notified by the Govt. of India, MoEF&CC vide notification dtd.13.10.2015. The officers included in the Select Lists unconditionally and eligible for appointment were appointed to IFS vide notification dtd.26.11.2015 issued by the Govt. of India, MoEF&CC. Thereafter, the applicant vide his representation dtd.23.01.2016, requested the Commission to reconsider his case for the Select List of 2012 against the unfilled vacancies due to non-appointment of officers from the Select Lists of 2008-A and 2009. One vacancy from the Select List of 2008-A was not filled

OA.No.170/00987/2016/CAT/Bangalore Bench

due to non-appointment of Sri D.Yatish Kumar whose name was included provisionally in the said Select List and two vacancies from the Select List of 2009 were not filled due to non-appointment of two officers who retired from SFS before 26.11.2015 i.e. the date of the appointment notification issued by Govt. of India, MoEF&CC. The Commission considered his representation and observed vide letter dtd.11.03.2016 that the names of aforesaid officers who were not appointed to IFS were considered and included by the Selection Committee in the relevant Select Lists strictly in accordance with the provisions of the Promotion Regulations. Further the names of requisite number of SFS officers equal to the number of vacancies determined by the Govt. of India, MoEF&CC were included in the Select List of 2012. Further, there is no provision in the Promotion Regulations to reconsider the name of officers already considered for a Select List against the unfilled vacancies due to non-appointment of officers from the Select List due to any reason, whatsoever.

15. Regarding contention of the applicant that amendment/interpretation of the provision of the Promotion Regulations which is within the exclusive domain of the Govt. of India, MoEF&CC in consultation with DoP&T, it is submitted that the Commission has no role to play in this matter. Regarding consideration of his name at Sl.No.5 in the eligibility list for preparation of the Select List of 2012 against 3 vacancies determined by the Govt. of India, MoEF&CC as he was assessed as 'Very Good' by the State Govt., it is submitted that his name was not included in the Select List of 2012 due to availability of senior officers with similar grading and the statutory limit on the size of the Select List of 2012. The role of Commission is limited to preparation of a Select List for promotion to IFS of a State Cadre against the vacancies determined by the Govt. of India, MoEF&CC. Further, Promotion

Regulations do not provide for consideration of the name of an SFS officer against the unfilled vacancies of the year-wise Select Lists prepared by the Selection Committee.

16. Regarding contention of the applicant against the carrying forward the 3 unfilled vacancies of the Select Lists of 2008-A(1 vacancy) and 2009 (2 vacancies) to the Select List of 2013, it is submitted that the determination of the vacancies for preparation of a Select List for promotion to the IFS of a State Cadre is within the exclusive domain of the Govt. of India, MoEF&CC. The Commission has no role to play in this regard.

17. The respondents No.3 to 5 have filed their reply statement submitting that they are not concerned with the issue of framing of rules & regulations under the Regulation 5(3) of IFS (Appointment of Promotion) Regulations, 1966 which is under the domain of the Govt. of India, Min. of Environment & Forests. In regard to consideration of the applicant's name for selection to IFS against the unfilled 3 vacancies of Select List 2008A to 2012, they submit that UPSC has examined and issued an endorsement dtd.11.03.2016 rejecting his request and they have nothing to do in this regard. And regarding consideration of his representation dtd.23.01.2016 by selecting him to IFS, it is submitted that the UPSC has considered and stated that there is no provision in the Promotion Regulations to reconsider the name of officers already considered for a Select List against the unfilled vacancies arising due to non-appointment of officers from the Select List. Therefore, they have no comments to say.

18. We have heard the Learned Counsel for all the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the

OA and the reply statements.

19. We have gone through the main contentions of the applicant and replies of the respondents in detail. The applicant has sought for four reliefs viz., (i) declaring Sub-Regulation (3) of Regulation 5 of Indian Forest Service (Appointment by Promotion) Regulation, 1966 as unconstitutional, discriminatory and arbitrary, (ii) to quash the endorsement dtd.11.03.2016 from the Secretary, UPSC, (iii) to consider the case of the applicant as per his representation dtd.21.06.2016 for the select year 2012/2013 and finally (iv) to direct the respondents to treat his case as eligible for vacancies of 2013 (3+1 vacancies) and 2014 (1 vacancy) in accordance with the Regulation 5(3) of Indian Forest Service(Appointment by Promotion) Amendment Regulations, 2015. At the outset, the issue of declaring Regulation 5(3) of IFS(Appointment by Promotion) Regulation 1966 as unconstitutional, discriminatory and arbitrary does not arise as no case has been made out with respect to the same. The said Sub-Regulation has been amended so that the Selection Committee for promotion from the State Forest Service(SFS) to Indian Forest Service(IFS) should not consider the case of the Members of SFS who have attained the age of 56 years on the 1st day of January of the year for which the select list is prepared. Inasmuch as the regulations have been notified and have come into effect from 17.03.2015 based on an earlier direction from the Hon'ble Apex Court in WP(C).No.266/2008 dtd.07.08.2014, the applicant has not made out any case for declaring the same as unconstitutional, discriminatory and arbitrary. On the contrary, he himself is requesting for consideration to be eligible for the vacancies of 2013 and 2014 based on the very same amended Regulations.

20. With regard to the second claim, the UPSC has rightly put forward the

extant procedure stating that the names of the officers who were not appointed to IFS were considered and included by the Selection Committee in the relevant select list strictly in accordance with the provisions of the Promotion Regulations. Further, the names of requisite number of SFS officers equal to the number of vacancies determined by the Govt. of India(MoEF&CC) were included in the select list of 2012. The UPSC has also mentioned that there is no provision in the Promotion Regulations to reconsider the names of officers already considered for a select list against the unfilled vacancies arising due to non-appointment of officers from the select list due to any reason whatsoever. From the detailed reply furnished by the UPSC along with the proceedings of the Selection Committee Meeting held on 21.11.2014, it is clear that the entire list of eligible officers as proposed by the State Government has been duly considered and the select list has been prepared accordingly. The applicant in this case has found place in the select list for 2012 but could not be given appointment due to the fact that there were only 3 vacancies apart from 1 vacancy kept for Sri D.Yatish Kumar as per second proviso to Regulation 5(4) of the IFS(Appointment by Promotion) Regulations 1966. It is not the case of the applicant that the persons placed in the select list above him for the year 2012 did not deserve to be there for any reason whatsoever. His contention is that if 1 vacancy for the select list of year 2008A and 2 vacancies for 2009 were to be opened afresh and allotted to the select list candidates of the later years, he would have a chance to be fitted in the select list of the year 2012 itself. Such an exercise would obviously lead to the repeated tinkering of the whole process of selection and uncertainty to any select list. There is no provision in the Regulations to reconsider the names of the officers already considered for a select list against the unfilled vacancies arising due to non-appointment of

OA.No.170/00987/2016/CAT/Bangalore Bench

officers from the select list due to any reason as contended by the respondents. Furthermore, it is to be noted that based on the orders issued by this Tribunal in OA.No.390-391/2016 dtd.9.1.2017, 2 officers who were in the select list of the year 2009 have been appointed to the IFS vide Ministry of Environment, Forests & Climate Change notification dtd.14.03.2017. Therefore, it is clear that the request of the applicant for re-ordering the select list and issuing revised appointment orders would only lead to chaos and confusion and upset the very order of the detailed procedure being adopted in the selection of suitable persons to the All India Services.

21. Coming to the last request of the applicant to treat his case as eligible for vacancies in 2013, the Govt. of India has re-determined the number of vacancies for the select list of 2013 as 3+3 based on the reason of carrying forward of 3 unfilled vacancies of select list of 2008A and 2009 and 3 vacancies already determined by the Ministry vide letter dtd.4.7.2014. We have already seen that based on this Tribunal's order, 2 SFS officers already included in the select list of 2009 have been appointed to the IFS. These 2 vacancies, therefore, may not be available for the select list of the year 2013. However, we still find that there are 4 vacancies available for the select list of 2013. In the reply furnished by the 1st respondent namely, the Secretary, Ministry of Environment, Forests & Climate Change in paras-14 & 15, it has been submitted that the Ministry has agreed with the proposal of the State Government and accordingly Annexure-R9 has been enclosed for further action by the UPSC to convene the Selection Committee Meeting. The 1st respondent has also submitted that the SCM for the select list 2013 onwards has not been convened and chaired by the UPSC till date. However, for the select list 2013, the crucial date will be 01.01.2013 and on that date, as per the Regulations related to that period, the applicant would have crossed the

age of 54 years and as such he will not be eligible for consideration in the said list. The amendment to the Regulations has taken effect only from the year 2015 and the same cannot be applied retrospectively to suit the contentions of the applicant. If the same were to be accepted, there will be no end to the year from which the amendment should take effect. As such, the contention of the applicant cannot be accepted and the OA is dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

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

/ps/

Annexures referred to by the applicant in OA.No.170/00987/2016

- Annexure A1: Copy of the Promotion Order DCF dtd.19.04.2013 with typed copy
- Annexure A2: Copy of the Transfer Order dtd.26.03.2014 issued by the DPAR (Services), Government of Karnataka
- Annexure A3: Copy of the said order dtd.17.11.2015 along with English Translation copy
- Annexure A4: Copy of the Notification dtd.20.03.2015
- Annexure A5: Copy of the SLP Writ Petition (C) No.266/2008 in order dtd.07.08.2014
- Annexure A6: Copy of the said order dtd.02.06.2016
- Annexure A7: Copy of the said representation dtd.23.01.2016
- Annexure A8: Copy of the Endorsement dtd.11.03.2016
- Annexure A9: Copy of the Provisional Selection List dtd.11.03.2016
- Annexure A10: Copy of the Final Notification dtd.26.11.2015 issued by the 1st respondent
- Annexure A11: The applicant being aggrieved by Sub-Regulation (3) of Regulation 5 of the Indian Forest Service (Appointment by Promotion) Regulation, 1966

Annexure A12: Copy of the Notification dtd.26.05.2016

Annexures with reply statement filed by R1:

Annexure-R1: Copy of letter No.17013/09/2010-IFS-II dtd.15.10.2014
Annexure-R2: Copy of letter No.17013/21/2012-IFS-II dtd.26.07.2012
Annexure-R3: Copy of letter No.17013/20/2013-IFS-II dtd.03.06.2013
Annexure-R4: Copy of Minutes of Meeting dtd.25.11.2014
Annexure-R5: Copy of Notification No.17013/20/2013-IFS-II dtd.13.10.2015
Annexure-R6: Copy of Notification No.17013/20/2013-IFS-II dtd.26.11.2015
Annexure-R7: Copy of notification No.22012/14/2016-IFS-II dtd.14.03.2017
Annexure-R8: Copy of the State Government's letter No.DPAR 104 SFP 2014
dtd.19.05.2016
Annexure-R9: Copy of letter No.17013/09/2016-IFS-II dtd.02.06.2016

Annexures with reply statement filed by R2:

-NIL-

Annexures with reply statement filed by R3-5:

-NIL-
