

(OPEN COURT)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
(Circuit Bench at Nainital)**

ALLAHABAD this the **23rd** day of **October, 2017**.

HON'BLE JUSTICE SHRI DINESH GUPTA, MEMBER (J).
HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 331/0038/2015.

1. M.K. Joshi, a/a 61 years, S/o Late A.D. Joshi, R/o Om Vihar, Lane 4, Ajabpurkala, Dehradun.
2. Surendra Prasad Singh, a/a 61 years, S/o Sri Banwari Singh, R/o House No. 4/123, Vishesh Khand, Gomati Nagar, Lucknw.
3. A.K. Upadhyay, a/a 61 years, S/o Late M.P. Upadhyay, R/o House No. 123, Him City, Part I, Matyam Deva Road, Lucknow, U.P.

.....Applicants.

VE R S U S

1. Union of India through the Secretary, Environment and Forest & Climate Change, Indira Paryavaran Bhawan, 6th Floor, Prithai Book, Jor Bagh Road, Ali Gunj, New Delhi.
2. State of Uttarakhand through the secretary Forest, Govt. of Uttarakhand at Dehradun.
3. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi.

.....Respondents

Advocate for the applicants : Shri Sunil Upadhyay
Shri Naveen Tiwari

Advocate for the Respondents: Shri P.K. Rai
Ms. Anjali Bhargawa

ORDER**(Delivered by Hon'ble Mr. Gokul Chandra Pati, A.M)**

The applicants have filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the following relief:-

“That in view of the facts and law involved in the aforesaid application, this Hon'ble Tribunal may graciously be pleased to set aside the order dated 26.2.2015 passed by the respondent No. 1 contained in Annexure No. A-1 to the compilation I of the aforesaid application and direct the respondent No. 1 to appoint/promote the applicants to the Indian Forest Service as per the select list issued by the Union Public Service Commission with all consequential benefits and the respondent No. 2 may be directed to award all the benefits to the applicants arising out of the appointment /promotion of the applicants to the IFS”.

2. The brief facts emerging out from the O.A. are that the applicants were inducted in the U.P. State Forest Service (in short SFS) cadre in the year 1982. On reorganization of the State of U.P. on 9th November, 2000, all were allocated for the State of Uttarakhand and since they were discharging their duties in the State of Uttarakhand and retired from service on 31.5.2013, 31.1.2014 and 31.8.2014 respectively.

2.1 The applicants were working in the SFS cadre and under the provision of “The Indian Forest Service (Appointment by Promotion of 1966) as amended from time to time, became eligible for

promotion to the Indian Forest Service (in short IFS) but no steps were taken by the respondents after expiry of a long period of more than 14 years from the date of creation of State of Uttarakhand.

2.2 In October, 2014, i.e. after 14 years from creation of State of Uttarakhand, the Union Public Service Commission (in short UPSC) conducted Departmental Promotion Committee under the Rules of 1966 for selection in the IFS cadre from SFS cadre. The Committee considered the candidature of the applicants for promotion to IFS cadre and applicant No. 1 and 2 were selection for promotion in the IFS cadre in the select list of the year 2002 and applicant No. 3 was selected in the year 2003. UPSC issued a select list vide notification dated 21.11.2014 (Annexure No. A-2 to the O.A.).

2.3 Respondent No. 1 also sent copy of notification dated 21.11.2014 to the Chief Secretary of the State of Uttarakhand for information to the concerned officers with a further request to forward necessary proposal for promotion of the eligible officers to the IFS along with necessary documents.

2.4 In continuation of notification dated 21.11.2014, the respondent No. 1 in exercise of provisions contained in Rule 8 of the Indian Forest Service (Recruitment) Rules, 1966 read with regulation 9(1) of the 1966 regulations issued another notification dated 10.12.2014 (Annexure No. A-3 to the O.A) appointing 13 officers excluding the applicants in the IFS cadre.

2.5 Being aggrieved from the illegal and arbitrary action of respondent No. 1, the applicant No. 3 submitted a representation dated 27.12.2014 (Annexure No. A-4 to the O.A.) to the respondent No. 1 and 2 and UPSC stating therein that in view of the select list issued by the UPSC the action of the respondent No. 1 not promoting retired officers of the State Forest Service is illegal and it was also stated that in past the respondent No. 1 has promoted various persons, names disclosed in the representation were promoted in IFS even after their retirement.

2.6 The applicants came to know from the letter dated 26.2.2015 (Annexure No.A-1 to the O.A.) sent by Under Secretary to the Govt. of India, Ministry of Environment and Forest & Climate Change that they were debarred from appointment on the ground that on the date of appointment, they were not member of State Forest Service.

2.7 It is relevant to mention here that under Regulation 10 of the Regulation of 1966, the Central Govt. has power not to appoint any person whose name appears in the select list but no such decision could be taken by the central Govt. without consulting the UPSC. In this regard, applicant No. 3 submitted an application under RTI seeking information that whether before deleting his name from the select list the commission was consulted or not. In response thereto, the UPSC vide letter dated 20.4.2015 (Annexure

No. A-5 to the O.A.) informed him that no such consultation was made with the UPSC by the Ministry of Environments and Forest & Climate Change.

2.8 The applicants submitted a combined representation dated 27.4.2015 to the respondent No. 1 and representation dated 20.5.2015 to the Director, Department of Personnel & Training , Govt. of India, New Delhi and requested that in view of the facts stated in the representation, they may be appointed in IFS cadre.

2.9 On the representation dated 27.4.2015, the Under Secretary of the respondent No. 1 sent a letter dated 30.4.2015 (Annexure No. A-9 to the O.A.) to the Director, Personnel and Training, Govt. of India seeking advice in the matter but no further order has been passed so far.

2.10 In the notification dated 21.11.2014, the name of applicants No. 1 and 2 lies against the select list 2002 and name of applicant No. 3 lies against the select list 2003 but because of their retirement prior to the date of notification , they were debarred from promotion even after a long period of service. The promotion quota from SFS to IFS remained vacant till 2014 when the Ministry of Environments and Forest & Climate Change notified the select list of 17 SFS officers to be promoted to IFS on 21.11.2014.

2.11 Earlier in 2013, one Sri Rama Shankar Singh who was in select list of 2005 was promoted to IFS vide order dated 10.10.2013

(Annexure No. A-10 to the O.A.) whereas he had retired in the year 2012 from SFS service.

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that names of applicants were considered by the Selection Committee in its meeting held on 22.10.2014. On the basis of recommendations of the Selection Committee, the respondent No. 1 published a Select List for promotion from SFS to IFS of Uttarakhand cadre for the year 2001, 2002, 2003, 2004 and 2009 vide notification dated 21.11.2014. In the select list for the year 2002, the names of applicants No. 1 and 2 were at Sl. No. 2 and 3 and in the select list 2003, the name of respondent No. 3 was at Sl. No. 2. DOP&T vide letter dated 21.8.2014 and again vide O.M. dated 18.6.2015 (Annexure No. CR-1 and CR-2 to the Counter Reply) clarified that as per Regulation 9(1) of IFS (Appointment by promotion) Regulation 1966 only a member of the service can be appointed to IFS. Since the officers had already retired from the service, they were no longer a member of the service, therefore, their appointment are not in consonance with the Regulation 9(1) of the IFS (Appointment by Promotion) Regulation 1966. Thus, in terms of Regulation 9(1) of Indian Forest Service (Appointment by Promotion) Regulation, only members of the SFS can be appointment by promotion in IFS. Since on the date of appointment i.e. 10.12.2014, the applicants were not in service and had already retired on 31.5.2013, 31.1.2014 and 31.8.2014, hence there was no question of appointing them into IFS from SFS.

4. Counsel for applicants filed Rejoinder Reply through which he has reiterated the facts stated in the O.A. and denied the contents of counter reply.

MEMBER- A.

MEMBER- J.

Anand...