

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Ram Singh

----- Vice Chairman (J)

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 115/DB/2019

1. Shiv Nath Singh aged about 64 years, S/o Sh. Ram Nath Singh, R/o A-7, Vishwakarma Nagar Colony, Chitapur-Chunar Road, Kandawa, Varanasi, U.P.-221106, retired as Assistant Conservator of Forest, Kedar Nath Wild Life Division, Gopeshwar, District Chamoli.
2. Rakesh Kumar Vashistha, aged about 61 years, S/o Late Sri Shyam Bihari Lal, Retd. ACF as D.L.M. Tanakpur, Uttarakhand R/o 21-Prateeksha Enclave, Dayal Bagh, Agra, U.P.
3. Chandra Bhushan Tripathi, aged about 61 years S/o Late Sri H.N. Tripathi Retd. Dy. Director from the office of Principal Chief Conservator of Forest (HOFF) R/o 306 Crown residency, Panditwari, Dehradun.
4. Subhash Chandra aged about 60 years S/o Late Bhachai Lal at presently working and posted as Divisional Forest Officer, Soil Conservation Division, Ramnagar, Nainital, residing at H. No. 7, Street No. 6, Vasant Vihar Enclave, Dehradun- 248006..

.....**Petitioners**

VERSUS

1. State of Uttarakhand through Principal Secretary, Department of Forest and Environment, Government of Uttarakhand, Secretariat, Subhash Road, Dehradun.
2. Principal Chief Conservator of Forest (HOFF), Uttarakhand, Dehradun (HOFF), Rarjpur Road, Dehradun, Uttarakhand.
3. Director, Treasury, Pension, Lekha and Haqdari, Dehradun.
4. Finance Controller, Forest Department, Rajpur Road, Dehradun, Uttarakhand.
5. Divisional Forest Officer, Kedar Nath Wild Life Division, Gopeshwar, District Chamoli, Uttarakhand.

6. Divisional Forest Officer, Tarai West, Forest Division, Ramnagar, Nainital, Uttarakhand.
7. Divisional Forest Officer, Addl. Soil Conservation Division, Ramnagar, Nainital, Uttarakhand.

.....Respondents

Present: Sri L.K.Maithani, Ld. Counsel
for the petitioners
Sri V.P.Devrani, Ld. A.P.O.
for the Respondents

JUDGMENT

DATED: DECEMBER 06, 2019

HON'BLE MR. RAM SINGH, VICE CHAIRMAN (J)

1. The petitioners have filed the present claim petition for the following reliefs:

"a) To quash the impugned order dated 31.07.2019 (Annexure No. A-1) passed by the respondent No. 2 along with its effect and operation, declaring the same null and void in the eyes of law.

b) To issue order or direction to the respondent to sanction the pay scale 37400-6700 grade pay Rs. 8700/- as was sanctioned to the petitioners vide previous order No. 19/1-8(3) of dated 30.01.2014 (Annexure No. A-4) of the respondent No. 2 with all consequential benefit.

c) Any other relief which the court may deem fit and proper in the circumstances of the case.

d) Cost of the petition be awarded to the petitioners."

2. By means of this petition, petitioners have challenged the order dated 31.07.2019, issued by respondent No. 2, Principal Chief Conservator of Forest, Uttarakhand. Vide impugned order dated 31.07.2019, after considering the representation of the petitioners, respondent No. 2, in pursuance of the relevant service rules and the G.Os., passed the order, refixing the grade pay of the petitioners from Rs.

8700 to Rs. 7600 and directed to recover the excess amount, already paid to the petitioners, due to earlier erroneous fixation. Such order was passed by the respondent No. 2 after giving an opportunity of hearing to the petitioners, as was directed by the Hon'ble High Court in its order dated 23.05.2019, passed in writ petition (S/B) No. 31 of 2018 along with some other connected petitions.

3. The impugned order dated 31.07.2019 passed by the respondent No. 2 was challenged by the petitioner, Sri Shiv Nath Singh, before the Hon'ble High Court in Writ Petition No. 40 of 2019, wherein the Hon'ble High Court vide its order dated 30.09.2019 disposed of the same and relegated the petition on the ground of alternative remedy and directed them to approach the Public Services Tribunal. Consequently, the present claim petition came up before this Court.

4. Brief facts, as per the claim petition, are as under:

The petitioners were appointed as Range officers in the Forest Department of the State Government by the method of direct recruitment between the year 1980 and 1981.

According to the petitioners, first promotional post for Range Officer is Assistant Conservator of Forest (hereinafter called as 'ACF') under the State Forest Service Rules, second promotional post for Range Officer is Deputy Conservator of Forest (hereinafter called as 'DCF') and third promotional post for the Range Officers, according to the petitioner, is Conservator of Forest (hereinafter called as 'CF'). While the post of ACF is filled up as per U.P. Forest Service Rules, 1993 (hereinafter called as State Service Rules), the posts of DCF and CF are the posts of Indian Forest Service (hereinafter call as 'IFS'). It is stated in the claim petition that 50% posts of ACF are filled by promotion from Range Officers and as per Indian Forest Service (Recruitment) Rules, 1966, 33.33% posts of IFS are filled by promotion from ACF. According to the petitioners, Range Officers are also a feeding cadre of IFS having stake of

16.5% in ideal condition. Petitioners have claimed that they are entitled to the Grade Pay of Rs. 8700 in the corresponding pay scale of Rs. 37400-67000 and the pay scale of the post of CF as their 3rd ACP.

It is contended that they are directly appointed Range Officer, their next promotional post is of ACF, second promotional post is DCF (under the IFS) and third promotional post is Conservator of Forest (CF) in the corresponding pay scale of Rs. 37400-67000 with grade pay of Rs. 8900.

According to the petitioners, such benefits are admissible to them on the recommendations of the 6th Pay Commission. They have also submitted that vide order dated 08.03.2011, the Finance Department, government of Uttarakhand introduced the scheme of Assured Career Progression (ACP). According to the scheme of ACP, three financial upgradations were allowed after completion of continuous and satisfactory service of 10, 18 and 26 years. The scheme of ACP provided benefit of next higher Grade Pay along with its Pay Band in accordance with the Pay Matrix Table as per the Sixth Pay Commission pay scales issued by the G.O. dated 17.10.2008, if promotional post is not available in the cadre. The scheme of ACP under G.O. dated 08.03.2011 was amended by another clarification G.O. dated 06.11.2013, which provides that the State Government employees who were substantively appointed with Grade Pay of Rs. 4800 or less, will get the benefit of Grade Pay with corresponding Pay Band of promotion post, if the post for promotion is available in the relevant service rules **and in case, post of promotion is not available, they will be entitled to the next higher Grade Pay as per the Pay Matrix Table enclosed with the Sixth Pay Commission i.e. G.O. dated 17.10.2008.**

According to the petitioners, the Principal Chief Conservator of Forest (PCCF) after taking cognizance of the G.O. dated 06.11.2013, issued order dated 30.1.2014 and granted third ACP of Grade Pay Rs. 8700 to 52 Range Officers with corresponding pay scale and in the year

2015, further 15 Range Officers were also granted similar benefit i.e. Grade Pay of Rs. 8700 and corresponding pay scale, but at the same time, the then PCCF in its order dated 30.01.2014 itself imposed a rider that the sanction of Grade Pay Rs. 8700 in place of Rs. 7600/- to the Range Officers is conditional and if any anomaly or otherwise instructions are received from the State Government, the higher amount paid to the persons will be adjusted from the concerned officers. The said condition is quoted below:

“उक्त संशोधन इस प्रतिबन्ध के साथ किये जाते हैं कि यदि भविष्य में शासन अथवा अन्य किसी स्तर से कोई विपरीत निर्देश प्राप्त होते हैं अथवा किसी प्रकार की विसंगति/आपत्ति प्राप्त होती है तो तदनुसार भुगतान की गयी धनराशि का समायोजन सम्बन्धित अधिकारियों से सुनिश्चित कर लिया जाय।”

But when, in the year 2017, 10 more Ranger Officers claimed the benefit of third ACP with Grade Pay of Rs. 8700 and corresponding pay scale, the same was not granted to them, as the matter was already referred to the State Government for clarification with regard to admissibility of such benefit to directly appointed Range Officers. The Government issued a clarification G.O. dated 28.11.2017 with respect to various issues relating to the scheme of ACP and further directed the respondent department to grant the ACPs as per the G.O. dated 28.11.2017. In compliance of that, the respondent No. 2 vide orders dated 20.12.2017 & 22.12.2017 reduced the Grade Pay of directly appointed Range Officers from Rs. 8700 to 7600 and corresponding pay scale, with directions to recover the excess amount already given. Between the correspondence of the HOD with the concerned Departmental Secretary, the matter was also referred to the Finance Department, who vide his order dated 04.05.2018 clarified that for the purpose of G.O. dated 06.11.2013, the posts of promotions which are included in the Service Rules/ Cadre structure of the State employees can only be considered for the grant of 1st, 2nd and 3rd ACP. It was also made

clear in the G.O. of the Finance Department that where the posts of promotion are not available in the Service Rules/cadre structure, the next higher grade pay with its pay band in the pay matrix table(given in G.O. dated 17.10.2008) will be permissible for the purpose of granting ACP. It was also made clear in the said G.O. that the post of promotion under 'All Indian Service Rules' shall not be considered for the purpose of granting ACP. On the basis of the G.O. dated 04.05.2018, issued by the Finance Department, the PCCF issued consequential order dated 08.05.2018, re-fixing Grade Pay and Pay Scale with orders for recovery of extra amount paid to the Range Officers.

The said orders dated 04.05.2018 and 08.05.2018 & 08.05.2018 were challenged before the Hon'ble High Court in W.P. SB No. 200/2018 on the ground that the petitioners were not afforded a reasonable opportunity of hearing before passing the said orders. Some aggrieved persons also challenged the said orders before this Tribunal by filing a Claim petition No. 23/DB/2018, Chandra Prakash Sharma & Others vs. State and others. The writ petition filed before the Hon'ble High Court was disposed of vide order dated 27.07.2018 and the impugned orders dated 04.05.2018 and 08.05.2018 were quashed but the liberty was granted to the respondents to proceed with the matter after giving opportunity of hearing to the petitioners, strictly in accordance with the law.

As the orders challenged before the Tribunal were set aside by the Hon'ble High Court, before the decision of the matter by the Tribunal hence, the claim petition was accordingly, decided by this Tribunal as infructuous, as there was no further need to pass any substantive order.

Respondent No. 2 in pursuance to the order of the Hon'ble High Court dated 27.07.2019 gave an opportunity to the petitioners and other similarly placed persons and issued a letter dated 21.09.2018. The letter was challenged before the Hon'ble High Court in writ petition No. 31/2018, 09/2018 and 10/ 2018, which were disposed of by the Hon'ble

High Court holding that the letter dated 21.09.2018 is valid and further granted liberty to the petitioners to submit their reply to the letter and the Hon'ble High Court directed to the respondent No. 2 to pass a reasoned order in accordance with law after considering their reply.

After receiving the representations of the concerned persons, respondent No. 2 passed the impugned order dated 31.07.2019 in compliance of the order passed by the Hon'ble High Court dated 23.05.2019, in writ petition No. 10/2018 (SB), Shivnath Singh vs. State of Uttarakhand & others. One of the petitioners in the present claim petitioner filed a writ petition before the Hon'ble High Court, challenging the impugned order dated 31.07.2019, passed by the respondent no. 2. The Hon'ble High Court dismissed the said writ petition vide order dated 03.09.2019 with the directions to the petitioners to approach the Public Services Tribunal, on the ground of alternative remedy. Thereafter, present claim petition was filed by the petitioners for the above mentioned reliefs.

5. The petition has been opposed by the respondents on various grounds. It is contended that the petitioners were initially appointed under the Subordinate Forests (Rangers, Deputy Rangers & Foresters) Service Rules, 1951 as a 'Ranger' and there was no promotional post available under the erstwhile Service Rules applicable to the petitioners. The petitioners were later promoted to the post of Assistant Conservator of Forest (ACF), a post defined under the Uttar Pradesh Forest Service Rules, 1993. The Service Rules of 1993 contained no provision for a post of promotion from the post of ACF. However, vide an Executive Order dated 30.06.1998, the State Government created the post of Deputy Director as the next promotional post for Assistant Conservator of Forest (ACF). Hence, according to the respondents, for the petitioners, the first post of promotion under the ACP scheme is the ACF, the second post is of Deputy Director and there is no further promotional post available, neither in the Service Rules/cadre structure nor in any Executive Order for

the third stage of the ACP. It has also been contended that in the absence of a promotional post under the applicable service rules/cadre structure/executive orders, the petitioners, at the third stage of the ACP were entitled to only a pay scale as per the general provisions of the Government Order dated 06.11.2013 read with the Government Order dated 17.10.2008 (which provides Pay Matrix Table for the higher Grade Pay). The relevant provisions of the G.O. dated 06.11.2013 is reproduced as below:

“2- शासन द्वारा विचारोपरान्त लिये गये निर्णय के क्रम में मुझे यह कहने का निदेश हुआ है कि राज्य कर्मचारियों के लिये ए0सी0पी0 की लागू पूर्व व्यवस्था के स्थान पर रू0 4800 ग्रेड वेतन या उससे न्यून पाने वाले मौलिक रूप से नियुक्त राज्य कर्मचारियों के लिए जहां पदोन्नति का पद उपलब्ध है, वहां पदोन्नति के पद का ग्रेड वेतन एवं सुसंगत वेतन बैण्ड वैयक्तिक रूप से प्रोन्नतीय वेतनमान के रूप में तथा जहां पदोन्नति का पद उपलब्ध नहीं है, वहा शासनादेश संख्या- 395/xxvii(7)/2006 दिनांक 17 अक्टूबर, 2008 के संलग्नक-1 में उपलब्ध तालिका के अनुसार अगला ग्रेड वेतन एवं सुसंगत वेतन बैण्ड वैयक्तिक रूप अगले वेतनमान के रूप में दिनांक 01 नवम्बर 2013 से संशोधित व्यवस्था के अर्न्तगत तत्काल प्रभाव से अनुमन्य किये जाने की श्री राज्यपाल सहर्ष स्वीकृति प्रदान करते हैं।”

6. According to the respondents, the post of promotion will include only that post, which has been specified in the service rules, on which the promotion criteria is seniority. Meaning thereby, that pay scale of post of promotion is payable only when the promotional post is available in the cadre structure under the relevant Service Rules to which the employee belongs and if posts are not available in the cadre structure of relevant Service Rules, the employees are allowed only the next higher grade pay as mentioned in the pay matrix table as per G.O. dated 17.10.2008.

7. According to the respondents, the time scale promotion was first introduced by the Government of Uttar Pradesh on 02.12.2000, which was adopted by the Government of Uttarakhand vide G.O. dated 12.03.2001. Under this scheme, two financial ungradation were provided after completion of 14 and 24 years of service and these were provided in the form of pay scale of the promotion post, if the promotion post is

available and in the form of next higher grade in the pay matrix table, if the post of promotion is not available in the cadre structure of employees. In the year 2011, after the 6th Pay Commission, the new ACP scheme (vide G.O dated 08.03.2011) was introduced and the 1st, 2nd and 3rd benefits under the ACP scheme were confined only to the next higher grade and the concept of providing benefit of pay scale of the post of promotion was done away with. But by G.O. dated 06.11.2013, for the employees directly appointed with Grade Pay of Rs. 4800 or below, the benefit of pay scale of promotion was reintroduced as it was there during the period of 5th Pay Commission. The definition of 'post of promotion' as mentioned in 5th Pay Commission G.O. dated 02.12.2000 remained the same and is followed in its application in the amended G.O. dated 06.11.2013.

8. The petitioners were directly appointed as Range Officers under the Subordinate Forest (Rangers, Deputy Rangers and Foresters) Service Rules, 1951. Such Rules were also adopted by the State of Uttarakhand, in which no promotional post is available to them in the cadre structure hence, according to the respondents, ACP can be granted to the petitioners in the form of next higher grade and as per the pay matrix table as per G.O. dated 17.10.2008 and they are entitled to Grade Pay of Rs. 5400, 6600 and 7600 with their three financial up gradation as per the G.O. dated 06.11.2013. According to respondents, the plea of petitioners that the first promotional post of Range Officer is 'ACF', second post of promotion is 'DCF' and third promotion post is 'CF' is wrong. The petitioners by making such averments are misleading the court, in view of the fact that the pay scale of DCF and the next higher grade for the post of ACF in the pay matrix table are the same.

9. It is also contended that earlier the Uttar Pradesh Forest Service Rules, 1952 were in existence, which were superseded by the U.P. Forest Service Rules, 1993 and as per the Rules of 1993, only post available is of ACF in the cadre structure. By exercising its powers under Rule 4(1) of

the Rules of 1993, the Government also created the post of Deputy Director, Forest in 1998. The post of Deputy Director exists in the State of Uttarakhand also and at present 32 posts of Deputy Director (Grade Pay of Rs. 6600) in the cadre structure of the Forest Department are available on which promotions of ACF (Grade Pay of Rs. 5400) are made. There are many Range Officers who after their promotion as ACF under the Rules of 1993 have been promoted as Deputy Director from time to time. In the State of U.P., there were separate Service Rules for the Range Officers (Rangers) known as "the Subordinate Forest (Rangers, Deputy Rangers and Foresters) Service Rules, 1951", which were also continued in Uttarakhand till 2010 and were replaced by the Uttarakhand Forest Range Officers Service Rules, 2010. As the directly appointed Range Officers get Grade Pay of Rs. 4800(in its corresponding Pay Band), hence, their 1st, 2nd and 3rd benefit under ACP scheme cannot be made as per to the grade pay of C.F.

10. The respondents have also contended that the Principal Chief Conservator of Forest while granting them the Grade Pay of Rs. 8700 in place of 7600, specifically imposed a rider that such grade pay granted to them is conditional and if any anomaly or otherwise instructions are received from the State Government, the higher amount paid to the persons will be adjusted from the concerned officers and this condition was never challenged by the respondents and by accepting the benefit of grade pay of Rs. 8700 right to challenge such condition was waived. Now after hearing both the parties, such facility has been revised and the impugned order has been passed correctly and the recovery order has been made as per the rules. The petitioners are not entitled either to the grade pay of Rs. 8700 or 8900, because in their cadre structure, 3rd promotional post is not of C.F. The post of C.F. is a post under Indian Forest Service. The first post of promotions for ACP scheme for the petitioners is ACF, the second promotion post is of Deputy Director and there was no further promotional post available in the State Service Rules,

hence, no third ACP was admissible to the petitioners hence, in the absence of the promotional post in the cadre structure under the Service Rules, the petitioners, at the third stage of ACP were entitled to only a Pay Scale and Grade Pay as per the general provisions of the G.O. dated 06.11.2013 read with the G.O. dated 17.10.2008. The respondents has contended that the third promotional scale given after 26 years of service under the scheme of ACP to the petitioners vide order dated 30.1.2014 and other like orders of 2015, was of the post of C.F, which is a post under the Indian Forest Service (an all India Service) and are contrary to the Government Orders issued by the Finance Department and, therefore, these orders are *non-est* in the eye of law.

11. The petitioners also filed R.A. against C.A/.W.S. filed by the respondents. It was also emphasized upon by the petitioners that they were entitled to the grade pay of Rs. 8900, rather their grade pay was reduced from 8700 to 7600, which is against the rules and the impugned order passed by the respondents, was passed without discussing the points raised by them in their representation.

12. We have heard learned counsel for the petitioners and learned A.P.O. on behalf of the respondents as well as respondent No. 2, who was personally present before the court and perused the record of the case.

13. Before discussion of the rival submissions of the parties, it is appropriate to narrate the basic facts of the case which arise as follows:

- (i) The petitioners were given the benefit of third ACP of Grade Pay Rs. 7600 in Pay Band Rs. 15,600-39,100 according to the G.O. dated 08.03.2011 (Annexure: A5) on various dates in the years 2011, 2012 and 2013.
- (ii) The G.O. No. 395/xxvi(7)/2008 dated 08.03.2011 provides that the financial upgradation under the ACP will be the next higher grade (Grade Pay with the corresponding Pay Band) as per the Pay Matrix Table of the Sixth Pay Commission shown as

Enclosure-1 to the G.O. dated 17.10.2008, which is reproduced below for convenience:-

वर्तमान वेतनमान		दिनांक 01-01-2006 से संशोधित वेतन संरचना/ढाँचा		
क्र० सं०	वर्तमान वेतनमान (दिनांक 01-01-2006 के पूर्व)	वेतन बैंड/वेतनमान का नाम	सादृश्य वेतन बैंड/वेतनमान	सादृश्य ग्रेड वेतन
(1)	(2)	(3)	(4)	(5)
1	2550-55-2660-60-3200	-1एस	4440-7440	1300
2			
3				
4	2750-70-3800-75-4400	वेतन बैंड-1	5200-20200	1800
5	3050-75-3950-80-4590	वेतन बैंड-1	5200-20200	1900
6 से 12			
13	7450-225-11500	वेतन बैंड-2	9300-34800	4600
14	7500-250-12000	वेतन बैंड-2	9300-34800	4800
15	8000-275-13500	वेतन बैंड-3	15600-39100	5400
16	8550-275-14600	वेतन बैंड-3	15600-39100	6600
17	10000-325-15200	वेतन बैंड-3	15600-39100	6600
18	10650-325-15850	वेतन बैंड-3	15600-39100	6600
19	12000-375-16500	वेतन बैंड-3	15600-39100	7600
20	14300-400-18300	वेतन बैंड-4	37400-67000	8700
21	16400-450-20000	वेतन बैंड-4	37400-67000	8900
22	18400-500-22400	वेतन बैंड-4	37400-67000	10000
23			
24				

As per the above Pay Matrix Table, the petitioners who were initially (directly) appointed as Range Officers have the following pay scales as a result of Sixth Pay Commission:-

At the time of Appointment- S. No. 14 in the Table

Pay Band: Rs. 9300-34800

Grade Pay: Rs. 4800

First Higher Grade Pay- S. No. 15 in the Table

Pay Band: Rs. 15,600-39,100

Grade Pay: Rs. 5400

Second Higher Grade Pay- S. No. 16 in the Table

Pay Band: Rs. 15,600-39,100

Grade Pay: Rs. 6,600

Third Higher Grade Pay- S. No. 19 in the Table

Pay Band: Rs. 15,600-39,100

Grade Pay: Rs. 7600

- (iii) Vide G.O. dated 06.11.2013, the employees who were directly appointed with Grade Pay Rs. 4800 or below, the benefit under

ACP was allowed equivalent to Grade Pay of the next promotion, post if the promotion post is available, and when the post of promotion is not available, the employees were allowed only the next higher Grade Pay (as per the Pay Matrix Table enclosed to the G.O. dated 17.10.2008).

- (iv) The PCCF (respondent No. 2) amended the earlier granted 3rd ACP to the petitioners (and some others) from Grade Pay Rs. 7600 to 8700 vide order dated 30.01.2014 w.e.f. 01.11.2013 as per the G.O. dated 06.11.2013 deciding that for the Range Officers, the posts of promotion are available as ACF (Grade Pay Rs. 5400), DCF (Grade Pay Rs. 6600) and CF (Grade Pay Rs. 8900). However, PCCF in his order dated 30.01.2014 allowed only Rs. 8700 G.P. as the third ACP in order to avoid the anomaly between the Range Officers and directly recruited ACF.
- (v) Pursuant to the order of the PCCF dated 30.01.2014 and other orders of 2015, some other persons were also granted Grade Pay Rs. 8700 as 3rd ACP on completion of 26 years of service as per the G.O. dated 06.11.2013.

14. Learned counsel for the petitioners has argued that the petitioners who were directly appointed as Range Officers (Grade Pay Rs. 4800) have following posts of Promotion available for them:-

First Promotion Post

ACF (State Forest Service)

Grade Pay Rs. 5400

Second Promotion Post

DCF (Indian Forest Service)

Grade Pay Rs. 6600

Third Promotion Post

CF (Indian Forest Service)
Grade Pay Rs. 8900

It is, therefore, the contention of learned counsel for the petitioners that the petitioners should have been granted Rs. 8900 Grade Pay as 3rd ACP in place of Rs. 8700. Instead of that, the Finance Department vide G.O. dated 04.05.2018 and respondent No. 2 vide order dated 08.05.2018 have withdrawn even Grade Pay Rs. 8700 and reduced the 3rd ACP to Rs. 7600 with the order to re-fix the pay/pension and recover the excess payment. Learned A.P.O. on behalf of the Government of Uttarakhand in his counter argument has submitted that the petitioners were initially recruited as Range Officers. Earlier, their services were governed by the "Subordinate Forest ('Rangers', 'Deputy Rangers' and 'Foresters') Service Rules, 1951" which were adopted by the State of Uttarakhand. Later on, the Government of Uttarakhand framed its own Rules known as "Uttarakhand Forest Range Officers Service Rules, 2010" (which were notified on 03.01.2011). The contention of learned A.P.O. is that under both Service Rules (Rules of 1951 and Rules of 2010), there is no post of promotion available for Range Officers. As there is no post of promotion in their Service Rules, the Range Officers are entitled only to the higher Grade Pay of Rs. 5400, Rs. 6600 and Rs. 7600 (as per the Pay Matrix Table enclosed to the G.O. dated 17.10.2008) as laid down in the G.O. dated 06.11.2013 for their 1st, 2nd and 3rd financial upgradation under the scheme of ACP.

15. The contention of the petitioners has been that as per Rule-5 of the U.P. Forest Service Rules, 1993, 50 per cent posts of ACF are filled by promotion from Range Officers and, therefore, first post of promotion for the Range Officer is ACF. It has further been contended by learned counsel for the petitioners that as per the Indian Forest Service (Recruitment) Rules, 1966, 33 $\frac{1}{3}$ per cent posts of IFS are filled by promotion from amongst the substantive members of the State Forest Service (ACF). Since 50 per cent ACFs are from amongst Range Officers, 16.5 per cent Range Officers can be appointed in IFS under ideal condition. The State Forest

Service Officers, after their promotion/induction into IFS, are given the post of DCF and, therefore, the second post of promotion available for Range Officer is DCF. It has also been submitted by learned counsel for the petitioners that after the post of DCF, the officers of Indian Forest service are promoted on the post of CF and, therefore, for Range Officers, the 3rd post of promotion is the CF under the Indian Forest Service.

16. Respondents have vehemently opposed this contention of the petitioners. It has been submitted on behalf of the respondents that the availability of post of promotion for the purpose of the G.O. dated 06.11.2013 is necessarily to be seen with reference to the Service Rules to which the employees belong. As there is no post of promotion available for the Range Officers in their Service Rules (Rules of 1951 and Rules of 2010), the posts of promotion which are available in another Service Rules that is U.P. Forest Service Rules, 1993 cannot be taken into consideration for granting ACP to the petitioners. It is, therefore, the contention of the respondents that the petitioners cannot get the benefits under the scheme of ACP taking post of ACF under the U.P. Forest Service Rules, 1993 as post of promotion available for them. The benefit of ACP (which was provided earlier in the form of time scale promotion/next higher grade) for providing either the pay scale of post of promotion or the next higher grade has always been applied with reference to the cadre of the employees and the Service Rules by which they are governed. The pay scale of post of promotion is payable only when the promotional post is available in the cadre structure under the relevant Service Rules to which the employee belongs. If posts of promotion are not available in the cadre structure of relevant Service Rules, the employees were granted only the next higher grade under the Time Scale Promotion Scheme.

17. According to the respondents, the Time Scale Promotion Scheme was issued by the Government of U.P. on 02.12.2000 (which was adopted by the Government of Uttarakhand vide G.O. dated 12.03.2001). Under this scheme, two financial upgradations were provided after

completion of 14 years and 24 years of service. It was very clearly mentioned in the G.O. dated 02.12.2000 that these two financial upgradations to the State Government employees will be provided as personal pay, the pay scale of the promotion post, if the promotional post is available and to the next higher grade if the posts of promotion are not available in the cadre structure of the employees. The paragraphs 2 and 4 of the G.O. dated 02.12.2000 for providing financial upgradations to the State Government employees read as under:-

“प्रथम वैयक्तिक प्रोन्नतीय/अगला वेतनमान—

(2) उपर्युक्त श्रेणी के ऐसे अधिकारी/कर्मचारी जिन्होंने सेलेक्शन ग्रेड के लाभ की तिथि से 6 वर्ष की अनवरत सन्तोषजनक सेवा सहित कुल 14 वर्ष की अनवरत सन्तोषजनक सेवा पूर्ण कर ली हो और सम्बन्धित पद पर नियमित हो चुके हों, को प्रोन्नति का अगला वेतनमान वैयक्तिक रूप से अनुमन्य किया जाय। ऐसे संवर्ग/पद जिनके लिए प्रोन्नति का कोई पद नहीं है, उनको उस वेतनमान से अगला वेतनमान वैयक्तिक रूप से देय होगा।.....

.....

द्वितीय वैयक्तिक प्रोन्नतीय/अगला वेतनमान—

(4) प्रत्येक नियमित कर्मचारी को वैयक्तिक प्रोन्नतीय/अगले वेतनमान में उपर्युक्त प्रस्तर-1(3) के अनुसार एक वेतनवृद्धि का लाभ अनुमन्य होने की तिथि से 5 वर्ष की अनवरत संतोषजनक सेवा सहित न्यूनतम 24 वर्ष की सेवा पर वैयक्तिक रूप से द्वितीय प्रोन्नतीय/अगला वेतनमान अनुमन्य होगा। ऐसे कर्मचारी जिनके संवर्ग में प्रोन्नति का पद उपलब्ध नहीं है, उनको उस वेतनमान का अगला वेतनमान वैयक्तिक रूप से देय होगा।”

18. It has further been submitted on behalf of the respondents that under the Sixth Pay Commission, the new ACP scheme (vide G.O. dated 08.03.2011) was introduced and the 1st, 2nd and 3rd benefits under the ACP scheme were confined only to the **next higher grade** and the concept of providing benefit of **pay scale of the post of promotion** was done away with. But vide G.O. dated 06.11.2013, for the employees directly appointed with Grade Pay Rs. 4800 or below, the benefit of pay scale of post of promotion was reintroduced as it was there during the period of 5th Pay Commission. In view of this, respondents have argued that the

Range Officers in the present case, cannot get the benefit of pay scale of promotion post which are not available in their cadre under the Service Rules by which they are governed. Since, there is no post of promotion available in the Service Rules of 1951 and the Service Rules of 2010 for the Range Officers, they are entitled to get only the next higher grade as per the Pay Matrix Table of G.O. dated 17.10.2008 for the purpose of their 1st, 2nd and 3rd financial upgradation under the G.O. dated 06.11.2013. Learned A.P.O. has also referred paragraph 4(1) of the G.O. dated 02.12.2000 which reads as under:-

“4(1) उपर्युक्त प्रस्तर-1(2) तथा 1(4) के अन्तर्गत वैयक्तिक प्रोन्नतीय वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिये प्रोन्नति के पद का आशय उस पद से है जिस पर सेवा नियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित पदधारक द्वारा धारित पद से वरिष्ठता के आधार पर प्रोन्नति का प्राविधान हो।.....”

19. On the basis of the para 4(1) of the G.O. dated 02.12.2000 above, learned A.P.O. has submitted that the definition of “post of promotion” has very clearly been stated as a post which has been specified in the Service Rules of the concerned employees and on which promotion is made by the criterion of seniority. Respondents have emphasized that the definition of “post of promotion” for the purpose of G.O. dated 06.11.2013 is the same as provided in the G.O. dated 02.12.2000 as by the G.O. dated 06.11.2013, the employees have been placed in the same position in which they were during the period of 5th Pay Commission by including the “post of promotion” available for promotion as a relevant factor for determining the benefit under the ACP scheme.

20. According to the respondents, following conditions are required to be fulfilled for providing the benefit of “post of promotion” to the State Government employees for the purpose of ACP under the G.O. dated 06.11.2013:

- (i) The post of promotion is available in the cadre structure of the employee concerned;

- (ii) The post of promotion should be available in the relevant Service Rules of the employee; and
- (iii) The criterion for promotion under the Service Rules is seniority

Since the petitioners do not fulfill the above conditions, they cannot go outside their cadre structure and outside their Service Rules for getting the benefit of pay scale of "post of promotion" for the purpose of benefit under the ACP scheme under the G.O. dated 06.11.2013.

21. In reply to the contentions on behalf of the respondents, referred above, learned counsel for the petitioners has submitted that vide G.O. No. 75/xxvii(7)ए०सी०पी०/2009 dated 28.02.2009, the G.O. dated 12.03.2001 by which the G.O. dated 02.12.2000 was adopted by the Government of Uttarakhand has been cancelled and, therefore, the contention of the respondents is not acceptable. The G.O. dated 12.03.2001 does not exist as it was cancelled by the G.O. dated 28.02.2009. Learned A.P.O. has vehemently opposed this contention of learned counsel for the petitioners and has pointed out that vide G.O. No.144/XXVII(7)ए०सी०पी०(1)/2010 dated 09.02.2010, the G.O. No. 75/xxvii(7)ए०सी०पी०/2009 dated 28.02.2009 has been superseded and, therefore, the G.O. dated 02.12.2000 which was adopted by the State of Uttarakhand dated 12.03.2001 stands restored and it very much exists and it is quite relevant in the present case for the purpose of the G.O. dated 06.11.2013. We have perused above mentioned G.Os. and agree with the contention of learned A.P.O. that the G.O. dated 28.02.2009 (which had cancelled the G.O. dated 12.03.2001) has been superseded by the G.O. dated 09.02.2010 and the G.O. dated 12.03.2001 exists even today and, therefore, the contention of learned counsel for the petitioners is factually incorrect.

22. Respondent No. 2 has also submitted that the definition of “post of promotion” has also been reiterated vide G.O. No. 327/xxvii(3)सं0वे0/2005 dated 23.08.2005 as under:-

“समयमान वेतनमान व्यवस्था के अन्तर्गत वैयक्तिक प्रोन्नतीय वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिए प्रोन्नतीय पद का आशय उस पद से है जिस पर सेवा नियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित कर्मचारी की प्रोन्नति वरिष्ठता-कम-उपयुक्तता के आधार पर की जाती हो। ऐसी स्थिति में जिन पदों पर पदोन्नति की व्यवस्था वरिष्ठता-कम-उपयुक्तता के साथ ही साथ योग्यता/उच्च अर्हता/मेरिट के आधार पर हो, वे पद समयमान वेतनमान की अनुमन्यता हेतु पदोन्नतीय पद नहीं माने जायेंगे। ऐसे मामलों में अन्य शर्तों की पूर्ति की दशा में अगला उच्चतर वेतनमान जैसा कि शासनादेश दिनांक 12 मार्च, 2001 के संलग्नक प्रस्तर-4(1) में स्पष्ट किया गया है, देय होगा।”

23. On behalf of the respondents it has also been pointed out that the provisions of the G.O. dated 02.12.2000 (adopted by the State of Uttarakhand on 12.03.2001) and the G.O. dated 23.08.2005 have further been reiterated by the Department of Finance vide G.O. dated 28.11.2017 and paragraphs 2 and 3 of the said G.O. read as under:-

“2. शासनादेश सं0-1014/01 वित्त/2001 दिनांक 12 मार्च, 2001 सपठित शासनादेश दिनांक 02 दिसम्बर, 2000 में वैयक्तिक प्रोन्नति वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिए प्रोन्नति के पद का आशय उस पद से है जिस पर सेवा नियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित पदधारक द्वारा धारित पद से वरिष्ठता के आधार पर प्रोन्नति का प्राविधान हो।

3. शासनादेश सं0- 327/XXVII(3)सं0वे0/2005 दिनांक 23 अगस्त, 2005 में समयमान वेतनमान व्यवस्था के अंतर्गत वैयक्तिक प्रोन्नतीय वेतनमान की अनुमन्यता हेतु किसी पदधारक के लिए प्रोन्नतीय पद का आशय उस पद से है जिस पर सेवानियमावली अथवा कार्यकारी आदेशों के आधार पर सम्बन्धित कर्मचारी की प्रोन्नति वरिष्ठता-कम-उपयुक्तता के आधार पर की जाती हो, परन्तु जिन पदों पर पदोन्नति की व्यवस्था वरिष्ठता-कम-उपयुक्तता के साथ-साथ योग्यता/उच्च अर्हता/मेरिट के आधार पर हो, वे पद समयमान वेतनमान की अनुमन्यता हेतु पदोन्नतीय पद नहीं माने जायेंगे। ऐसे मामलों में अन्य शर्तों की पूर्ति की दशा में अगला उच्चतर वेतनमान/वेतन मैट्रिक्स में अगला उच्च स्तर जैसा कि उपरोक्त प्रस्तर-2 एवं 3 में स्पष्ट किया गया है, देय होगा।”

24. It has further been submitted on behalf of the respondents that vide G.O. No. 132/XXVII(7)40/2018 dated 04.05.2018, the Finance Department has also reiterated that “ऐसे कार्मिकों के लिए पदोन्नत वेतनमान का तात्पर्य केवल उनके संवर्गीय ढांचे एवं उनकी संगत सेवा नियमावली में उल्लिखित पदोन्नति के पदों के वेतनमान से है। जहाँ संवर्गीय ढांचे में पदोन्नति के पद उपलब्ध नहीं हैं वहाँ धारित वेतनमान से अगला वेतनमान ए०सी०पी० के रूप में देय होगा।”

25. After hearing learned counsel for the petitioners and the respondent No. 2 and after perusing the record, we are of the view that the G.O. dated 06.11.2013 is restoration of the position which was prevailing during the 5th Pay Commission period and the G.O. dated 02.12.2000 (adopted by the State of Uttarakhand vide G.O. dated 12.03.2001), G.O. dated 23.08.2005 and G.O. dated 28.11.2017 exist and quite relevant for the purpose of defining the “post of promotion” as mentioned in the G.O. dated 06.11.2013 and our conclusion in this regard is that since there are no posts of promotion available for the Range Officers in the cadre structure under their Service Rules of either 1951 or 2010, the petitioners can get the benefit of 1st, 2nd and 3rd Time Scale/ACP only in the form of next higher grade in the Pay Matrix Table of the Pay Commission and accordingly the petitioners are entitled to the Grade Pay of Rs. 5400, Rs. 6600 and Rs. 7600 as three financial upgradations as per the G.O. dated 06.11.2013.

26. It is the contention of the petitioners that second post of promotion for the Range Officers is the post of DCF (under the Indian Forest Service). The Respondent no. 2 (PCCF, Uttarakhand) has stated that even if it is assumed that there is post of promotion for the petitioners outside the Service Rules of Range Officers (Rules of 1951 and Rules of 2010), Range Officers are promoted on the post of ACF under the U.P. Forest Service Rules, 1993 (Grade Pay Rs. 5400) and after that there is a post of promotion of Deputy Director (Grade Pay Rs. 6600) which was created by the Governor vide G.O. No. 1825/14-1-98 dated 30.06.1998 (Annexure: R4 to the W.S. of Respondent no. 2). It has further

been stated by the respondent no. 2 that the post of Deputy Director exists in the State of Uttarakhand also and at present there are 32 posts of Deputy Director (Grade Pay Rs. 6600) in the cadre structure of the Forest Department on which promotions of ACF (Grade Pay Rs. 5400) are made. There are many Range Officers who after their promotion as ACF under the Rules of 1993 have further been promoted as Deputy Director from time to time.

27. Learned counsel for the petitioners though admitted that the post of Deputy Director exists and Range Officers have also been promoted (after their promotion on the post of ACF) as Deputy Director yet the post of Deputy Director has not been created under the U.P. Forest Service Rules, 1993 and this post of Deputy Director was created only by a G.O. Since the post of Deputy Director has not been created under the Rules of 1993, the same cannot be treated as the promotion post available under the Service Rules as it was created under an Executive Order and an Executive Order cannot be above the Rules. The contention of the learned counsel for the petitioners is that the post of Deputy Director is not a post of promotion for the Range Officers as the same has not been created under the Service Rules.

28. We have perused the U.P. Forest Service Rules, 1993 (which are applicable in the State of Uttarakhand) and do not agree with the contention of learned counsel for the petitioners that the post of Deputy Director has not been created under the Rules. We find that the post of Deputy Director has been created under Rule 4 of the U.P. Forest Service Rules, 1993 which reads as under:-

"4. Cadre of Service.-(1) The strength of the service and of each category of posts therein shall be such as may be determined by the Government.

(2) The strength of the service and of each category of posts therein shall until orders varying the same are passed under sub-rule(1) be as given below:

Name of the post	Number of Posts		
	Permanent	Temporary	Total
Assistant Conservator of Forests	97	63	160

Provided that:

- (i) *the appointing authority may leave unfilled or hold in abeyance any vacant post without thereby entitling any person to compensation;*
- (ii) **The Governor may create such additional, permanent or temporary posts from time to time as he may consider proper.**

Perusal of above Rule makes it clear that strength of the service of each category of post shall be determined by the Government, the strength of service and each category of post can be changed by the Government by passing an order under Rule-4(1) above and the Governor may create additional posts from time to time as he may also consider proper under Rule 4(2) (ii) above.

In view of this, we are of clear opinion that the post of Deputy Director (Grade Pay Rs. 6600) is duly created post by the Government under Rule -4 of the U.P. Forest Service Rules, 1993 vide G.O. dated 30.06.1998 (Annexure: R-4 to the W.S. of Respondent no. 2).

29. Learned counsel for the petitioners has also argued that the petitioners have already been given the benefit of second ACP by granting the Pay Scale of DCF which is a post in IFS cadre even during the period of Fifth Pay Commission. It has further been stated by him that even before the period of Fifth Pay Commission period, the officers of the State Forest Service were given the Pay Scale of DCF (a post belonging to the IFS) in undivided State of U.P. It is the contention of the petitioners that during the period of Fourth and Fifth Pay Commission also, the benefit of Pay Scale of an IFS post i.e. DCF was given to the State Forest Service Officers under the Time Scale Promotion Scheme. Petitioners have filed a copy of the order dated 10.03.1995 (Annexure: 8 to the Rejoinder Affidavit) to show that the ACF (State Forest Service

Officers) were given the Pay Scale of DCF (IFS post) under the Time Scale Promotion Scheme. The initial paragraph of the said order reads as under:-

“संख्या-856 / 14-1-95

प्रेषक,
प्रमुख सचिव
वन विभाग
उत्तर प्रदेश शासन।

सेवा में,

प्रमुख वन संरक्षक,
उत्तर प्रदेश, लखनऊ।

वन अनुभाग-एक

लखनऊ: दिनांक- मार्च 10, 1995

विषय:- सहायक वन संरक्षकों एवं वन प्रभाग अधिकारी को रू0 3000-4500 का समयमान वेतनमान वैयक्तिक रूप से स्वीकृत किया जाना।

महोदय,

उर्पयुक्त विषय पर मुझे यह कहने का निदेश हुआ है कि शासनादेश संख्या 965 / 14-1-93-45(67) / 91, दिनांक 5 नवम्बर, 1993 में किए गए प्रावधानों के अनुसार निम्नलिखित अधिकारियों को उनके नाम के सम्मुख स्तम्भ-3 में अंकित तिथि से समयमान वेतनमान रू0 3000-4500 वैयक्तिक रूप से स्वीकृत करने का निर्णय लिया गया है:”

30. Respondents have submitted that in the order dated 10.03.1995 referred above, no where it has been mentioned that the ACFs have been given the Pay Scale of the DCF. Learned A.P.O. on behalf of the Finance Department, Government of Uttarakhand, has submitted that the Pay Scale of ACF in 1995 was Rs. 2200-75-2800-EB-100-4000 and the next higher grade according to the Pay Matrix Table of the Fourth Pay Commission was Rs.3000-100-3500-125-4500. The ACFs at that time received the next higher grade of Rs. 3000-4500 after completion of 8 years of service according to the Time Scale Promotion Scheme in the form of next higher grade. The contention of the respondents is that since

the Pay Scale of DCF and the next higher grade for the post of ACF in the Pay Matrix Table are the same, the petitioners are trying to mislead the Tribunal by stating that the ACFs vide order dated 10.03.1995 received the Pay Scale of DCF which is an IFS post. Respondents have also stated that since beginning of the Time Scale Promotion Scheme in 1983, no State employee was granted pay scale of "post of promotion" unless the "post of promotion" was available as the next post in the cadre of the State employee under the relevant Service Rules which govern the service conditions of that employee and if that was not so, the benefit of only next higher grade as per the Pay Matrix of the Pay Commission was permissible under the Time Scale Promotion Scheme. In no case, the Time Scale Promotion Scheme provided benefit of the "post of promotion" outside the cadre structure provided in the Service Rules to which the employee belongs.

31. In view of description above, we are not convinced by the argument of learned counsel for the petitioners that the Range Officers/State Forest Service Officers got the promotional pay scale of the post of DCF (an IFS post) under the Time Scale Promotion Scheme. By order dated 10.03.1995, it cannot be established that the Pay Scale of "promotion post" of DCF was given to the ACFs under the Time Scale Promotion Scheme. The order dated 10.03.1995 is too little and too far to show that the ACF got their Time Scale Promotion for the post of DCF. Further, after 10.03.1995 till date no record was presented by the petitioners to show that the Range Officers got their Second Time Scale for the post of DCF. Learned counsel for the petitioners has, therefore, failed to demonstrate that the Range Officers ever got the Pay Scale of "promotion post" DCF. We are, therefore, of the clear view that the petitioners have never got the benefit of Time Scale/ACP for the post of DCF.

32. It is also to note here that earlier to the U.P. Forest Service Rules, 1993, the Uttar Pradesh Forest Service Rules, 1952 were in

existence. Rule 4 of the Rules of 1952 provided the cadre structure of the Uttar Pradesh Forest Service as under:-

1. Assistant Conservators of Forest (ACF)
2. Deputy Conservators of Forest (DCF)
3. Conservators of Forest (CF)
4. Chief Conservator of Forest (CCF).

Rules of 1952 were superseded by the U.P. Forest Service Rules, 1993 and initially there was only the post of ACF available in the cadre structure in the Rules of 1993. By exercising its power under Rule 4(1) of the Rules of 1993, the Government also created the post of Deputy Director, Forest in 1998. The posts of DCF, CF, and CCF were excluded from the cadre structure of the State Forest Service in the U.P. Forest Service Rules, 1993. Thus, the posts of DCF, CF and CCF no longer remained the posts of the State Forest Service when the Rules of 1993 came into force. However, the post of Range Officer was never a State Forest Service Post. There were separate Service Rules for the Range Officers (Rangers) known as the Subordinate Forest (Rangers, Deputy Rangers and Foresters) Service Rules, 1951 which were replaced by the Uttarakhand Forest Range Officers Service Rules, 2010. It may also be noted here that the posts of DCF, CF and CCF stand transferred to the Indian Forest Service long back (w.e.f. 1966) and since then appointment on these posts is within the purview of the Government of India. Thus, the posts of DCF, CF and CCF ceased to be State Forest Service posts long back.

33. It is also pertinent to note that directly appointed Range Officers get Grade Pay (in its corresponding Pay Band) Rs. 4800. Their First and Second benefit under the ACP scheme can be viewed in the following three ways:

(i) Next Higher Grade Pay in Pay Matrix Table

- | | | |
|-----|---------|-----------|
| (a) | First: | Rs. 5,400 |
| (b) | Second: | Rs. 6,600 |

(ii) Promotion Grade Pay in the State Forest Service

- (a) ACF: Rs. 5,400
- (b) Deputy Director: Rs. 6,600

(iii) Promotion Grade Pay in the State/IFS

- (a) ACF-State Service: Rs. 5,400
- (b) DCF-Indian Forest Service: Rs. 6,600

It is very interesting to note that from all above 3 angles, the amount of the Grade Pay of 1st and 2nd ACP to the Range Officers is the same. While the respondent, Government of Uttarakhand has shown that the First and Second ACP is payable to the Range Officers under the G.O. dated 06.11.2013 as per the next higher Grade Pay in Pay Matrix Table because no “post of promotion” is available in the cadre structure in the relevant Service Rules (Rules of 1951 and Rules of 2010), learned counsel for the petitioners has contended that the First ACP pertains to the promotion post of ACF (State Forest Service) and the Second ACP falls under the Indian Forest Service related to the promotion post of DCF. We have already discussed above that the learned counsel for the petitioners has not been able to show any order by which the ACP (First or Second) to the Range Officers was granted for the “Post of Promotion” (ACF or DCF). Since the amount of Grade Pay in respect of First and Second ACP is the same in all three scenario, the real controversy is in respect of the Third ACP. While the Finance Department, Government of Uttarakhand is of the view that next higher Grade Pay (Rs. 7600) as per Pay Matrix Table is payable as the Third ACP, the petitioners have claimed the Grade Pay of IFS post of CF Rs. 8900.

34. Learned counsel for the petitioners has contended that the petitioners are entitled to Second ACP of Grade Pay Rs. 6600 as DCF in the IFS and since the next promotion from the post of DCF is made to the post of CF (in the IFS), the petitioners are entitled to the Grade Pay of the CF (Rs. 8900) as the Third ACP.

35. We have made an attempt here to examine whether the next promotion from the post of DCF is CF in the Indian Forest Service.

36. The Indian Forest Service (Pay) Rules, 2007 provide Rules in respect of the “promotions” and the “pay scales” associated with the promotions.

37. Rule-2(k) of the said Rules defines the “Promotion” in the IFS as under:-

“Promotion” means appointment of a member of the Service to the next higher grade over the one in which he is serving at the relevant time”

38. Rule 3(1) of the Indian Forest Service (Pay) Rules, 2007 provides the Pay Bands and Grade Pays admissible to an IFS officer as follows:-

A. Junior Scale: Pay-Band – 3: Rs.15600-39100 plus Grade Pay Rs.5400;

B. Senior Scale:

(i) Senior Time Scale: Pay-Band - 3: Rs.15600-39100 plus Grade Pay Rs.6600;

(ii) Junior Administrative Grade: Pay-Band - 3: Rs.15600-39100; plus Grade Pay Rs.7600;

(iii) Selection Grade: Pay-Band - 4: Rs.37400-67000; plus Grade Pay Rs.8700;

C Super Time Scale:

(i) Conservator of Forests of Forests : Pay-Band – 4: Rs.37400-67000; plus Grade Pay Rs.8900;

(ii) Chief Conservator of Forests/Regional Chief Conservator of Forests : Pay-Band – 4: Rs.37400-67000; plus Grade Pay Rs.10000;

D Above Super Time Scale –

(i) Additional Principal Chief Conservator of Forest : 7 HAG Scale : Rs.67000 (annual increment @ 3%)-79000/- Grade Pay : nil;

(ii) HAG + Scale: Rs.75500- (annual increment @ 3%)-80000/- Grade Pay : nil;

(iii) Apex Scale : Rs.80000/- (fixed), Grade Pay : nil

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Note 1: Appointment of a member of the Service to the Senior Time Scale and above shall be regulated as per the provisions in the Guidelines regarding promotion to various grades in the Indian Forest Service”

39. Rule 6(3) of the Indian Forest Service (Recruitment) Rules, 1966 provides that the initial appointment of persons recruited to the IFS by promotion from the State Forest Service shall be in the Senior Scale of Pay.

40. The petitioners have contended that their second post of promotion is DCF (in the IFS) having Grade Pay Rs. 6600 (Senior Time Scale).

41. As is clear from the above position of IFS (Pay) Rules, the next “promotion” from the Grade Pay Rs. 6,600 is “Junior Administrative Grade” the Grade Pay of which is Rs. 7600.

42. It is, therefore, clear from the above Rule position that the next promotion from the post of DCF having Grade Pay Rs. 6600 is not made to the post of CF (Grade Pay Rs. 8900). After the post of DCF (Grade Pay Rs. 6,600), there are promotions in Junior Administrative Grade (Grade Pay Rs. 7600) and in the Selection Grade (Grade Pay Rs. 8700) and only after that the promotion is made to the post of CF (Grade Pay Rs. 8,900).

43. In view of above, the contention of the petitioners that next promotion from the post of DCF (Grade Pay Rs. 6,600) is made to the post of CF (Grade Pay Rs. 8900) is patently against the IFS (Pay) Rules and, therefore, their claim of Grade Pay of Rs. 8900 for the 3rd ACP is grossly misconceived and cannot sustain. We have no hesitation in holding that the contention of the petitioners that promotion from the post of DCF (Grade Pay Rs. 6600) is made to the post of CF (Grade Pay Rs. 8900) is based on wrong facts and the same is against the Rules and this alone is sufficient to reach a conclusion that the petitioners have no

case and the very basis of the claim for the Grade Pay Rs. 8900 (as Third ACP) is not tenable.

44. Learned counsel for the petitioners has also argued that there was no fraud or misrepresentation committed by the petitioners and, therefore, excess money, if any, paid to the petitioners cannot be recovered from the petitioners. The question was posed whether this case of the petitioners that the re-fixation of pay be made from future date and the excess money already paid be not recovered as per the judgment of the Hon'ble Supreme Court in State of Punjab vs. Rafiq Masih (2015)4 SCC, 334, learned counsel for the petitioners replied in 'Negative' and submitted that the case of the petitioners is this that the 3rd ACP of the petitioners has been wrongly reduced from Rs. 8700 to Rs. 7600 and further that the 3rd ACP should have actually been granted as Rs. 8900. Learned counsel for the petitioners has further argued that the petitioners have not been given any opportunity of hearing before passing the order of re-fixation of pay and order to recover the so called excess money paid.

45. It has been argued that after the judgment of the Hon'ble High Court for giving opportunity to the petitioners, the respondents in the impugned order dated 31.07.2019, have not considered the points raised by the petitioners.

46. Respondents have refuted the argument of learned counsel for the petitioners and have submitted that when the 3rd ACP was amended from Rs. 7600 to Rs. 8700 in respect of 52 Officers on 30.01.2014 and 19 other Officers in 2015, it was made clear in the order itself that the sanction of 3rd ACP is conditional and if any otherwise instructions are received from the Government, the higher amount paid will be recovered from the concerned officers. Respondents have pointed out the content of the last paragraph of the order of the PCCF dated 30.01.2014 and orders issued in 2015 which reads as under:-

“उक्त संशोधन इस प्रतिबन्ध के साथ किये जाते हैं कि यदि भविष्य में शासन अथवा अन्य किसी स्तर से कोई विपरीत निर्देश प्राप्त होते हैं अथवा किसी प्रकार की विसंगति/आपत्ति प्राप्त होती है तो तदनुसार भुगतान की गयी धनराशि का समायोजन सम्बन्धित अधिकारियों से सुनिश्चित कर लिया जाय।”

47. The contention of the Respondent no. 2 is that the last paragraph in the orders, clearly indicates that the Sanctioning Authority was in doubt and not certain of its action for granting 3rd ACP enhancing it from Rs. 7600 to Rs. 8700. The Range Officers whose amount of 3rd ACP was increased on 30.01.2014 and in 2015, were clearly put on notice that if excess payment was found to have been made it would be required to be refunded. The petitioners did not challenge the above condition mentioned in the orders of the PCCF and accepted the condition and, therefore, the petitioners have waived their right to challenge the same.

48. Respondents previously issued the orders dated 04.05.2018 and 08.05.2018, reducing the grade pay and for recovery, but the same were set aside by the Hon'ble High Court vide its order dated 27.07.2018, passed in WPSB No. 200 of 2018. While setting aside the above orders, liberty was reserved to the respondents to proceed with the order strictly as per law after giving opportunity of hearing to the petitioners.

49. In compliance of that, respondents afforded an opportunity to the petitioners for submitting their stand against the show cause notice dated 21.09.2018 (Annexure: A17) and after hearing, the objections submitted in respect to the notice, the impugned order dated 31.07.2019 (Annexure: A1) was passed by which it was mentioned that the third ACP and grade pay of Rs. 7600 will be available to the petitioners and the excess amount will be recovered.

50. The petitioners have also argued that some other similarly situated persons are being allowed the grade pay of Rs. 8700 whereas, petitioners have been debarred from such facility. The respondents have

contended that such grade pay and other facility, is being maintained, in view of the interim order, passed by the Hon'ble High Court, which is yet to be finalized, as per their orders and the provisions of law.

51. We hold that in the petition, this court has to decide, as to what benefit, the petitioners are entitled as their 3rd ACP as per the rules, and we are of the view that the petitioners are not entitled to the grade pay of Rs 8700 or 8900, rather they are entitled to the benefit of 3rd ACP as their grade pay of Rs. 7600, as per the pay matrix table dated 17.10.2008, and if some other persons are getting other benefits, on the basis of any order of the Hon'ble High Court, on that basis, the case of the petitioners cannot be decided by this Court, as the matter of the other persons is yet to be finalized by the Hon'ble High Court on merits. The petitioners cannot take the benefit of such interim situation in this petition.

52. In the result, we are of the view that the relief claimed by the petitioners cannot be granted. The impugned order dated 31.07.2019, passed by the respondent No. 2 is as per the rules. The petitioners are not entitled to the grade pay either of Rs. 8700 or Rs. 8900 as their 3rd ACP. The impugned order dated 31.07.2019 is perfectly legal. The claim petition deserves to be dismissed.

ORDER

The claim petition is hereby dismissed. No order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(RAM SINGH)
VICE CHAIRMAN (J)

DATE: DECEMBER 06, 2019
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