

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

(Through Video Conferencing)

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

WRIT PETITION (S/B) NO. 20/DB/2020

[RENUMBERED AS CLAIM PETITION NO.88 /DB/2020, ON TRANSFER]

Van Kshetradhikari Sangh Uttarakhand, through its State Secretary, Office at 85-
Rajpur Road, Dehradun, Uttarakhand.

....Petitioner

vs.

1. State of Uttarakhand through Chief Secretary, Civil Secretariat, Dehradun, District Dehradun.
2. State of Uttarakhand through Secretary Forest, Civil Secretariat, Dehradun, District Dehradun
3. Principal Chief Conservator of Forest/ Head of Forest Force (HOFF, 87-Rajpur Road, District Dehradun.
4. Uttarakhand Public Services Commission, through its Secretary, Gurukul Kangari, District Haridwar.

....Respondents

Present: Sri Sandeep Tiwari, Advocate, for the petitioner.

Sri V.P.Devrani, A.P.O., for Respondents No. 1, 2 & 3.

Sri N.S.Pundir, Advocate, for Respondent No. 4

JUDGMENT

DATED: OCTOBER 12, 2020

Per: Justice U.C.Dhyani

Background Facts

1. Writ petition (S/B) No. 20/2020 was filed by Van Kshetra Adhikari Sangh, Uttarakhand through its Secretary against State of Uttarakhand

and others, in the High Court of Uttarakhand at Nainital on 19.01.2020, for the following reliefs:

- a) Issue a writ or order in the nature of certiorari quashing the impugned advertisement dated 30.07.2019 issued by Uttarakhand Public Service Commission (Respondent No.4) for recruitment on the post of Assistant Conservator of Forests in terms of Rule 19(2) of the Uttarakhand State Forest Service Rules, 2017.
- b) Issue a writ order or direction in the nature of mandamus directing the Respondent No.3 to recalculate the vacancies as per advertisement dated 30.07.2019 and accordingly convene the Departmental Promotion Committee for filling up proportionate quota at par with direct recruits in terms of sub rule (4) of Rule 5 of the Uttarakhand State Forest Service Rules, 2017, for the vacancy year 2019-20.
- c) Issue any other writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.
- d) Award cost of the petitioner.

2. By means of the aforesaid writ petition, the petitioner challenged the advertisement dated 30.07.2019 issued by Uttarakhand Public Service Commission (Respondent No. 4) for recruitment on the post of Assistant Conservator of Forests (ACF) in terms of Rule 19(2) of the Uttarakhand State Forest Service Rules, 2017. A copy of the advertisement dated 30.07.2019 has been brought on record as Annexure-1 to the writ petition. An affidavit, in support of the writ petition filed by the State Secretary of the duly recognized association, has been enclosed with the writ petition. The respondents are 'State' in the meaning of Article 12 of the Constitution of India. Before creation of State of Uttarakhand, the relevant Service Rules governing the field were the U.P. Forest Service Rules, 1952, which were notified on 21.01.1952. Later, in supersession of these Rules, the U.P. Forest Service Rules 1993 came into existence. These Rules of 1993 were later on adopted by State of Uttarakhand. In the year 2017, the Governor of Uttarakhand, in exercise of powers conferred under *proviso* to Article 309 of the Constitution of India, and in supersession of all existing Rules regulating recruitments and conditions of service of persons appointed in Uttarakhand State Forest Service, framed the Uttarakhand State Forest Service Rules, 2017, which were notified on 26.07.2017, a copy

of such Rules has been brought on record as Annexure: 2 to the writ petition.

Rule 5(4) of the aforesaid Rules contemplates sources of recruitment to the post of ACF, as follows: -(a) 50% by direct recruitment through the Commission (b) 50% by promotion from amongst such substantively appointed Forest Rangers who have completed minimum 8 years' service, as such, on the first day of the year of recruitment, on the basis of seniority subject to rejection of unfit, by the Commission.

Rule 17(1) further states the procedure for recruitment by promotion in case of ACF, as under: "Recruitment by promotion shall be made on the basis of seniority subject to rejection of unfit, in accordance with the Uttarakhand Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 2003, as amended from time to time."

Rule 18 of these Rules stipulates combined selection list, according to which, "if in any year of recruitment, appointments are made both by direct recruitment and by promotion, a combined selection list shall be prepared by taking the names of the candidates from the relevant list, in such a manner that the prescribed percentage of candidates recruited directly or by promotion is maintained, the first name in the list of the person appointed by promotion"

Rule 19(2) further states that, "where, in the year of recruitment, appointments are to be made both by direct recruitment and by promotion, regular appointment shall not be made unless selection is made from both the sources and /or combined list is prepared in accordance with Rule 18".

Rule 22 of these Rules further states that the seniority of the persons substantively appointed to any category of posts shall be determined according to the Uttarakhand Government Servants Seniority Rules, 2002, as amended from time to time.

As per Rule 8(3) of the Uttarakhand Government Servants Seniority Rules, 2002, notified on 13.08.2002, “where appointments are made both by promotion and direct recruitment on the result of any one selection, the seniority of promotees *vis-à-vis* direct recruits, shall be determined in a cyclic order, the first being a promotee as far as may be, in accordance with the quota prescribed for two sources.”

3. Illustration: (i) where quota of promotees and direct recruits is in proportion of 1:1, the seniority shall be in the following order: (i).....promoted (ii).....directly recruited and so on.
4. There are 90 sanctioned posts of ACFs and 28 officers are already working on such posts as on date. 17 posts of ACFs were lying vacant as on 30.06.2019, as per the list submitted by Principal Conservator of Forests. These posts are still vacant till date, but neither any DPC has been convened, nor the documents of the DPC have been called for. Thus, in a situation, the direct appointees will be senior to the Range Officers, who will be promoted on the said post after this recruitment. A copy of list of 17 officers, who retired in 2018-19 has been brought on record as Anneuxre-4 to the writ petition.
5. Thus, respondents, according to the writ petition, deliberately issued the advertisement to fill up 45 posts of ACFs, the implication of which will be that the directly appointed candidates will become senior by virtue of their joining *vis-à-vis* the promotee Range Officers, who will be promoted on the next vacancy year. The respondent authorities, while calculating 45 vacancies, have overlooked a vital aspect that, along with the direct recruitment in the vacancy year 2019-20, they will also have the promoted eligible Range Officers, who are in the zone of consideration for promotion to maintain the ratio of 1:1, as spelt out in the Rules. Thus there are 17 posts of ACFs only and only 17 vacancies are to be published, that too after calling out the DPC from the rank of Range Officer to ACF to maintain the ratio of 1:1.

6. For filling up the rest of the vacancies of direct quota, the vacancies will be calculated in the next recruitment year by calculating (a) number of personnel retired in the rank of ACF (b) number of personnel promoted from the rank of ACF to DCF (c) number of direct recruits who left the service due to any reason.
7. There is every possibility that if recruitment is done in 2 or 3 consecutive years, the resultant vacancy will be filled up 100% and ratio of 50% each of promotee as well as direct candidate will be filled up with due procedure and that will be no injustice to other candidates.
8. As per the projection, after taking into consideration retired persons from the rank of ACF and above, 14 vacancies will be available for promotion in the post of ACF in the next vacancy year and 12 vacancy in the further year. Therefore, $17+14+12=43$ vacancies can be filled up to vacancy year 2020-21. Thus, the cadre will face no difficulty if the promotion as well as direct recruitment is made in 3 phases, *i.e.* 3 recruitment years then only quota of 1:1 prescribed in Rule 19(2) of Uttarakhand State Forest Service Rules, 2017, will be maintained.
9. Selection, which shall be finalized in advertisement dated 30.07.2019, shall be for the year 2019-20 of the selected candidates and as per service Rules, in the same vacancy year in the year 2019-20, Range Officers have also to be promoted under the promotional quota. But since no promotional exercise is being done by the respondents, the direct appointee ACFs will become senior by virtue of their joining in previous recruitment year, hence present advertisement suffers from grave illegality.
10. The requisition sent by Respondent No. 2 and 3 is completely without any calculation and is *de-hors* the service Rules, as after issuance of advertisement, 45 posts of ACF, the ratio of 1:1, *i.e.*, 50% posts for promotees and 50% posts of direct recruits could not be maintained and those who are in the zone of consideration for promotion to the rank of ACF, will suffer hardship. Respondents have

also failed to appreciate that the post of ACF cannot be filled up immediately through direct recruitment, but the same is required to be filled up by giving proportionate quota to direct recruited candidates *vis-à-vis* promotees and this process is to be adopted for further vacancy year. Therefore, the advertisement suffers from gross illegality, as no prudent authority will send such a requisition to be advertised which shall open a Pandora's box for the litigation. Thus, according to the petition, the advertisement dated 30.07.2019 issued by Respondent No.4 is in violation of Article 14, 16 and 21 of the Constitution of India; is violative of Rule 5(4) and Rule 19(2) of the Uttarakhand State Forest Service Rules, 2017; and Rule 8(3) of Uttarakhand Government Servants Seniority Rules, 2002.

11. Petitioner association, soon after the issuance of advertisement preferred a representation dated 13.08.2019 to Respondent No.2, with a copy to Respondent No.3, wherein reasons for stagnation as a result of issuance of advertisement for 45 posts were mentioned. By filling up 45 posts of ACF at once will bring stagnation to the promotee Range Officers. National Forest Commission, 2006 also gave its recommendation in this regard so that such stagnation should not come in the cadre. Later on, through representation dated 23.12.2019, it was brought to the notice of Respondent No.3 that those directly recruited candidates, who shall join the Forest Service in pursuance to advertisement dated 30.07.2019, will be eligible for promotion to the post of DCF for merger in IFS, where only 33 posts are held with the promotees cadre. It will stop the promotion prospects of Range Officers in IFS cadre, which will amount to gross mismanagement of cadre. The petitioner association also gave one more representation on 08.01.2020. The note-sheets of earlier advertisement issued in the year 2012 regarding Range Officers, were also obtained through RTI, wherein out of 122 posts of Range Officers, 62 posts were curtailed and only recruitment was done on 60 posts for better cadre management. A copy of the note dated 25.11.2011 along with advertisement dated 03.03.2012 has been filed as Annexure- 10 (colly) to the writ petition.

12. Counter Affidavits have been filed on behalf of Respondents No. 1 & 2. It is stated, in the counter affidavits thus filed, that the petitioner's apprehension that if selection for the vacancy year 2019-20 is only conducted through direct recruitment without conducting promotion exercise for Range Officers, then in such a situation direct recruit ACFs will become senior to promotee ACFs, which shall affect their further service benefits, is incorrect. Such apprehension of the petitioner is misconceived. True facts are that Respondent No.3, *vide* letter dated 26.04.2019, addressed to Respondent No.2, submitted requisition for filling up 45 posts of ACFs for the vacancy year 2018-19 by direct recruitment. The requisition by Respondent No.3 was accepted by the State Government and *vide* letter dated 09.05.2019, Respondent No.4 was directed to conduct a selection process for filling up 45 vacant posts of ACFs under direct recruitment quota. For selection to the post of ACF by promotion, Respondent No.3 *vide* requisition letter dated 02.07.2019, addressed to Respondent No.2, requested to fill up vacant posts of ACFs under promotion quota. The requisition by Respondent No.3 was accepted by the State Government. The grounds taken by the petitioner in the writ petition are misconceived and based on wrong interpretation of the existing Rules. It is clear, on the basis of plain reading of the Service Rules that in State Forest Service Rules, 2017(hereinafter referred to Forest Service Rules), in Rule 5(4), there is fixed equal quota for selection to the post of ACF (50% by direct recruitment and 50% by promotion from amongst Range Officers). Rule 15 of the Forest Service Rules empowers the appointing authority to determine the number of vacancies to be filled during the course of the year and supply the same to the Commission to conduct selection process. The number of vacancies are to be filled up every year both by direct recruitment and promotion in equal ratio. It is thus left open to the discretion of the appointing authority to fill up the vacancies from any source (by direct recruitment and by promotion). Rule 18 of the Forest Service Rules further clarifies that if in any year recruitments are made by direct recruitment and by

promotion, a combined selection list shall be prepared in such a manner that the prescribed percentage [50% for direct recruits and 50% for promotees as given in Rule 5(4)] of the candidates recruited directly or by promotion is maintained. Rule 18 of the Forest Service Rules states that at no point of time the number of recruits by direct recruitment or by promotion shall exceed the percentage fixed in Rule 5(4). On a plain reading of Rule 5(4), 15 and 18, it is clear that the Rules do not pertain to filling in the vacancies when they occur, but to maintain the proportion between direct recruits and promotees at all times whenever the selection process is conducted. The Rule only requires that appointment between direct recruits and promotees should be so maintained that at no time those recruited either by promotion or by direct recruitment exceed 50% of its quota. The Rules clearly refer to recruitment of candidates to vacancies and the vacancies would be such as State Government wanted to fill in whatever way, either by direct recruitment or by promotion, but such recruitment would not exceed 50% quota fixed in the Rules. The Rules do not provide for ratio to be maintained at the time of appointment but provide only for maintaining the proportion (50% between two sources at all point of time). Thus, in view of the clearly defined Rules, the ground taken by the petitioner that the recruitment exercise should have been taken by fixing the equal ratio of the vacancies for direct recruits and promotees, is not tenable in the eyes of law.

13. Apprehension of the petitioner that its members' seniority will be affected if direct recruits are appointed, leaving the posts fallen vacant in the promotee quota unfilled, is also misconceived. Case of the petitioner is covered by 2nd proviso to Rule 8 (3) of the Government Servants Seniority Rules, 2002, which clearly states that when appointment from any source falls short of the prescribed quota, an appointment against such unfilled vacancies are made in the subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which the appointment is made. 90 posts of ACFs are available in the

cadre strength, of which 50% are to be filled up by direct recruitment and 50% are to be filled by promotion from the post of Range Officers. In the year 2018-19, ACFs only on promotion quota are working in the Forest Department and no ACF under direct recruitment quota is working.

14. C.A. has been filed on behalf of Respondent No.3. According to Respondent No.3, the whole writ petition is thoroughly misconceived and is not maintainable for want of proper application of the Rules governing the field. A clear picture of the Service Rules has been portrayed in the C.A. of Respondent No.3. In fact, C.A. filed on behalf of Respondents No. 1 & 2 is replica of facts and Rules highlighted by Respondent No.3 in its C.A. Reference of the important facts, policy decisions and interpretation of Rules, as highlighted in C.A. of Respondent No.3, shall be given, as and when required, during the course of the discussion.
15. Separate C.A. has been filed on behalf of Respondent No.4 (Uttarakhand Public Service Commission). According to C.A. thus filed, the State Government *vide* letter dated 09.05.2019 desired the Public Service Commission to fill up 50% of the seats against the total of 90 seats as per the provisions of Rule 5(4) of the Uttarakhand State Forest Service Rules, 2017. In response, the Commission issued letter dated 13.06.2019, after which an amended letter dated 03.07.2019 was given to the Commission. Accordingly, *vide* advertisement dated 30.07.2019 (enclosed as Annexure: A-2 to the writ petition) was published for direct recruitment to the post of ACFs. The direct recruitment of ACFs has been initiated for the first time in State of Uttarakhand. According to the C.A. filed on behalf of Respondent No.4, the Rule 19(2) of the Forest Service Rules will not come into play. Uttarakhand Public Service Commission is an examining body and has acted as per the requisition sent by the State Government. Although, the C.A. has touched upon other facts and legal aspects of the writ petition, but, primarily, has

projected itself as an examining body, which acts at the behest and as per the requisition sent by the State Government.

16. Rejoinder affidavits have been filed by the petitioner as against the counter affidavits filed by Respondents No. 1 & 2 and Respondent No.3, reasserting the facts contained in the writ petition and contradicting the stand taken by the respondents in their C.As.
17. Supplementary affidavit has also been filed on behalf of the petitioner enclosing copy of English translation of a few documents, Hindi version of which was filed during winter vacations of Hon'ble High Court of Uttarakhand.

Order passed by Hon'ble High Court

18. When pleadings were exchanged, Hon'ble High Court of Uttarakhand at Nainital passed an order on 30.09.2020, as follows:

“During the course of hearing this matter, it was brought to the notice of the Court that the matter falls within the jurisdiction of the Uttarakhand Public Services Tribunal. Therefore, it is submitted that the Uttarakhand Public Services Tribunal would have jurisdiction over this matter. However, on hearing learned counsels and keeping in mind that the entire pleadings have been exchanged, we deem it just and necessary to direct that the instant petition be transferred to the file of the Uttarakhand Public Services Tribunal; both the parties shall appear before the Tribunal on 5th October, 2020; and from that day onwards, the Tribunal shall hear both the parties physically or through video-conferencing and pass orders in accordance with law within a period of two weeks from that day. The Uttarakhand Public Services Commission is directed not to precipitate the matter till the disposal of the matter before the Tribunal.

2. Registry is directed to transmit the records forthwith to the Uttarakhand Public Services Tribunal for further action.

3. The petition stands disposed of accordingly.”

19. Sri Sandeep Tiwari, Advocate, entered appearance for the petitioner before this Tribunal, Sri V.P.Devrani, Assistant Presenting Officer appeared for Respondents No. 1, 2 & 3 and Sri N.S.Pundir, Advocate, appeared for Respondent No.4 (Uttarakhand Public Service Commission)— all through Video Conferencing.

20. Heard submissions of Ld. Counsel for the parties at length on 05.10.2020. Remaining arguments were heard on 06.10.2020. Hearing was concluded on 06.10.2020. Parties were given opportunity to file their written submissions and extracts of Case Laws on 07.10.2020. Petitioner and respondents no. 1, 2 & 3 did the same. This Tribunal was directed by Hon'ble High Court to pass orders in accordance with law, within a period of two weeks from 05.10.2020. Accordingly, an effort is being made to resolve the dispute between the parties, within the prescribed time-frame.

Rival Submissions

(a) Petitioner

21. (i) This Petition is filed with the prayer to quash the impugned advertisement dated 30.07.2019 issued by Uttarakhand Public Service commission for recruitment to the post of Assistant Conservator of Forest, wherein 45 vacancy against the quota of Direct Recruitment were Advertised in one go. It was further prayed that respondents be issued directions to recalculate the vacancies as per advertisement dated 30.07.2019 and accordingly convene the Departmental Promotion Committee for filling proportionate quota at par with direct recruits in term of sub rule (4) of Forest Service Rules.

(ii) The facts of the case are that petitioners are Forest Range Officers association. The next promotional post for Forest Range Officer is Assistant Conservator of Forests (hereinafter called as ACF). As per rule 5 (4) of Forest Service Rules, 50% posts of ACF are to be filled through direct recruitment and 50% of posts are to be filled by promotion from amongst Forest Range Officers who have completed minimum 08 years of service, on the first day of the year of recruitment on seniority come fitness basis.

(iii) Forest Range Officers being the feeder cadre of ACF has their seniority list and seniority of direct candidate is required to be prepared

on the basis of merit list of the examination. Inter-se-seniority of both the cadre is required to be prepared on cyclic order in the ration of 1:1 promotee being the first and direct recruit be the second and so on. In the year 2000 when State of Uttarakhand was formed the initial posts of ACF were 97 which was later on curtailed to 90. Out of 97 initial posts, state of U.P has allotted 82 ACFs in the proportionate quota in terms of earlier U.P Forest Service Rules 1993. No Direct recruitment for the post of ACF was carried out after formation of state. The direct recruited ACF were consequently retired up to the vacancy year 2015-16. On the other hand the officers against promotion quota were filled on regular interval and in the beginning of 2018-19, the 45 ACF were posted against the promotion quota. At present 28 ACF are posted against the promotion quota.

(iv) Respondents have not paid any heed to look after the proper cadre management for the post of ACF. Anticipated vacancies of each year are required to be calculated in the preceding years and accordingly recruitment process for direct candidate and DPC for promotee quota is to be carried out for equal number of candidates, and accordingly posts are to be filled with proportionate quota. But due to perpetual fault of respondents the situation of cadre management arose where on the one hand all the vacancies of direct candidate remained unfilled yet a good number of vacancies against the promotee quota is also required to be filled.

(v) Deep impact of this situation would be that if the vacancy of direct recruitment will be conducted in one go, the 45 ACF recruited through direct recruitment will be senior to the next batch of promotee officers by virtue of their joining in the cadre. The existing promotee officers will be retired in 2 to 3 years and after that a situation will arise where 45 direct recruited officers will be on top of the seniority list followed by the 45 promotee officers, which will lead to following anomaly :-

ACF is the feeder cadre for the post of Deputy Director, Joint Director and Additional Director in the state Forest Service cadre. These posts will be held by the directly recruited candidates only and they will stagnate the chance of promotees range officers as they are in the lesser age group.

On the other hand ACF is also a feeder cadre post for the rank of Deputy Conservator of Forest in Indian Forest Service (IFS) cadre, as 33% of quota in IFS Cadre for the post of DCF is required to be filled by substantively appointed ACFs. In the hierarchal ladder the IFS cadre has promotion prospects of DCF, CF, CCF, PCF & PCCF. As a result of this recruitment the higher posts will be occupied by the Direct recruits only.

(vi) A committee formed for implementation of recommendation of National Forest Commission has also raised serious concern for cadre mismanagement and accordingly given its opinion to fill the vacancies on proportionate basis. The essence of provisions in the Constitution is equality of opportunity in Government service as per the provisions of Article 14 and 16 of the Constitution of India. That is why procedure of rotational quota in service rules is inserted as to maintain 1:1 ratio among direct recruits and promotee so that no stagnation shall come in the cadre. Equal number of vacancies in the promotion quota can be filled by giving relaxation to Forest Range officers in 8 years mandatory residency period. Still respondents can maintain the rota quota rules and accordingly a chart to this effect is prepared and marked as Annexure RA.3 to both the rejoinder affidavits filed by the petitioner.

(vii) The joint interpretation of Rule 5(4), 17(1), 18, 19(2), 22 and Rule 8(3) of Uttarakhand Government Servant Rules 2002 clearly stipulates that the rule of rotational quota is to be maintained. Hon'ble Apex Court in catena of judgments has held that rule of rota quota is mandatory and not discretionary. Moreover the exigency of services is not a ground to break this rule.

(b) Respondents

22. (i) Ld. APO on the other hand, submitted that by means of captioned writ petition the petitioner union is challenging the advertisement dated 30-07-2019 issued by Uttarakhand Public Service Selection

Commission for direct recruitment (different from promotion quota of the petitioners) on the post of Assistant Conservator of Forest (hereinafter referred to as ACF), under the provisions of rules 16 (1) of the Forest Service Rules. The petitioner union's allegations that the advertisement issued is in violation of the provision of the Forest Service Rules, are hereby vehemently denied.

(ii) That as preliminary objection, the respondents submit that the present writ petition filed by the petitioner union is not maintainable. Since, members of the petitioner union on date are working on the post of Range Officers whereas they by means of this writ petition are challenging advertisement and selection process being conducted for the post of ACF. On date the cadre of petitioner is that of Range Officers and they are governed by the separate set of service rules whereas selection to the post of ACF is governed by separate set of service rules known as Uttarakhand State Forest Service Rule, 2017. Since, on date, legally no rights have accrued to the petitioners to be considered for the post of ACF therefore, the petitioner have no locus to challenge the advertisement dated 30-07-2019 merely based on future assumption/presumption/apprehension that their rights will be affected if , the selection process for direct recruitments to the post of ACF concludes.

(iii) Further, in view of schedule to Section 4-A (5)(a) the U.P Public Services (Tribunal) Act, 1976, it is apparent that the relief "issue a writ or order in the nature of certiorari quashing the impugned advertisement dated 30-07-2019" appears to be not maintainable before the Tribunal.

(iv) As per Rule 5 (4) of the Forest Service Rules, the cadre of ACF consists of total 90 posts of which 50 % are to be filled by direct recruitment and 50% are to be filled by promotion from among Forest Rangers who have completed minimum 8 years satisfactory services on the first day of selection year. By the advertisement dated 30-07-2019, 45 posts of ACF under direct recruitment quota has been advertised . Under the direct recruitment quota of ACFs no selection process was ever conducted after the creation of the State of Uttarakhand. As a

result long standing backlog of vacancies over the period of 20 years, 45 posts of ACFs were advertised for selection under direct recruitment quota i.e. 50% of the total cadre strength. Further, for non selection under the direct recruitment quota, no ACF is working at present under the quota for direct recruit ACFs. Moreover after the creation of State of Uttarakhand no selection for direct recruitment was ever conducted.

(v) Rule-15 is a part of direct recruitment procedure and does not relate to promotion procedure. Therefore, the appointing authority has powers to determine/calculate the number of vacancies to be filled by direct recruitment during the course of the year. Since, at present all posts available for the ACF under the direct recruitment quota were vacant and considering long standing backlog vacancies, the appointing authority sent a requisition for conducting selection process on all vacant posts under the direct recruitment quota. Rule-15 has been followed in true spirit.

(vi) Rule-18 of the Forest Service Rules, deals with the situation where selections are made both for direct recruitment and by promotion. In the present matter the selection process is separately being conducted for the appointments to the posts of ACF under the direct recruitment quota. Rule 18 makes it clear that when selection process is being conducted separately by direct recruitment and separately by promotion process, prescribed percentage (50%) of the quota should not be exceeded. The contention of the petitioner that the criteria of equal ratio between the direct recruits and promotees should be maintained is misconceived.

(vii) Maximum number of members of petitioner union are of the 2014 batch. They will be eligible for promotion to ACF after completion of mandatory period of 8 years satisfactory service only in year 2022. Remaining members of petitioner association who are appointee of 2018 batch will be eligible for promotion to the post ACF after completing 8 years satisfactory service only in year 2026. Even if 45

posts, as advertised for the direct recruits, are filled up in a staggered manner, even then the members of the petitioner association cannot become senior to the direct recruits. Therefore, in such a situation, there is no application of Rule 19 (2) of 2017 Rules. There is no violation of Rule-19(2) of the 2017 Rules.

(viii) The apprehension of petitioner that their future promotion will get affected if all the posts of direct recruits ACF are filled by one selection process, is misconceived. In this context, it is clarified that the ACFs who are unable to get inducted to All India Forest Services (IFS) have the opportunity of promotion to the post of Deputy Director (a post equal in pay scale to the post of DCF under the IFS). The next posts of promotion are Joint Director and Additional Director under State Forest Service Rules. At present 35 posts of Deputy Directors are available in the cadre structure of State Forest Services and 05 posts of ACF are available for induction to the IFS Cadre.

(ix) ACFs' direct recruitment examination is in advanced stage. Preliminary written examination has been conducted and the results are declared. The dates for conducting the main examination have been declared. Petitioner union has no legal right to challenge the advertisement, especially when many of its members have already appeared in the preliminary examination, have qualified and will be appearing for the main written examination.

23. Forest Department is responsible for conservation of Forests which is possible only when there is efficient manpower.

24. In the very beginning, Ld. A.P.O. objected to the maintainability of present claim petition, inter alia, on the ground that the Claim Petition by employees' union is not maintainable before this Tribunal. It may be noted here that the Writ Petition was filed by the petitioner before Hon'ble High Court of Uttarakhand at Nainital, which Writ Petition has been transferred to this Tribunal *vide* order dated 30.09.2020. The Writ Petition was, accordingly, reclassified and renumbered as Claim Petition

No. 88/DB/2020. We therefore, do not think it necessary to delve on the issue any further. We are deciding the claim petition on merits, ignoring trifles, in this particular case.

(c) Public Service Commission

25. Respondent No.4, Uttarakhand Public Service Commission is an examining body. Ld. Counsel for Respondent No.4, therefore, submitted that the Commission, in so far as the appointments are concerned, acts at the behest of the State Government- Respondents No. 1 & 2. Since a requisition was sent by the State Government to hold examination for the appointment on the posts of 45 ACFs, therefore, the said examination is being conducted by the Uttarakhand Public Service Commission.

Synthesis

26. Whether any legal right has accrued to the petitioner to challenge the advertisement, is open to question. The petitioner appears to have processed on future assumptions and apprehensions which might prove to be true or may just come out to be damp squib. Apprehension is that when selection process of direct recruitment to the post of ACFs concludes, Range Officers' promotional prospects will be adversely affected. *Quia timet* ?

27. The cadre of ACF, in State of Uttarakhand, consists of 90 posts, 50% of which are to be filled by direct recruitment and remaining 50% are to be filled by promotion from amongst Forest Range Officers, who have completed minimum eight years' satisfactory service on the first day of the selection year. No selection process was ever conducted for direct recruitment quota of ACFs after creation of the State of Uttarakhand. On account of long standing backlog of vacancies over the past 20 years, 45 posts of ACFs were advertized for selection under direct recruitment quota. It has come in the pleadings that, for non-selection under the direct recruitment quota, no ACF is working at present under

the quota for direct recruitment. Non-selection under direct recruitment quota resulted in long standing vacancies.

28. The appointing authority has power to determine/ calculate the number of vacancies to be filled up during course of the year. Since all the posts available for ACFs under the direct recruitment quota are vacant, the appointing authority thought to send a requisition for conducting selection process on all vacant posts under direct recruitment quota, under the Forest Service Rules.
29. Rule 18 of the Forest Service Rules makes it clear that when selection process is being conducted separately by direct recruitment and separately by promotion process, the vacancies are not to exceed prescribed percentage (50%) of their quota. This fact is under no dispute that out of a cadre of 90 ACFs, 45 belong to direct recruits and 45 to the promotee Range Officers, therefore, there appears to be no violation of Rule 19(2) of the Forest Service Rules if the Government has sent requisition for 45 direct recruits (direct ACFs)
30. Preliminary written examination for ACFs' direct recruitment has been conducted and result of the same has also been declared. The dates for conducting main examination have been fixed. The Tribunal has been informed that many of the members of petitioner union have participated in the preliminary examination and have also qualified for the main examination.
31. Primarily, the grievance of the petitioner is for advertizing 45 vacancies of direct recruitment quota in one go. What the petitioner union wants, is that the respondents be directed to recalculate the vacancies and, simultaneously, convene the departmental promotion committee for filling up the proportionate quota at par with direct recruits in terms of sub-rule (4) of Rule 5 of the Forest Service Rules. The import of Rule 5 of the Forest Service Rules has been quoted by the Tribunal in one of the foregoing paragraphs of this judgment. Forest Range Officers constitute the feeding cadre of ACF (for promotional

quota). Seniority of the direct candidates is required to be prepared on the basis of merit list prepared by the examining body. *Inter se* seniority of both the cadre is required to be prepared in cyclic order in the ratio of 1:1, promotee being the first and direct recruit to be the second, and so on.

32. The thrust of the petitioner, therefore, is that the anticipated vacancies of each year were required to be calculated in the preceding year and accordingly, recruitment process for direct candidate and DPC for promotees was to be carried out for equal number of candidates so that the posts were and are filled up with proportionate quota. The grievance of the petitioner union is also that due to perpetual default of the respondents, the problem of cadre mismanagement arose, where on the one hand, all the vacancies of direct recruits remained unfilled and on the other hand, a good number of vacancies against promotee quota is also required to be filled up. Issue of proper cadre management for the post of ACFs has thus been highlighted. Issue of rotational quota, no doubt, is required to be maintained.
33. The word 'if' is used in Rule 18 of the Forest Service Rules, to say that, if in any year of recruitment, appointments are made by direct recruitment and by promotion, a combined selection list shall be prepared by taking the names of the candidates from the relevant list, in such a manner that the prescribed percentage of candidates recruited directly and by promotion, is maintained, the first name in the list is of the person appointed by promotion. In the instant case the Government has advertized 45 vacancies for recruitment to the posts of ACFs within the prescribed quota. Had the appointments been made both by direct recruitment and by promotion, which is not being done at present, the Rule says that a combined selection list shall be prepared as per Rule 18 of the Forest Service Rules.
34. Further, in Rule 19(2), the word 'where' has been used to say that where in the year of recruitment, appointments are to be made both by direct recruitment and by promotion, regular appointments shall not

be made unless selection is made from both the sources and/or combined list is prepared in accordance with Rule 18. The words 'appointments are to be made' are used. The Rule does not say that essentially the appointments shall be made both by direct recruitment and by promotion in the year of recruitment. It is not mandatory for the Government to make appointments both by direct recruitment and by promotion in the year of recruitment.

35. Uttarakhand Government Servants Seniority Rules, 2002 will come into play only when the appointments are made. Here, at present, only an exercise is being done to make an appointments for the posts of ACFs. Seniority list has not yet been prepared. Again, Rule 8(3) of the Uttarakhand Government Servants Seniority Rules, 2002 uses the word 'where'. Where appointments are made both by direct recruitment and by promotion on the result of any one selection, the seniority of promotes *vis-à-vis* direct recruits shall be determined in a cyclic order, the first being a promotee as far as may be in accordance with the quota prescribed for two sources. Here, (i) the appointments have not been made; (ii) there is no question of 'any one selection' in the instant case; (iii) appointments are being made only for direct recruits; (iv) the question of determination of the seniority of promotees *vis-à-vis* direct recruits, may be made in a cyclic order only when such appointments are made.

36. But yes, the petitioner has provided enough food for thought for re-thinking that DPC for eligible Range Officers and appointment of direct ACFs should be made simultaneously to maintain the ratio of 1:1. At present, such an exercise is not being done. The tribunal has been informed that eligible Range Officers are not there and, therefore, such an exercise cannot be undertaken at this juncture. In such circumstances, what should be done? The concept of cadre-management also comes to fore, when we heard the arguments of Ld. Counsel for the parties and also discussed the issue of promotion of Range Officers, for the sake of better cadre management.

37. In the decision of *A.K.Subraman & Others vs Union of India, (1975) 1 SCC 319*, it has been observed by Hon'ble Apex Court that when recruitment is from two or several sources, it should be observed that there is no inherent invalidity in introduction of quota system and to work it out by a Rule of Rotation. The existence of a quota and rotational Rule, by itself will not violate Article 14 or Article 16 of the Constitution of India. It is the unreasonable implementation of the same which may, in a given case, attract the frown of the equality clause.
38. In the decision of *S.C.Jaisinghani vs Union of India, AIR 1967 SC 1427*, the Hon'ble Apex Court had observed that the Quota Rule is legally binding on the Government. Para 15 of the said decision is very important in the context of present controversy. The same reads as below:
- “We should also like to suggest the Government that for future years, roster system should be adopted by framing an appropriate Rule for working out the quota between the direct recruits and the promotes and that a roster should be maintained indicating the order in which appointments are made by direct recruitments and by promotion in accordance with percentages fixed under the statutory Rules for each method of recruitment.”
39. Further, in the decision of *Bishan Sarup Gupta vs Union of India and connected Civil Appeals, (1973) 3 SCC 1*, the Hon'ble Supreme Court has clearly observed that the Court would not take upon itself what the Government is required to do. In the language of Hon'ble Apex Court, “it is wrong to assume that the Supreme Court would take upon itself to do what the Government is required to do under Rule.....”It is the prerogative of the Government, as reflected in the Rules.
40. In the decision of *Gonal Bhimiappa vs. State of Karnataka, 1987 (Supp) SCC 207*, Hon'ble Supreme Court, in para 23 of the judgment observed that, “no justification was shown to us as to why the State of Karnataka failed to comply with its obligation of making recruitment in terms of the quota. Once the State frames Rules, they are binding on

the State and like individuals, the State has got to regulate its conduct in accordance with the Rules— nay, the State has observed it all the more. We hope and trust that the State of Karnataka in the years ahead, will comply with the quota Rule with regularity so that litigation of this type may not arise again.....”

41. In the decision of *Arvinder Singh Bains vs. State of Punjab & Ors*, (2006) 6 SCC 673, the Hon’ble Apex Court has observed that rota -quota must necessarily be reflected in the seniority list and any seniority list prepared in violation of rota -quota, is bound to be negated.
42. Although other decisions have also been placed before us, but we have highlighted only those decisions here which are found useful for facilitating our discussion.
43. There are two sources of recruitment for the posts of ACFs, (i) by promotion from existing cadre of Range Officers, and (ii) by direct recruitment of ACFs through Public Service Commission. The classification should therefore be recognized and respected for the purpose of ensuring Rota -Quota Rule.
44. We make an attempt to strike a balance between two conflicting interests in the following narration.

Conclusions drawn

45. We put it to the learned counsel for the petitioner that if the direct recruitment of ACFs on the 45 posts had been made over the past few years, then all these 45 posts of direct recruits would have been filled and they would have been even more senior to the recruits now going to be selected in pursuance of the impugned process of recruitment. Learned counsel for the petitioner agreed that it could have been done by the State Govt. and there is no ground for objecting to the same. He further stated that all the promoted ACFs, as on today, will retire in the next couple of years and all the future promoted ACFs (promoted rangers) will be junior to these 45 directly recruited ACFs and further

promotion prospects of these promoted ACFs will be heavily compromised. However, this situation would have been still there had the 45 direct recruits been appointed over the past few years.

46. The State is well within its right to directly recruit 45 ACFs in one go. However, it will lead to cadre mismanagement, more so, for the directly recruited ACFs. It is understandable that most of them will continue in service and only a few will leave the service and migrate to other avenues. The whole cadre of direct recruits will consist of only one batch and when future promotions will take place, only a small percentage of the batch would be getting promotions leaving the others disgruntled and situations may arise when many persons of the same batch will have to work under their batch-mates, which will be a major cause of their dissatisfaction.

47. Even the seniority gap of one batch (selection year) between two persons is sufficient to maintain the morale of the junior person when the senior is promoted or when he has to work under him. Therefore, it is advisable that the direct appointment of 45 ACFs be staggered over a period of some years. Seeing the urgent requirement of Govt. for filling the posts in the interest of work, the batch size cannot be kept too small. In our view, it would be ideal to spread the appointment process over two or three selection years. We also understand that to issue a fresh advertisement and conduct a fresh selection process for every batch would not only consume lot of time for every batch but would also put a heavy burden on the resources of the Public Service Commission with thousands of candidates applying and the entire selection process being conducted every time. It will also inordinately delay the availability of the direct recruits in required numbers. The advertisement for the current selection process was issued in July 2019 and after the preliminary examination, the main examination is yet to be conducted. We therefore, recommend that the Uttarakhand Public Service Commission may go ahead with the selection of 45 persons, but the Govt. may issue the appointment orders in phases.

48. Assuming that the above selection process would be completed in this selection year, the Govt. may issue appointment orders to only 17 persons in this selection year. This will be in line with the demand of the petitioner that since there were only 17 vacancies in promoted quota, therefore, only 17 direct recruitments be made. In the next selection year, there are going to be 11 vacancies in the promotion quota which exist even today (45 total posts minus 34 posts filled) plus vacancies due to future retirement of promoted ACFs. We recommend that the Govt. may issue appointment orders to the next 14 selected candidates of direct recruitment quota in the next selection year (2021-22) and also make promotions in the available vacancies of the promotion quota and issue their orders fixing their seniority according to the *rota-quota* system i.e. first person being promotee, second direct recruit and third promotee and so on. Appointment orders of the remaining 14 direct recruits from the list of selected candidates may be issued in selection year 2022-23 along with the promoted ACFs again following the system of *rota-quota*.
49. The above staggering of the appointment process in the direct recruitment quota will not only lead to better intermixing of the directly recruited and promoted ACFs but also better discipline, batch hierarchy and morale in the entire ACF cadre.
50. If the government wants to appoint much bigger number of the direct ACFs in the first go, then that number may be limited to 34 inasmuch as there are now 34 promoted ACFs and the appointment orders of the remaining direct recruits may be issued in the next selection year i.e. 2021-22 along with the promotion orders of the Rangers to the post of ACFs in the promotional quota, while maintaining their seniority according to *Rota-quota* system.
51. It is also to note that in the recent promotional exercise out of 17 vacancies, only 6 vacancies could be filled because, for other vacancies, eligible candidates were not there. Keeping in view the requirement of more personnel at ACF level, the government may also consider giving

one time relaxation as per rules in qualifying service etc. to rangers so that more number of posts in the promotion quota of ACF can also be filled in future.

52. Orders accordingly.
53. The claim petition thus stands disposed of. No order as to costs.
54. Registrar I/C shall ensure that copies of this judgment are supplied to Ld. Counsel for the parties today itself, free of charge.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: OCTOBER 12, 2020
DEHRADUN

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