



GOVERNMENT OF JAMMU AND KASHMIR
FOREST, ECOLOGY & ENVIRONMENT DEPARTMENT
Civil Secretariat, J&K, Jammu /Srinagar

Subject: - Consideration of claim of applicants in compliance with the order dated 12.10.2023 passed by the Hon'ble Tribunal in OA No. 1357/2023 titled Munish Bhardwaj and others Vs. Union Territory of J&K and others.

Government Order No. 283- JK(FST) of 2024

Dated: - 05.12.2024

Whereas, the applicants have approached the Hon'ble Tribunal through the medium of an Original Application that has been numbered as OA No. 1357/2023 titled Munish Bhardwaj and others Vs. Union Territory of J&K and others, seeking therein following reliefs:-

(i) Directing the respondents to integrate different wings functional under the Administrative Control of the Forest, Ecology and Environment Department into one, i.e as these exist in other states/UTs through appropriate mechanism to be further governed necessarily by a common set of recruitment rules..

(ii) Directing the respondents to thereafter notify/treat members of such integrated common service as constituting the members of State Forest Service (SFS) to be further used as a feeding cadre for the purpose of induction into Indian Forest Service in accordance with prevalent rules governing the field with prospective effect.

(iii) Directing the respondents to maintain status-quo as it exists as on date with respect to induction of members of State Forest Services into India Forest Services (IFoS).

(iv) Directing the respondents to decide the representations dated 08.10.2023 filed by the petitioners before the official respondents and conclude the process initiated in terms of Government Communication dated 07.10.2023 within some reasonable time frame.

(v) Directing the respondents to reserve 10 posts of the Indian Forest Services (IFoS) in favour of the applicants till the final adjudication of the O.A.

Whereas, the Hon'ble Tribunal has been pleased to pass an order dated 12.10.2023 in the afore-cited matter, which reads as under:-

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"Issue notice to respondents. Mr. Raghu Mehta, learned Sr. Central Government Standing Counsel accepts notice on behalf of Respondent No. 1. Mr. Sudesh Magotra, learned Additional Advocate General accepts notices on behalf of Respondents No. 2 to 4. Registry is directed to issue notice to Respondent No.5 returnable by the next date of hearing.

List on 06.12.2023."

In the meanwhile, respondents are directed to decide the pending representation of the applicant. In case, any induction is made, the applicants shall be at liberty to approach this tribunal."

Whereas, the constitution of "State Forest Service" under and in terms of sub-clause (i) of clause (g) of rule 2 of the Indian Forest Service (Recruitment) Rules, 1966, for induction into Indian Forest Service by promotion, which involves a policy decision and is the exclusive domain of the Government. It is no longer *res integra* that making a policy is not within the domain of Judiciary or a quasi judicial body functioning within the parameters set out in the governing legislation.

Whereas, so far in the past, without defining the State Forest Service, only as a convention, the Gazetted officers from the J&K Forest (Gazetted) Service were arbitrarily and illegally being considered for induction into Indian Forest Service and Gazetted members of other services/cadres falling within the domain of Forest, Ecology & Environment Department were being excluded from the zone of consideration, which constrained the members of some allied services of Forest Ecology & Environment Department, especially the members of J&K Wildlife (Gazetted Service) to file a writ petition on the subject, seeking their inclusion into the State Forest Services, for the purpose of induction into Indian Forest Service by promotion, which was disposed of by the Hon'ble Court vide its order dated 12.02.2019 with the direction to respondents to notify "State Forest Service" as required in terms of rule 2 (g) (i) of the Indian Forest Service (Recruitment) Rules, 1966 read with Regulation 5 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966 and to consider the petitioners as members of the said State Forest Service. Therefore, the issue that needs to be seen is whether without defining the "State Forest Service" under extant rules, the consideration of members of J&K Forest (Gazetted) Service only, for induction into Indian Forest Service by promotion, to the exclusion of members of other allied services under the administrative control of Forest, Ecology & Environment Department, is legally permissible;

Whereas, aforesaid order dated 12.02.2019 was challenged by some members of J&K Forest (Gazetted) Service by filing LPASW No. 33/2019 titled Abhijeet







Joshi & others Vs. Union of India and others. The matter is presently sub-judice before the Division Bench of Hon'ble High Court of J&K and Ladakh at Srinagar.

Whereas, in view of the importance of the matter for proper cadre management, the pending litigation in the matter, and the fact that the issue has remained unresolved from 2013, the matter was deliberated in a series of meeting with all concerned, including Department of Law, J & PA and General Administration Department. However, the issue is still under consideration of the Government and no formal decision with regard to the constitution of State Forest Service has been taken by the Government, so far. As already stated above, constitution of State Forest Service involves a policy decision that falls within the exclusive domain of the Government.

Whereas, minutes of meeting, referred to by the applicants, are internal documents related to the process of constitution of State Forest Service, which is yet to culminate into any formal decision and until and unless the minutes of meeting is converted into a formal order by the Government, same does not give any cause of action to any person.

Whereas, the Hon'ble Supreme Court of India in case titled ***Union Territory of Ladakh and others Vs. J&K National Conference and another, Civil Appeal No. 5707 of 2023 [Special Leave Petition (Civil No. 18727 of 2023)]*** has, *inter alia*, observed in para 17 of the judgment dated 06.09.2023 that "*...the legal opinion by the Law Department remains internal advice and advice alone and, as such, the learned ASG was correct in contending that the same would not create/confer any right in favour of R1...*"

In ***Mahadeo Vs. Sovan Devi 2022 SCC Online SC 1118***, the Hon'ble Supreme Court after considering various case laws has also held that "*...it is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right...*"

Whereas, no formal decision has been taken on the subject. Therefore, in the absence of any formal decision by the Competent Authority in the present case, mere minutes of meeting would not give any cause of action to the applicants.

Whereas, the other grievance of the applicants with regard to the integration of all services connected with the forestry also involves a policy decision and a decision yet to be taken. Further, the issue regarding integration of all services connected with the forestry is also under consideration of the Government and no formal decision has been taken in this regard as well, which may have given any cause of action to the applicants;




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Whereas, both the issues viz., constitution of State Forest Service and integration of all services connected with the Forestry require a policy decision, which falls within the exclusive domain of the Government and cannot be done according to the choice of applicants or in any manner suggested by the applicants. Any cause of action in favour of the applicants or any right to be agitated before this Hon'ble Tribunal cannot be said to have arisen in anticipation of a decision that is yet to be taken. Further, the Hon'ble Supreme Court vide its judgment dated 14.12.2023 passed in Civil Appeal No. 14524/2015 titled **Union of India and others Vs. AIR Commodore NK Sharma** has recently clarified that Tribunals functioning under the strict parameters of their governing legislations cannot direct the government to make policy.

Now, therefore, keeping in view the afore-stated position, claim of the petitioners having been considered in deference to the order dated 12.10.2023 passed by the Hon'ble Central Administrative Tribunal, Jammu Bench in OA No. 1357/2023 (Jammu) is found devoid of merits. Accordingly, the claim of the petitioners is rejected.

By Order of the Government of Jammu and Kashmir.

Sd/-

(Shailendra Kumar), IAS

Principal Secretary to the Government

No: FST-Lit/64/2024-02

Dated:-05.12.2024

Copy to the:-

1. Advocate General, Jammu and Kashmir.
2. Principal Chief Conservator of Forests/HoFF, J&K.
3. Joint Secretary (J&K), Ministry of Home Affairs, Government of India.
4. Director, Archives, Archaeology and Museums, J&K.
5. Officer on Special Duty (OSD) with Hon'ble Minister, Forest, Ecology & Environment Department, Government of Jammu and Kashmir, for kind information of the Hon'ble Minister.
6. PS to Principal Secretary to the Government, Forest, Ecology & Environment Department
7. I/c Website/Government Order file (w.3.s.c)/Stock file.



(Raj Kumar) 05.12.24

Under Secretary to the Government