

HIGH COURT OF ORISSA
Bench: JUSTICE SASHIKANTA MISHRA
Date of Decision: 10.11.2023.

W.P.(C) No.7388 OF 2023
An application under Articles 226 and 227 of the Constitution of India

Prakash Chandra Das and others ... **Petitioners**

versus

State of Odisha and others ... **Opposite Parties**

Legislation:

Articles 226 and 227 of the Constitution of India
Section 4 of the Odisha Reservation of Vacancies in Posts and Services (Scheduled Castes and Scheduled Tribes) Act, 1975
Rule 5, 14 of the Odisha Forest Service Group-A (Senior) (Method of Recruitment and Conditions of Service) Rules, 2015
Articles 14,16, 16(4A) of the Constitution of India
Odisha Forest Services Group-A (JB) (Recruitment and Condition of Services) Rules, 2013

Subject: Issue of promotional exercises for the position of Deputy Conservator of Forests in the Forest Department, Government of Odisha. The core issue pertains to the application of eligibility criteria versus seniority, and the indirect application of reservation principles in promotions.

Headnotes:

Promotional Exercise – Eligibility Criteria and Seniority – Challenging the communication for promotion to Deputy Conservator of Forests (DCF) based on eligibility without considering seniority – Eligibility criterion under Rule 5 of the 2015 Rules mandates five years of continuous service in the grade of OFS Group-A (JB) – Petitioners, senior in service but not meeting the eligibility criterion, challenge the promotion of juniors. [Para 2, 3, 4, 11, 18]

Maintainability – Locus Standi of Petitioners – Petitioners have locus standi to challenge the promotion process as the proposed promotion of their juniors would affect their inherent seniority and career progression. [Para 7, 10]

Reservation in Promotion – Applicability and Legal Position – Promotion to DCF not proposed on the basis of reservation but on eligibility criteria – Relevance of the catch-up principle in restoring seniority and its potential nullification by the proposed promotion process. [Para 6, 12, 16, 17, 20]

Rule of Law and Constitutional Principles – Balancing Articles 14 and 16 of the Constitution – Seniority to take precedence over eligibility to maintain the balance between equality and affirmative action – Indirect application of reservation principle through eligibility criteria held as contrary to constitutional principles. [Para 18, 20, 21]

Directive to Authorities – Quashing the impugned communication and directions for future promotion exercises – Authorities directed to consider relaxation of eligibility criteria or defer the promotion exercise to include all eligible officers as per the final gradation list. [Para 21, 22, 24]

Decision – Impugned communication quashed – Directions issued for filling up the posts in the promotional cadre (DCF) in line with the observations made in the judgment. [Para 24]

Referred Cases:

- Pravakar Mallick v. The State of Orissa (2020) 15 SCC 297
- M. Nagaraj v. UOI (2006) 8 SCC 212
- Indra Sawhney v. UOI AIR 1993 SC 477
- Uttar Pradesh Power Corporation Limited v. Rajesh Kumar (2012) 7 SCC 1
- Ajit Singh Januja v. State of Punjab (1996) 2 SCC 715
- State of Tamil Nadu and others v. K. Shyam Sundar and others (2011) 8 SCC 737
- State of Odisha v. Amar Chhatoi 124(2017) CLT 976

JUDGMENT

Sashikanta Mishra,J. The Petitioners, who are 8 in number

have filed this Writ Petition with the following prayer;

“Under the facts and circumstances as narrated above, this Hon’ble Court may graciously be pleased to issue notice to the Opp. Parties and after hearing the parties, be pleased to:

A. *Quash the communication dated 03.03.2023 issued by OP No.1 under Annexure-1 so far as it relates to the promotional exercise of O.P. Nos.4 to 34 as the same is contrary to section 4 of the ORV Act and the judgment of the Hon’ble Supreme Court in the case of Pravakar Mallick v. The State of Orissa (2020) 15 SCC 297).*

AND/OR

B. Direct the O.P. Nos. 1 to 3 not to promote Opp. Party No. 4 to 34 by resorting to reservations in promotions without recasting the gradation list under Annexure-2 keeping in mind the judgment of the Hon'ble Supreme Court in the cases of Pravakar Mallick v. State of Orissa, (2020) 15 SCC 297, (Paras 15, 23 & 26), M. Nagaraj v. UOI. (2006) 8 SCC 212 (Paras 85, 121 to 123), Indra Sawhney v. UOI AIR 1993 SC 477 (Para 700), Uttar Pradesh Power Corporation Limited v. Rajesh Kumar, (2012) 7 SCC 1 (Paras 81 to 86);

AND/OR

C. Direct the O.P No. 1 to issue a fresh communication for promotion to the post of Deputy Conservator of Forest OFS Group-A (SB) in the Forest, Environment and Climate Change Department, Govt. of Odisha without considering the aspect of reservation in promotion for such posts and by considering the petitioners as senior to the Opposite Party Nos.4 to 34;

AND/OR

D. Pass any other order/orders as this Hon'ble Court deems fit and proper;

And for which act of kindness, the humble petitioners as in duty bound shall ever pray".

2. Though much has been pleaded by the parties but

in view of the issues involved, it is not necessary to refer to the same in extenso. It would suffice to refer to

the basic facts only as the same are not generally disputed.

3. **Factual matrix:**

All the 8 Petitioners belong to the general category and were initially appointed as Forest Rangers in the year 1993 and 1994 on different dates. They were subsequently promoted as Asst. Conservator of Forests, OFS Group-A (JB) on different dates in the year 2018. The following table shows the dates of initial appointment and promotion of the Petitioners;

Sl.No	Name	Date of entry into initial service	Date or promotion to ACF	Position in the tentative seniority list dated 29.4.2013
1	Prakash Chandra Das	02.8.1993	01.2.2018	247
2	Gouri Shankar Das	08.8.1993	01.2.2018	248
3	Sarat Kumar Mishra	04.8.1993	01.2.2018	252
4	A.Uma Mahesh	05.8.1994	01.2.2018	262
5	Sisir Kumar Mishra	03.8.1994	25.6.2018	263
6	Soubhagya Kumar Sahoo		25.6.2018	264
7	Bijay Kumar Parida	05.8.1994	25.6.2018	271
8	Amaresh nath Pradhan	01.8.1994	25.6.2018	272

4. The private Opposite Party Nos.4 to 34 were similarly appointed initially as Forest Rangers and were promoted as Asst. Conservator of Forests ahead of the Petitioners by applying the principles of reservation. After being subsequently promoted to the rank of Asst. Conservator of Forests however, the Petitioners' seniority was restored by applying the catch-up principle and accordingly a final gradation list of Asst. Conservator of Forests (ACF) as on 9th September, 2022 was published. On 3rd March, 2023 a letter was issued by the Government of Odisha in Forest, Environment and Climate Change Department (Forest Department) to the PCCF, Odisha, intimating that the

Departmental Promotion Committee (DPC) meeting for considering promotion of ACFs to the rank of Deputy Conservator of Forest (DCF), OFS Group-A (SB) is going to be held shortly (copy enclosed as Annexure-1). Accordingly, it was requested to intimate whether any disciplinary proceeding is pending against the Officers (ACF) as per the list enclosed to the said letter. The names of the Petitioners were not included whereas the list contained only the names of private Opposite Parties. Apprehending that such grant of promotion to the rank of DCF would perpetually make them junior to said private Opposite Parties, the Petitioners have approached this Court in the instant Writ Petition. By order dated 15th March, 2023, a co-ordinate Bench of this Court directed as an interim measure that the DPC may meet but the final decision shall be kept in a sealed cover and shall not be given effect to without leave of this Court. By order dated 12th May, 2023, the previous order was modified to the extent that the case of Opposite Party Nos.4 to 11 could be considered by the State-opposite parties as they are admittedly senior to the Petitioners.

- 5.** Heard Mr. Gautam Misra, learned Senior counsel, with Mr.D.K.Patra and Mr. J.R.Deo, learned counsel, for the Petitioners, Mr. T.K.Pattnaik, learned Addl. Standing Counsel for the State, Mr. K.P.Mishra, learned Senior counsel, with Mr. Sridhar Rath and Associates, learned counsel, for the Opposite Parties 12,13 and 14, Mr. B. Routray, learned Senior counsel, with Mr. S.K.Samal, learned counsel, for Opposite Parties 15, 24, 25 and 26, Mr. Haladhar Sethy, learned counsel, for the Opp.Party

Nos.18,19,27,30 and 34 and Mfr. D.K.Pani, learned counsel, for the Opp. Party Nos.20,22,29,32 and 33.

6. Rival contentions:

The case of the Petitioners, plainly stated is, firstly, the post of ACF being a promotional one, the principle of reservation could not have been applied. Secondly, having applied the catch-up principle to restore the seniority of the Petitioners, it is no longer permissible for the authorities to apply the principles of reservation again in case of promotion to the rank of DCF.

Per contra, it is the case of all the Opposite Parties including the State that the Petitioners have no locus standi to challenge the promotion process initiated by the authorities as they are admittedly not eligible for being considered for promotion as such. Even otherwise, it is factually incorrect for the Petitioners to contend that the principle of reservation is being applied while considering the case of the private Opposite Parties for being promoted to the rank of DCF, rather they are being considered because they have acquired the required eligibility of serving as ACF for five years.

7. Since the locus standi of the Petitioners to maintain the Writ Petition has been raised, it would be apposite to first deal with the said issue.

Maintainability:

Mr. B. Routray, and Mr. K.P.Mishra, learned Senior Counsel as well as Mr. T.K.Pattnaik, learned Add. Standing Counsel have all argued in one voice that as per Rule 5 of the Odisha Forest Service Group A (Senior) (Method of Recruitment and Conditions of Service) Rules, 2015 (for short, 2015 Rules),

an officer has to complete 5 years of continuous service in the grade of Odisha Forest Service Group-A (Junior Branch) as on the first day of January of the year in which the Board meets. Admittedly, the private Opposite Parties have completed 5 years in the grade of OFS, Group-A (Junior Branch) as on 1st January, 2023, but the Petitioners have not. Therefore, they are not eligible for being considered for promotion to the next higher post. It has also been argued that a person lacking eligibility himself cannot challenge the proposed promotion/promotions of persons who are eligible.

8. Mr. Gautam Misra, learned Senior counsel, on the other hand, has argued with vehemence that the question of locus standi cannot be dealt with only from the point of view of application of Rule 5 of 2015 Rules. Elaborating his argument, Mr. Misra submits that admittedly, the Petitioners had joined in service earlier than private Opposite Parties (except Opposite Party Nos.4, 6 to 11, 13). So they are inherently Senior to the concerned private opposite parties. The authorities committed gross illegality in applying the principle of reservation while promoting the private Opposite Parties to the next higher grade that i.e. ACF, which is a Group-A post, as the same runs contrary to the provisions of the ORV Act.

9. Be that as it may, the proposed action of the authorities to grant further promotion to the private Opposite Parties to the next higher rank of DCF is nothing but applying the principles of reservation again which is entirely contrary to law laid down by the Apex Court in several judgments beginning from

Indra Sawhney v. UOI (2006) 8 SCC 212 and reiterated in *M. Nagaraj vs. Union of India* (2006) 8 SCC 212, *U.P. Power Corporation Ltd. vs. Rajesh Kumar*; (2012) 7 SCC 1, *Jarnail Singh v. Lachhmi Narain Gupta*; (2018) 10 SCC 396 and *Pravakar Mallick v. State of Orissa*; (2020) 15 SCC 297. In all these judgments the principle that reservation cannot be granted in promotions has been reiterated. While interpreting the amended provision of Article 16(4A) of the Constitution of India, it has been held that such promotions can be effected only if the State is ready with quantifiable data showing inadequacy of representation of the reserved category persons in public services. Such exercise has not been done in Odisha. Such being the factual and legal scenario, according to Mr. Misra, granting promotion to the private opposite parties to the rank of DCF ignoring the case of the Petitioners only on the ground that they have not completed the mandatory residency period in the feeder grade would enable the former to steal a march over the latter. In other words, if such promotion is effected, the Petitioners, despite being inherently senior would become juniors to the private opposite parties for all times to come. Mr. Misra, thus concludes his argument by submitting that in such factual scenario, the Petitioners are definitely persons aggrieved so as to maintain the Writ Petition challenging the proposed promotion of the private opposite parties.

10. Analysis and findings on maintainability:

The facts as have been pleaded are not disputed

inasmuch as the Petitioners joined in service as Forest Ranger earlier than the private opposite parties (except Opp.Party Nos.4, 6 to 11, 13 and 15). It is also not disputed that the private opposite parties were promoted as Asst. Conservator of Forest, OFS Group-A (Junior Branch) ahead of the Petitioners despite being junior by application of the principles of reservation. Since such promotion was effected way back in the year, 2014 and was never challenged, this Court does not propose to enter into the controversy as to whether such promotion was legally valid or not. In any case, the Petitioners were also promoted as ACF in the year 2018. Regardless, in the final gradation list of ACF as on 9th September, 2022, the seniority of Petitioners vis--vis the private opposite parties (who were promoted earlier) was restored by applying the catch-up principle. According to learned counsel appearing for the Opposite Parties, it is a settled and accepted position which has gone unchallenged and therefore, cannot be allowed to be unsettled at this belated stage. This being the factual position, this Court would like to envision as to what effect the proposed promotion would have vis- -vis the Petitioners.

11. As per the impugned communication under Annexure-1 the list of Officers (ACF) short listed for being considered by the DPC contains only the names of the private opposite parties and not the Petitioners. It has been specifically pleaded in the separate counter affidavit filed by the Opposite Parties that consideration of the case of the private opposite parties for promotion is not on the basis of reservation but entirely by application of Rule 5 of the 2015 Rules, which mandates 5 years of continuous service in the Junior Branch for being eligible for promotion to the Senior Branch. Admittedly, the Petitioners have not completed 5 years of continuous service as ACF as on 1st January, 2023. So if Rule 5 is applied, the Petitioners will have to be kept out of the zone of consideration. However, this would also entail promotion of juniors

ahead of seniors thereby rendering the catch-up principle a nullity. Assuming that the Petitioners would be promoted subsequently upon completing the required 5 years of continuous service, they would become juniors to the private opposite parties and since there is no possibility of the application of catch-up principle again at the next higher grade, they would continue to remain junior to the private opposite parties for all times to come. Whether such a course of action can be

countenanced in law is something that has to be examined in detail, but there can be no denying that the Petitioners would be aggrieved by such action, inasmuch as the same seeks to nullify their inherent seniority vis- -vis the private opposite parties perpetually. This Court is therefore, of the considered view that the Petitioners definitely have locus standi to challenge the proposed promotion of the private opposite parties and therefore, holds that the Writ Petition is maintainable.

Finding on merits:

- 12.** Having held the Writ Petition to be maintainable, the next question that falls for consideration before this Court is whether the Petitioners have made out any case for interference with the impugned communication under Annexure-1. In this regard, it is contended by Mr. G. Misra, learned Senior counsel that the action of the authorities initiating the process of promotion only in respect of the private Opposite Parties is nothing but granting them benefit of reservation yet again, which is otherwise not permissible in view of several judgments of the Apex Court. Mr. Misra further contends that the Petitioners despite being inherently senior to the private Opposite Parties, their seniority cannot be taken away by promoting their juniors in the garb of invoking the so-called eligibility clause. According to Mr. Misra this would amount to nullifying the benefit of the catch-up principle that has already been applied

to restore the seniority of the Petitioners vis- -vis the private Opposite Parties. Though the authorities have not explicitly said so but the proposed promotion of the private Opposite Parties ahead of the Petitioners would be akin to granting them the benefit of reservation again which is not permissible in view of the ratio of **M. Nagaraj (supra)**, **U.P. Power Corporation Ltd. (supra)**, **Jarnail Singh (supra)**, and **Pravkar Mallick (supra)**. Mr. Misra has relied upon the decision of this Court in the case of **State of Odisha v. Amar Chhatoi**; 124(2017) CLT 976, wherein the State Government admitted that the exercise envisaged as per **M. Nagaraj (Supra)** has not yet been undertaken in Odisha. Thus, granting promotion to the reserved category candidates by invoking only the eligibility clause would be entirely contrary to the law of the land.

- 13.** The State counsel as well as the learned Senior counsel Mr. B. Routray and Mr. K.P.Mishra have argued that the Petitioners having received the benefit of catch-up principle at the stage of ACF and the next promotion, i.e. to the rank of DCF not being proposed to be done on the basis of reservation but entirely on considerations of eligibility, the Petitioners can raise no grievance legally against the impugned communication. In any case, since there are adequate vacancies, the Petitioners can be considered for promotion to the rank of DCF as and when they acquire eligibility, but presently the promotion proposed to be granted to the private Opposite Parties cannot be stalled at their instance as admittedly they do not satisfy the eligibility condition.

- 14.** Having noted the rival contentions as above, it would be apposite for this Court to refer to the relevant facts at the outset with a view to ascertain as to how the ratio of the decisions cited at the bar would be applicable. As already stated, the Petitioners joined as Forest Ranger

earlier than the private opposite Parties, but they were promoted as ACF later than the private Opposite Parties, who were admittedly granted such promotion by following the principle of reservation. It has been argued on behalf of the Petitioners that even such promotion was contrary to the provisions of the Odisha Reservation of Vacancies in Posts and Services (Scheduled Castes and Scheduled Tribes) Act, 1975 (for short the “1975 Act”). Rule 4 has been referred to in particular, which is quoted herein below;

4. Reservation and the percentage thereof (1) Except as otherwise provided in this Act, the vacancies reserved for the Scheduled Castes and the Scheduled Tribes shall not be filled up by candidates not belonging to the Scheduled Castes and Scheduled Tribes

(2) The reservation of vacancies in Posts and Services shall be at such percentage of the total number of vacancies as the State Government may, from time to time, by order determine:

[Provided that the percentage so determined shall in no case be less than the percentage of the persons belonging to the Scheduled Castes of the Scheduled Tribes as the case may be in the total population of the State:

Provided further that there shall be no reservation of vacancies to be filled up by promotion where

(a) the element of direct recruitment in the grade or cadre in which the vacancies have occurred is more than sixty-six and two third percent,

(b) the vacancies have occurred in Class I posts and are to be filled up by promotion, through limited departmental examination; or

6) the vacancies have occurred in Class I posts which are above the lowest rung thereof, and are to be filled up on the basis of selection

Explanation-The expression "population" means the population as ascertained at the last census for which the relevant figures have been published.”

15. Learned Senior counsel for the Petitioners has argued that the post of ACF is a Group-A post and can be filled up either by direct recruitment or by promotion from amongst the Forest Rangers. In this context, reference has been made to the Odisha Forest Services Group-A (JB) (Recruitment and

Condition of Services) Rules, 2013 of which Rules 3,4 and 5 are relevant inasmuch as the Odisha Forest Service GroupA (JB) is a separate cadre altogether but is a Class-1 (Group-A) post. It is contended that Sub-section (2) of Section-4 of the 1975 Act prohibits reservation in case of promotion in Class-I (Group-A) post. However, this Court observes that promotions to the post of ACF were effected in the year 2014 (in case of private Opposite Parties) and 2018 in case of the Petitioners. The final gradation list prepared subsequently after application of the catch-up principle to restore the seniority of the Petitioners has never been challenged. To such extent therefore, this Court is inclined to accept the argument advanced on behalf of the private Opposite Parties that it is too late in the day to raise any grievance as regards the legality and validity of promotions granted to the rank of ACF.

16. This Court would now focus its attention as to the legality of the impugned communication. As already stated, according to the Petitioners, the benefit of restoration of seniority that they received by application of the catch-up principle is sought to be nullified by the impugned communication. On the other hand, according to the Opposite Parties, the seniority of the Petitioners having already been restored, but they being ineligible for further promotion, cannot raise any grievance.

17. Now the question is, whether the principle of reservation is sought to be extended by the authorities in the proposed promotion. The impugned communication under Annexure-1, on the face of it does not say so. The State counsel as well as the learned Senior counsel appearing for the private Opposite Parties have emphatically argued that the principle of reservation is not sought to be extended for promotion to the rank of DCF, rather the promotion is sought to be made by invoking the eligibility clause.

This being the fact situation, the decisions cited by Shri G. Misra in relation to the applicability or otherwise of Article 16(4A) of the Constitution would not be relevant at all. To amplify, the need of obtaining quantifiable data by the State regarding inadequacy of representation of reserved category persons in public service being sine qua non to apply the principles of promotion with consequential seniority to them as envisaged in **M. Nagaraj, U.P. State Power, Jarnail Singh, Pravakar Mallick (supra)** are rendered redundant.

18. Rule 5 of 2015 Rules reads as follows;

“Eligibility Criteria:- (1) No Officer shall be eligible for promotion to the post in Group-A (Senior Branch) of the service unless he or she has competed five years of continuous service in the grade of Odisha Forest Service Group 'A' (Junior Branch) as on the 1st day of January of the year in which the Board meets.

(2) Appointment to Supertime Scale in the service shall be made on promotion cfrom amongst the officers who have completed two years of service in Odisha Forest Service Group 'A' (Senior Branch)as on the 1st day of January of the year in which the Board meets.

(3) Appointment to Superior Administrative Grade in the service shall be made on promotion from amongst the officers who have completed one year of service in Odisha Forest Service (Supertime Scale) as on the 1st day January of the year in which the Board meets.”

Thus, the Rule provides that an Officer shall not be eligible for promotion to the post in Senior Branch unless he has completed 5 years of continuous service in the Junior Branch as on the first day of January of the year in which the Board meets. The proposed promotional exercise being scheduled to be held in the current year i.e. 2023, the relevant date for consideration of eligibility would be 1st January, 2023. Admittedly as on that date the private Opposite Parties had completed 5 years of continuous service whereas the Petitioners had not. Thus, prima facie, they are not eligible for being considered for promotion to the Senior Branch, but then if only the eligibility

clause is harped upon and the proposed promotions are effected, it would entail a situation where the private Opposite Parties, who by virtue of the principle of reservation had been promoted to the Junior Branch earlier than the Petitioners (General Category candidates) would definitely steal a march over the Petitioners. Since on the face of it and on record the principle of reservation would not be applied in case of promotion to the post of DCF, the catch-up principle would also not be applicable if and when the Petitioners are promoted to the Senior Branch. In other words, this would lead to a situation where the inherent seniority of the Petitioners restored by application of the catch-up principle in the year 2022 would be lost forever. It would be back to square one. To further elaborate, the private Opposite Parties, who are inherently junior to the Petitioners but had marched ahead of them by virtue of the principle of reservation would become seniors to them for all times to come. According to the considered view of this Court, this would be entirely contrary to the principle of equality enshrined under Articles 14 and 16(1) of the Constitution of India. Thus, as between the question of seniority and the eligibility criteria, this Court is of the view that the former shall take precedence over the latter as otherwise the balance between Articles 16(1) and 16(4A) of the Constitution would be disturbed.

19. In its judgment rendered in the case of **Ajit**

Singh Januja v. State of Punjab; (1996) 2 SCC 715, the Supreme Court's following observations are

noteworthy;

Whenever a question arises for filling up a post reserved for Scheduled Caste/Tribe candidate in a still higher grade then such candidate belonging to Scheduled Caste/Tribe shall be promoted first but when the consideration is in respect of promotion against the general category post in a still higher grade then the general category candidate who has been promoted later shall be considered senior and his case shall be considered first for promotion applying either principle of seniority-cum-merit or merit-cum-seniority."

(Emphasis added)

Thus, the principle laid down is that the inherent seniority between reserved category candidates and general candidates in the promoted category shall continue to be governed by their inter- se seniority in the lower grade.

20. If, on the other hand, the proposed promotions are effected, it would be akin to taking away by one hand what was granted by the other. Moreover, even if, it is not explicitly stated so, but the logical conclusion of the proposed promotional exercise would enure only to the benefit of the reserved category candidates i.e. private Opposite Parties. Thus, what could not be done directly the State is attempting to do so indirectly, which needless to say is not conscionable in law. Reference in this regard may be had to the decision of the Apex Court in the case of **State of Tamil Nadu and others v. K. Shyam Sundar and others**; (2011)

8 SCC 737; wherein it was held as follows;

“It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur et omne per quod devenitur ad illud. An authority cannot be permitted to evade a law by ‘shift or contrivance’.”

21. How then to go about it. It has been argued by learned State counsel that there being large number of vacancies in the rank of DCF, the posts need to be filled up at the earliest for the overall efficiency and smooth functioning of the work of the Department. This Court finds that the Petitioners having been promoted to the Junior Branch on different dates in the year 2018 have acquired or will be acquiring the eligibility on different dates in this year itself. Moreover, we are at the fag end of the year 2023. As on 1st January, 2024 the Petitioners would have acquired the required eligibility. Thus, taking a larger view of the matter and in order to satisfy the requirements of the law of

the land, this Court is of the view that if it is felt necessary to grant promotions to the rank of DCF urgently then the Government can relax the eligibility criteria in respect of the Petitioners and effect promotion to the Senior Branch basing on the final gradation list as on 9th September, 2022. Significantly, the 2015 Rules provide such a clause in Rule 14, which is quoted herein below;

“14. Relaxation- whenever it is considered by the Government that it is necessary or expedient to do so in the public interest, it may, by order, for reasons to be recorded in writing, relax any of the provisions of these rules in respect of any class or category of officers in consultation with the Commission.”

In fact, it has been brought on record by way of an Additional Affidavit filed by the Petitioners on 20.4.2023 that the Government has in the past relaxed the eligibility condition of five years with concurrence of OPSC for promotions to the post of DCF by reducing it to 4 years/2 1/2 years etc. Copies of the relevant documents in this respect for the years 2018, 2019, 2020 and 2021 have been enclosed as Annexures-9,10,11 and 12 to the Additional Affidavit. So, given the fact situation obtaining in the present case this is no reason why such course of action should not be adopted now.

22. Since filling up the post of DCF would be in public interest, the Government shall do well to consider relaxation of Rule 5 in exercise of its power under Rule 14 or in the alternative, to defer the promotional exercise to a date after 1st January, 2024 so as to consider all officers as per the gradation list as on 9th September, 2022.

Conclusion.

23. In view of the foregoing narration, this Court is left with no doubt that the impugned communication under Annexure-1 being a product of arbitrary exercise of power, cannot be sustained in the eye of law inasmuch as it indirectly seeks to grant the benefit of reservation in the promotional posts to the juniors like the private Opposite Parties ignoring the inherent seniority of the Petitioners as correctly reflected in the gradation list.

24. The Writ Petition is therefore allowed. The impugned communication under Annexure-1 is hereby quashed. The Opposite Party-authorities are

directed to take necessary steps to fill up the posts in the promotional cadre i.e. DCF in terms of the observations made in this judgment. It is made clear that if any promotion has been granted to any officer pursuant to orders dated 12.5.2023 and 04.9.2023 passed by this Court, the same shall remain unaffected by this judgment.

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