

F. No.27(C)/40/2012-SRS
Government of India
Ministry of Personnel, P.G. & Pensions
Department of Personnel & Training

3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi
Dated: / 3 June, 2013

To

13 4 JUN 2013

1. The Chief Secretary,
Government of Uttar Pradesh,
Lucknow.
2. The Chief Secretary,
Government of Uttarakhand,
Uttarakhand.

Sub.:- Consideration of representation of Sh. Ashok, Deputy Director in pursuance of judgement dated 05.04.2013 in Writ Petition No.1321/2012 of Hon'ble Allahabad High Court, Lucknow Bench.

Sir,

I am directed to refer to the judgment dated 05.04.2013 of Hon'ble Allahabad High Court, Lucknow Bench in Writ Petition No.1321(S/B)/2012, the operative portion of which is as under:-

“Accordingly, writ petitions deserves to be and hereby allowed. A writ in the nature of certiorari is issued quashing the impugned order dated 26.07.2012 as contained in Annexure I to the Writ Petition with consequential benefits. A Writ in the nature of mandamus is issued directing the respondent Govt. of India to take a fresh decision with regard to controversy raised by the petitioner. Let a decision be taken expeditiously, say within a period of two months from the date of receipt of a certified copy of the present order and the decision so taken be communicated to the petitioner. For the period of two months or till disposal of the Writ Petition afresh, whichever is earlier, *status quo* as it exists today, shall be maintained.”

2. In compliance of the judgment, the representations of Sh. Ashok are to be considered by the Central Government. He had submitted a representation dated 29.05.2008 earlier in pursuance of order dated 07.05.2008 of the Allahabad High Court, Lucknow Bench in Writ Petition No.1556/2006. That representation was disposed of by the Central Government as per reasoned and speaking order dated 14/15.05.2009 based on the recommendations of the Advisory Committee headed by Dr. S.K. Sarkar. The representation was again considered as per direction of the Allahabad High Court, Lucknow Bench in a Contempt Petition filed by

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him and rejected as per order dt. 26.07.2012. This reasoned order has now been set aside by the Hon'ble Court in the judgement dated 05.04.2013 in Writ Petition No.1321/2012. Further, in pursuance of the judgement, Sh. Ashok has submitted a fresh representation dated 18.04.2013 for consideration.

3. Sh. Ashok has also submitted another representation dated 11.05.2013 enclosing a copy of order of Hon'ble Supreme Court in SLP No.16815(C) of 2013. As per the judgement, the Hon'ble Supreme Court has dismissed the SLP as withdrawn and has also granted liberty to the Petitioner to file an appropriate Review Petition in the judgement. He has further been permitted to approach the Hon'ble Apex Court questioning the main order as well as the order, that may be passed in the Review Petition if he fails before the High Court. The Petitioner in his representation dated 11.05.2013 has requested the Central Government not to proceed with the disposal of his representation claiming that the judgement dated 05.04.2013 of Hon'ble Allahabad High Court, Lucknow Bench has now merged with judgement of the Supreme Court. However, since the Hon'ble Supreme Court has not stayed the judgement dated 05.04.2013 of the Allahabad High Court, the representations of Sh. Ashok are to be disposed of.

4. The final allocation of personnel of all the Departments between the two successor States Uttar Pradesh and Uttarakhand are carried out based on posts allocated in terms of guidelines dated 13.9.2000 framed by Government of India. The guidelines are as under:

- a) The posts falling in the geographical area of Uttarakhand shall be allocated to Uttarakhand and those falling in Uttar Pradesh shall be allocated to that State.
- b) State cadre posts, which cannot be restricted to any specific areas like headquarter post, shall be allocated proportionately to the districts of the two states.

5. While finalizing the allocation of the personnel of the Provincial Forest Service, some of them have brought a court direction that their grievances may first be heard before finalizing the allocation. They had apprehended less promotional facilities to the IFS in Uttarakhand as 32 Dy. Directors were being proposed for allocation to the State against 25 posts of IFS available there. The proposed allocation was however, as per the guidelines. Consequently, they were heard and the allocation order dt. 31.03.2005 was issued after allocation of posts to UP and Uttarakhand in the ratio of 70:30, identical to IFS. This was at variance with the recommendations of the State Advisory Committee. Some other court directions were received for considering the representation of some other officials who opposed the allocation. The matter was reviewed and it was found that the order dt. 31.03.2005 was not as per the Reorganization Scheme and as such was not in order. The allocation was therefore, revised as per the original proposal based on the recommendations of the State Advisory Committee and the order dt. 30/31.10.2006 was issued.

6. Uttarakhand Government vide its letters dated 7.1.2005 and 10.11.2006 had sent a proposal to allocate less number of Dy. Director level posts citing the reason that keeping in view the limited number of IFS posts (25) for promotion from PFS personnel, all the 32 Dy.

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Directors would not be promoted, whereas juniors would be promoted in Uttar Pradesh. This was reflected in the judgement of High Court in Rama Krishna Singh case dated 28.5.2009. Government of Uttar Pradesh has, however, not proposed higher number of field level Officers at Deputy Directors and ACF levels. On the other hand they had expressed reservation against allocation on 70:30 ratio stating that this allotment will not be in accordance with sanctioned posts existing on the cut of date and may also hamper the promotional avenues in future.

7. Allocation in Forest Department to States as per revised allocation order dt. 30/31.10.2006 was based on Guidelines of State allocation. These guidelines are based on functional requirement. If allocation is made based on these guidelines, then it would be as follows :-

	Undivided Uttar Pradesh	Uttarakhand	
		Posts	Personnel
Ranger	994	284	253
ACF	255	97	82
DD	54	32	29

The allocation in the grades of Ranger, ACF & IFS based on guidelines does not create any major anomaly in promotional opportunities. However, allocation of Dy. Director posts and officers based on guidelines reduces promotional opportunities for State Forest Service officers to IFS in Uttarakhand. At the same time, due to higher number of Dy. Director posts in Uttarakhand, better promotional opportunities are there for State Forest Service Officers to become Dy. Directors. This anomaly arose because there were higher number of Dy. Director posts in geographical region falling in Uttarakhand as compared to number of Ranger, ACF & IFS posts. The ratio of allocation for ACF posts worked out to be 62:38 between Uttar Pradesh and Uttarakhand while that for IFS is 70:30 between Uttar Pradesh and Uttarakhand. This difference is because number of field level IFS posts depends more on number of districts while ACF posts depend more on forest area. In other departments, allocation has been made on the basis of the State Allocation Guidelines. Government of India undertakes State allocation on the basis of these guidelines. It may also be seen that if allocation is made at Dy. Director level based on the guidelines, then also all the Dy. Directors allocated to Uttarakhand would get promoted to IFS. Therefore, it may not be appropriate to deviate from the State Allocation Guidelines to equate promotional opportunities in the two States.

8. The allocation order dated 30/31-10-2006 superseding the original allocation order dt. 31.03.2005, was based on State Allocation Guidelines and was as follows:-

54 posts of the grade of Dy. Directors, a class-I post, were there in Forest Department of undivided Uttar Pradesh. Out of these posts, 45 posts were in the geographical

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areas (31 in Uttarakhand and 14 in Uttar Pradesh) and 9 were considered as HQ posts as these were posts created in Uttar Pradesh Forest Corporation and were not allocated in the field. These 9 posts were divided in the ratio of districts. As per this ratio, out of 9 posts, one was to go to Uttarakhand and 8 to Uttar Pradesh. Thus, as per the allocation guidelines, 22 posts were to go to Uttar Pradesh and 32 to Uttarakhand. This allocation works out to 40.7:59.3. Further details are as under:-

Sl. No.	Nature of posts of Dy. Director	Posts located in the territory of Uttar Pradesh	Posts located in the territory of Uttarakhand	Surplus Posts in Uttar Pradesh Forest Corporation	Total
1.	Divisions/ Special Posts	5	15	0	20
2.	Forest Corporation	8	8	9	25
3.	Watershed Directorate	0	8	0	8
4.	Others	1	0		1
	Total	14	31	9	54

9. Posts of Dy. Directors were created by undivided Uttar Pradesh for -

- (i) Special watershed projects
- (ii) Special wildlife wardens
- (iii) Uttar Pradesh Forest Corporation

10. These posts were outside the hierarchy of Forest Department and proportionate number of ACF and Ranger posts did not exist. Field level Dy. Director posts in region falling in Uttarakhand were much higher compared to those falling in Uttar Pradesh.

11. At the level of ACF, a Class-II post, there were 255 posts in the undivided Uttar Pradesh. Out of these posts, 158 posts were allocated to Uttar Pradesh and 97 went to Uttarakhand. These posts were distributed between both the States based on the guidelines which works out to 62:38 ratio (approx). The details are as under:-

Sl. No.	Nature of posts	Posts located in the territory of Uttar Pradesh	Posts located in the territory of Uttarakhand	Total
1.	Sub-divisions	126	76	202
2.	Wild life wardens	15	11	26
3.	Others	17	10	27
4.	Total	158	97	255

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12. Allocation of posts for the IFS is done by the Ministry of Environment & Forests, Government of India and the ratio of allocation between Uttar Pradesh and Uttarakhand came around to 70:30. There were total 283 posts as on the appointed day in the undivided State of Uttar Pradesh out of which 199 posts were allocated to Uttar Pradesh and 84 posts went to Uttarakhand.

13. 994 number of Ranger posts were there in the undivided Uttar Pradesh. 710 Rangers were allotted to Uttar Pradesh whereas 284 posts were allotted to Uttarakhand. This also works out to 70:30 ratio. The detailed allocation of posts in Forest Rangers are as under:-

There were 994 posts in the Cadre as on 09.11.2000 out of which 274 posts were located in the hill areas of the undivided State which went to Uttarakhand after Reorganization. There are 10 posts earmarked for Haridwar. Accordingly, 284 posts went to Uttarakhand and 710 posts remained in Uttar Pradesh.

14. Rangers get promoted as ACF. ACFs are promoted to Deputy Director as well as to IFS. Deputy Directors get promoted to IFS. Both Assistant Conservators of Forest and Deputy Directors are members of State Forest Service (PFS). Induction into Indian Forest Service is made from seniority list of State Forest Service.

15. Some of the Dy. Directors challenged the revised order and as per direction of the Hon'ble Allahabad High Court, their representations were considered by Dr. Sarkar Committee and were recommended for rejection. Based on the recommendations, reasoned orders dt. 14/15.05.2009 were issued. One of the petitioners, Shri Rama Krishna Singh challenged the revised allocation order. Hon'ble Allahabad High Court in judgment dt. 28.05.2009 in WP No. 21686/2009-Rama Krishna Singh vs. UOI & ors., set aside the revised allocation order dt. 30/31.10.2006 and directed the Central Govt. to decide the representation of the petitioner afresh after taking into consideration the objections raised by the Govt. of Uttarakhand in their letter dt. 07.01.2005. After dismissal of SLP No. 6399/2010, which was filed by UOI against the judgment, the Central Government finalized the allocation order of PFS personnel afresh on the basis of guidelines for allocation based on functional grounds as per order dt. 02.04.2013 in compliance of judgment dt. 28.05.2009.

The replies to the points raised by Sh. Ashok in his representation dated 29.05.2008, are as under:-

16. In Para 3 it has been stated that against 25 promotion quota posts available in Uttarakhand for the IFS, 19 Deputy Directors have already been promoted leaving only 6 posts for being filled up. He has alleged that by being at Serial No.23 of the allocation list in the revised allocation order dt. 30/31.10.2006, he will have no chance of getting promoted to the IFS in Uttarakhand. As per the number of posts in the IFS available for the recruitment year 2000 to 2009, 17 posts have been earmarked for promotion quota of IFS in Uttarakhand. Since only 15 Dy. Directors have been allocated to Uttarakhand, against 32 posts allocated to Uttarakhand as per fresh allocation order dated 02.04.2013, he will have a fair chance of promotion to the IFS being at Sl. No.13 of the list of allocated personnel.

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17. That in Para 27, the Petitioner has stated that by distributing the posts of Deputy Director in the ratio of 70:30, it resulted into fair and equal treatment to all members of the service. The allocation of posts in each grade was made as per functional justification based on the guidelines. On account of allocation of posts based on the guidelines, which worked out to the original ratio of 40.7:59.3, higher number of Dy. Director posts were allocated to Uttarakhand as compared to Uttar Pradesh, because of existence of higher number of Dy. Director level posts in the field in Uttarakhand. Less number of IFS posts were allocated to Uttarakhand because there were less districts in Uttarakhand. Allocation in all the State cadres in other departments was done based on the State Allocation Guidelines.

18. In Para 36, the Petitioner has disputed his juniority based on which he has been allocated to Uttarakhand. In this connection, it is stated that even seniors to the Petitioner have been allocated to Uttarakhand on the basis of being junior most in the reverse order of seniority.

The points raised by the Petitioner in his fresh representation dated 18.04.2013, are replied as under:-

19. The statement made in Para 1(iii) is denied. It is clarified that in the relevant paragraph of the counter affidavit, the Central Government has countered the statement made by the State Government that as per letters dated 15.09.2004 and 06.08.2006 of the Central Govt., they are authorized to revise allocation of personnel on mutual basis by issuing NOCs. In the statement made by UOI in the Counter Affidavit, it has been made clear that as per the judgement of the Hon'ble Uttarakhand High court, the letters dated 15.09.2004 and 06.08.2006 have been held as invalid. Since the judgment has become final, there is no truth in the State Govt.'s submission. It is not admitted anywhere in the Counter Affidavit that the Central Govt. cannot revise the allocation order issued by it .

20. As regards Para 1(iv) it is stated that the judgement dated 26.07.2010 of Hon'ble Uttarakhand High Court in WP No. 79/2008-M.C. Joshi & ors. vs. State of Uttaranchal & ors is attached as an Annexure in support of the Central Govt.'s stand that in view of the judgment, the letters dt. 15.09.2004 and 08.06.2006 issued by the Central Govt. regarding mutual transfer policy, have become invalid. The fresh allocation order dt. 02.04.2013 was issued in compliance of judgment dt. 28.05.2009 of Hon'ble Allahabad High Court.

21. Contentions made by the Petitioner in Para 1(v), (vi) & (vii) are denied. The case of implementation of judgement dated 28.05.2009 is not identically placed with the judgement of M.C. Joshi's case. In the judgment dated 28.05.2009, the Hon'ble Court directed Union of India to decide the representation of Sh. Rama Krishna Singh afresh by taking into account the objections raised by the Uttarakhand Govt. in its letter dated 07.01.2005. The Hon'ble Court's direction for issue of a fresh allocation order is implicit in the judgement. Since it was a direction to the Central Government for reconsideration of the whole matter, a fresh order was to be issued in compliance of the judgment.

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22. The contention of the Petitioner in Para 3 are denied. Sh. Rama Krishna Singh and Sh. T.P. Dubey, Deputy Directors were considered against the vacancies allocated by the Min. of Environment and Forests for the promotion quota of IFS for the undivided UP. The promotion is not in pursuance of judgment dt. 28.05.2009. The order dt. 28.05.2009 setting aside the revised allocation order dt. 30/31.10.2006 has been implemented in pursuance of the Hon'ble Supreme Court's judgment..

23. In Para 4 the Petitioner has wrongly stated that the Min. of Law had recommended for restoration of the original allocation order dated 31.03.2005. In fact, the Department of Legal Affairs, Ministry of Law has only quoted the three possibilities mentioned by Deptt. of Personnel & Training for obtaining their advice. This Deptt. had referred the matter to the Min. of Law seeking their advice, in which revival of order dated 31.03.2005 was one of the three alternatives.

24. As regard statement made by the Petitioner in Para 5, it is stated that in compliance of the judgement dated 28.05.2009, the fresh allocation order dated 02.04.2013 has been issued by the Central Government taking into account the objections raised by the State of Uttarakhand in its letter dt. 07.01.2005. It is seen that the Ministry of Environment and Forests, Government of India as per their Notification dated 26.05.2010, have promoted several Deputy Directors namely, S/Sh. Ravindra Juyal, Rama Krishna Singh, M.S. Pal, T.P. Dubey, Gopal Singh, Shobran Lal, G.C. Singh, Jairam and Devendra Kumar, who earlier figured in the allocation order dated 30/31.10.2006, into the IFS in the backlog vacancies for the years 1996-97 to 2000. On account of their induction into the IFS from a retrospective date of the appointed day, they are no longer eligible for allocation as Deputy Directors. They have therefore been excluded from allocation to either of the States in the fresh allocation order dt. 02.04.2013. Besides, Shri Ghanshyam Singh, Dy. Director, who also figured in the allocation order dated 30/31.10.2006, has been allocated to Uttar Pradesh under SC/ST guidelines. 4 more posts have become vacant due to retirement of two officials who had joined Uttarakhand (S/Shri S.C.N. Srivastava-YOR-2003 and Satya Pal Singh-YOR-2012) and death of another (Shri Sudhakar Mishra-YOD-2003) and reallocation of one (Shri Om Prakash Singh) to Uttar Pradesh on medical hardship ground. Although the names of these 4 Dy. Directors are to be reflected in the final allocation to Uttarakhand as they were in service on 9.11.2000, i.e., the appointed day, this would effectively bring down the number of officers allocated to Uttarakhand, who are still in service to 15. The number of posts earmarked for promotion from PFS to IFS allocated to Uttarakhand, is 25. Thus, all Deputy Directors now allocated would get promoted to IFS even if allocation is done as per the State Allocation Guidelines. Besides, out of 82 ACFs allocated to Uttarakhand against 97 posts as per revised allocation order dt. 30/31.10.2006, 21 have already retired and two have died. So effectively, 59 officials would remain in position in Uttarakhand. The vacancies of ACF would rise from 15 to 38. As against 14 Deputy Directors allocated in the original allocation order dated 31.03.2005, 15 Deputy Directors have now been allocation in the fresh allocation order dated 02.04.2013. While issuing the fresh allocation order, the allocation of posts have been retained which is as per the scheme of Reorganization.

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25. In Paras 6 & 7 the Petitioner has stated that since his name was considered for promotion for the year 2000A, he believed that he would be considered in the year 2000A in Uttar Pradesh, whereas he would be considered for promotion in the year 2009 in Uttarakhand. As regards his claim for promotion in particular year it may be stated that the final allocation has been made taking the interest of the allocated majority into account. It is not possible to take care of the interest of each individual officers otherwise no final allocation shall be possible.

26. In Para 8(i) it has been alleged by the Petitioner that the fresh order issued by the Central Government is only a reproduction of the earlier allocation order dated 30/31.10.2006 after deleting the names of Deputy Directors, who have been promoted to IFS. In this connection it is stated that it is a fresh order in compliance of the judgement dated 28.05.2009 by providing comprehensive reasons justifying the order. The order is based on the scheme of Reorganization because the allocation of posts could not have been made as per a fixed ratio which would have resulted in allocation of a number of posts to UP which are not required and reduction of posts from Uttarakhand which would have put the administration of large geographical areas in jeopardy. The fresh allocation order has been issued after considering the promotional avenues of the Deputy Directors allocated and also restoring the balance of allocation of posts in both the States. The Deputy Directors who have been promoted to the IFS against the backlog vacancies before the appointed day could not have been allocated as Dy. Directors again and therefore, were to be excluded from the final allocation and this has accordingly been done.

27. In Para 8(ii) the Petitioner has alleged that by issue of the fresh order the allocated batch of Deputy Directors have become unbalanced. The allocation is as per the seniority and there is no question of violation of the relative seniority of personnel allocated to Uttarakhand as only those persons who have been inducted into IFS in the backlog vacancies, have been omitted. The statement made by the Petitioner is therefore has no basis.

28. As regards Para 8(iii) it is stated that the allocation order is with reference to personnel existing in service as on the appointed day. So, in the final allocation order, the names had to be mentioned, although some of them have retired and some others have since died. Regarding mention of some personnel who have been reallocated under the special provision like spouse policy, medical hardship, SC/ST policy etc, it is stated that the fresh order maintained the *status quo* as available on the date of issue. This also applies to the mutual transfer. If the mutual transfers have been nullified in pursuance of the judgement dated 26.07.2010 in M.C. Joshi's case, they would remain as such. The order does not alter their positions. The petitioner has sought reversion of the reallocation of Sh. Parmatma Prasad Verma, whose allocation was revised to UP on the ground of serious illness of his wife, in view of the position that his hardship no longer remains now that he has remarried after the death of his wife. Reversion of allocation after the hardship is over, is not permissible as per the Reorganization scheme.

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29. In para 8(iv) allocation of Sh. Sudhakar Mishra, who has since died, has been objected by the petitioner. It is reiterated that the allocation is for personnel who were in service as on the appointed day and the names are to be shown in the allocation order although they might have died in the meanwhile. However, the retired or dead personnel have been so marked in the allocation order which indicates that the posts have since fallen vacant.

30. As regards Para 8(v), it is stated that allocation under medical hardship, SC/ST guidelines and spouse policy, etc., are treated as special categories. The officials allocated under these guidelines are to be allocated even if matching number of vacancies are not available. The State Governments are required to create supernumerary posts in case posts are not available to accommodate them.

31. In Para 8(vii), the Petitioner has alleged that the objection raised by the Government of Uttarakhand have not been taken care of in the fresh allocation order. It is denied. In the letter dated 07.01.2005 the Government of Uttarakhand has objected to the revised allocation order dated 30/31.10.2006 on the ground that against 25 posts of IFS available in Uttarakhand, 32 Deputy Directors have been allocated which would hamper their promotional prospect. The State supported the original allocation order dated 31.03.2005 on the ground that 14 Deputy Directors were allocated to Uttarakhand which was well matched with 25 promotion quota IFS posts available in the State. In the fresh allocation order dated 02.04.2013 this has been taken care of as 15 Deputy Directors have been allocated.

32. As regards Para 8(viii) there is no need to consult the State of Uttarakhand again as all material available from the State Governments of both UP and Uttarakhand have been taken into consideration while arriving at a decision to issue the fresh allocation order. Particularly, the objections of the State of Uttarakhand in its letter dt. 07.01.2005, as per the observations of the Hon'ble Allahabad High Court in its judgment dt. 28.05.2009, has been taken into account.

33. In Para 8(ix) the Petitioner has tried to justify the original allocation order dated 31.03.2005 on the ground that most of the Deputy Directors allocation as per the order have already been promoted to IFS against backlog vacancies falling before the year 2000 and that only less than 22 Deputy Directors remain in UP as per order dt. 31.03.2005. It is stated that no distortion shall be caused now as per the fresh allocation order as it is as per the posts allocated to both the States as per guidelines on Reorganization. The posts cannot be allocated on pre-determined ratio which would disturb the actual administration of the States. The issue of the fresh allocation order is as per direction of the Hon'ble Allahabad High Court, Lucknow Bench and as such there is no transgression of any authority.

34. In view of the position brought out above, there is no merit in the submissions made by the Petitioner and are therefore cannot be accepted. This disposes of the representation of Sh. Ashok in compliance of the judgement dated 05.04.2013 of Hon'ble Allahabad High Court, Lucknow Bench in Writ Petition No.1321/2012-Ashok Vs. Union of India & Ors.

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35. The disposal of his representation may please be brought to the notice of the official.

Yours faithfully,


(S. Nayak)

Under Secretary to the Govt. of India

Ph. No. 011-24624235

Copy to :-

- (1) Principle Secretary, Uttar Pradesh Reorganization Coordination Department, 46, Bahukhandi Bhawan, Secretariat, Lucknow.
- (2) Principle Secretary, Forests, Government of Uttar Pradesh, Secretariat, Lucknow. The enclosed reasoned order may please be served upon Sh. Ashok and his acknowledgement in receipt of the order may please be sent to this Department.
- (3) Principle Secretary, Forests, Government of Uttarakhand, Secretariat, Dehradun.
- (4) Secretary, Reorganization, Government of Uttarakhand, Secretariat, Dehradun.
- (5) Secretary, Ministry of Environment & Forests, Government of India, Pariyavaran Bhawan, CGO Complex, Lodhi Road, New Delhi-110003.
- (6) Secretary, UPSC, Dholpur House, Shahjahan Road, New Delhi.
- (7) Sh. Ashok, Deputy Director, O/o PCCS Wildlife, 17, Rana Pratap Marg, Lucknow.

