

HIGH COURT OF ANDHRA PRADESH

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WRIT PETITION No. 29304 of 2022

Between:

The State of Andhra Pradesh,
Department of Environment, Forest,
Science & Technology, Secretariat Building,
Velagapudi, Guntur District,
Rep.by its Principal Secretary and 2 others

.....PETITIONERS

AND

Sri P. Maruthi Prasada Rao and 3 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **22.12.2023**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

&

THE HON'BLE SRI JUSTICE B. V. L. N. CHAKRAVARTHI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

RAVI NATH TILHARI, J

B. V. L. N. CHAKRAVARTHI, J

*** THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE A V RAVINDRA BABU**

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Sri P. Maruthi Prasada Rao and 3 others

.....RESPONDENTS

! Counsel for the Petitioners : Sri Subrahmanyam Sriram,
Advocate General
Assisted by Sri G.V.S.Kishore Kumar
GP for Services-I

Counsel for the Respondent No.1 : Sri B. Adinarayana Rao,
Senior Counsel,
Assisted by Sri A. Rajendrababu

< Gist :

> Head Note:

? Cases Referred:

1. WP No.23856 of 2016, TGHC,
Decided on 06.01.2021
2. (2013) 16 SCC 440
3. (2007) 9 SCC 369
4. (2009) 1 SCC 610
5. (2019) 2 SCC 404

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE B. V. L. N. CHAKRAVARTHI

WRIT PETITION Nos. 29304 of 2022

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri Subrahmanyam Sriram, learned Advocate General, assisted by Sri G. V. S. Kishore Kumar, learned Government Pleader for Services-I and Sri B. Adinarayana Rao, learned senior counsel, assisted by Sri A. Rajendrababu, learned counsel for the 1st respondent. No representation for the 2nd respondent-Union of India, so also 4th respondent- B. Vijay Kumar.

2. The petitioners-State of Andhra Pradesh and its authorities have filed this writ petition challenging the Order of the Central Administrative Tribunal, Hyderabad (in short 'the Tribunal') for the following relief:

“to issue an appropriate writ or direction more particularly one in the nature of “WRIT OF CERTIORARI” calling for the records relating to the orders of the Hon'ble Central Administrative Tribunal in OA.No.020/00628/2021, dated 12.04.2022 and to set aside the same as holding as erroneous and contrary to law and pass such other order or orders.....”

3. The 1st respondent/Applicant before the Tribunal filed O.A.No.020/00628/2021 before the Central Administrative Tribunal for considering him for promotion to the cadre of Indian Forest Service (IFS) from the category of Forest Range Officer (FRO).

4. The case of the 1st respondent was that he was directly recruited as Forest Range Officer in May 2006 and was thereafter promoted as Assistant

Conservator of Forests (ACF) in August 2020. His next promotional post is Deputy Conservator of Forests (DCF). The grievance raised was that the respondents in O.A, the petitioners herein, were not considering the 1st respondent's claim for promotion to Indian Forest Service, though the rules and regulations provide for consideration of appointment of Forest Range Officer's cadre Officers to Indian Forest Service on promotion, and the 1st respondent was eligible for such consideration, and thereby, the denial of such consideration was violative of the fundamental right under Articles 14 and 16 of the Constitution of India.

5. The present petitioners filed reply in O.A. The Union Public Service Commission and the Union of India also filed reply. Their stand *inter alia* was that the service records of the Officers of the State Forest Service (SFS) are maintained by the State Government and the eligibility of State Forest Service Officers comes under the purview of the State Government. Their further stand was that the post of Forest Range Officer was declared as gazetted post, but Forest Range Officer cannot be automatically considered for promotion to Indian Forest Service, and only the Officers belonging to the cadre of Assistant Conservator of Forests / Deputy Conservator of Forests are to be included in the zone of consideration as per seniority. Their stand was that though the Forest Range Officer belongs to the gazetted category, but cannot be considered for appointment by promotion to Indian Forest Service. As per Andhra Pradesh Public Employment Order, dated 1975, the Forest Range Officer is a local cadre post in each zone, whereas Assistant Conservator of

Forests is a State Cadre post. Their further stand was that as per G.O.Ms.Nos.154 and 159, dated 18.11.1997 / 08.12.2008 there are separate entrance and training rules for State Forest Service and Forest Range Officers. The Forest Range Officers do not belong to the State Forest Service so as to be considered for Indian Forest Service. In the absence of adequate number of Officers, the vacancies have to be carried forward to the next panel. It was further their stand that the selection for the panel year 2013 was under process and the contingency of number of Assistant Conservator of Forest / Deputy Conservator of Forest Officers to be considered for Indian Forest Service were not less than the number of posts. The posts of Assistant Conservator of Forest / Deputy Conservator of Forest have been included in State Forest Service, but not Forest Range Officers, as per the Indian Forest Service (Recruitment) Rules of 1966 (in short 'the Recruitment Rules 1966'). Forest Range Officer is not a part of State Forest Service, though recognized as a gazetted by the Government of India, vide letter dated 30.09.2005 and reiterated in G.O.Ms.No.43, dated 06.02.2006, published in the State Gazette on 23.02.2006. The notification was issued to organize the post of Forest Range Officer into local cadres of each zone of the State of Andhra Pradesh under the Andhra Pradesh Public Employment Order, 1975 and in view thereof, the Forest Range Officers were not even in the zone of consideration for Indian Forest Service.

6. The Central Administrative Tribunal, by the impugned Order, dated 12.04.2022, allowed the O.A. The Tribunal directed the respondents therein to treat the Forest Range Officers as State Forest Service Officers and consider

appointment of the applicant/1st respondent to the Indian Forest Service on promotion, provided the 1st respondent was otherwise eligible against vacancies of the appropriate panel year.

7. The Tribunal held that Rule 2 (g) (i) of the Recruitment Rules 1966 defines 'State Forest Service' and as per the definition, there are three parameters to be satisfied for declaring a service as State Forest Service. There upon, the Central Government, in consultation with the State Government, need to approve 'the gazette status'. The Tribunal noted the 2 parameters to be satisfied, i.e., the service has to be connected to the forest and (ii) members of the said service should have gazetted status. It recorded that there was no dispute that the Forest Range Officer's cadre was connected to forest and the said cadre had been notified as gazetted post by the Central Government / State Government, vide G.O.Ms.No.188, dated 09.09.1993. Subsequently, the Andhra Pradesh Forest Service Rules, 1997 were framed by G.O.Ms.No.154, dated 18.11.1997 declaring the Forest Range Officer post as Category-3 post in Class-A service and Deputy Conservator of Forests / Assistant Conservator of Forests as Category-1 & 2 respectively. The Central Government, vide letter dated 30.09.2005 had notified the Forest Range Officer as "Specified Gazetted Category" on 23.02.2006. Besides, the Notification No.15/2006 dated 17.12.2004 issued by the Andhra Pradesh Public Service Commission also indicated the Forest Range Officer as a gazetted post. The Tribunal therefore concluded that it was established that Forest Range Officer is a gazetted post

and fits into the definition 'State Forest Service' under Indian Forest Service (Recruitment) Rules 1966.

8. The Tribunal further considered that the procedure for appointment to Indian Forest Service by promotion is under the Indian Forest Service Regulations 1966 (in short 'the Regulations 1966'). As per Regulation 5 (1) of the Regulations, 1966, those suitable will be selected would mean the selection is based on merit of those officers within the zone of consideration. The process for selection to the panel year 2013 was commenced. The year-wise break up of vacancies for the last 7 years, by the present 1st respondent was not denied. The Tribunal considered the Regulation 5 (2), under which, the list prepared under Sub-Rule (1) shall include number of candidates shall be equal to three times to number of vacancies. Such number of years of the State Service, must have been rendered either in officiating or substantive capacity, not less than 8 years of continuous service in the post (included in State Forest Service). The Tribunal concluded that the Forest Range Officer's cadre satisfies the criteria and cannot be denied consideration of promotion to Indian Forest Service, subject to fulfilling the other requirements.

9. The Tribunal referred to G.O.Ms.No.154 dated 18.11.1997 i.e. Andhra Pradesh Forest Service Rules 1997 to observe that Forest Range Officer was constituted as State Forest Service under Rule 2 and the same was not amended vide G.O.Ms.No.159, dated 08.12.2008, which G.O.Ms.No.159 amended the Rules 9 and 10 of the A. P. Forest Service Rules 1997 relating to the physical standards and training. It did not change any core aspect of the

methodology of the entry of the Forest Range Officer to the State Forest Service on par with the Assistant Conservator of Forests. The Tribunal, thus, concluded that there is no difference in regard to the recruitment rules of Assistant Conservator of Forest and Forest Range Officer in the method of recruitment, the appointing authority, qualifications, age and physical remarks. Consequently, it held that the claim of the present petitioners as raised before the Tribunal, with respect to the entry of the Forest Range Officer and Assistant Conservator of Forest into the organization that the same is different, does not stand to reason.

10. With respect to the Forest Range Officer as a local cadre, post in each zone, in view of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975 (in short 'the Presidential Order 1975'), whereas the Assistant Conservator of Forests is a State cadre post, the Tribunal observed that the same is for administrative convenience and such declaration had not denuded the Forest Range Officer of its essential character of it being a State Forest Service of gazetted category with the approval of the Central and State Government. The Tribunal observed that, therefore, the Forest Range Officer belong to State Forest Service in the light of the provision under the Recruitment Rules 1966, as much as the Assistant Conservator of Forests / Deputy Conservator of Forests under the Andhra Pradesh Forest Code, Volume-I and II. It further held that once the Forest Range Officer's cadre becomes a part of State Forest Service, as per the Recruitment Rules 1966 the relevant rules of State Forest Service, have to be

applied to this cadre also. The contention of the present petitioners that the Forest Range Officer's cadre is a local cadre and there are separate entrance and training rules for State Forest Service / Forest Range Officer and based thereon, their contention that the Forest Range Officer could not be considered for promotion to Indian Forest Service, was rejected. The Tribunal held that the applicant / 1st respondent herein had acquired right to be considered for appointment to Indian Forest Service on promotion for having rendered more than 8 years service in State Forest Service and was eligible to be considered from appropriate panel year and allowed the O.A.

11. Sri Subrahmanyam Sriram, learned Advocate General, while challenging the order of the Tribunal, raised the following submissions:

(1). In view of the definition in Rule 2 (g) (i) of the Recruitment Rules 1966, to constitute member of the State Forest Service, the three requirements must be fulfilled.

- (i) A service ought to be connected with forestry;
- (ii) Members of that service ought to have gazetted status; and
- (iii) On the first two requirements being satisfied, the Central and the State Government in consultation with each other ought to have approved such members thereof as comprising the State Forest Service for the purpose of the said rules.

(2) All the persons comprised in the State Forest Service, as notified in G.O.Ms.No.154, dated 18.11.1997 do not qualify to be considered for promotion to Indian Forest Service, unless such member of Andhra Pradesh Forest Service

albeit being gazetted, are approved by the State and the Central Government, as being eligible for being considered for promotion under the Indian Forest Service Recruitment Rules 1966 read with Indian Forest Service Promotion Regulations 1966.

(3) The Forest Range Officers stood declared as gazetted post by G.O.Ms.No.188, dated 09.09.1993, which was only indicative of the preliminary decision by the State Government, subject to the notification of the same in the Gazette for the purpose of paragraph 2 (1) (j) of the Andhra Pradesh Public Employment (Organization of Local Cadres and Regulation of Direct Recruitment) Order, 1975. The consequences of such notification for the purposes of the Presidential Order, would be as adumbrated in para-3 (4) read with Third Schedule of the Presidential Order 1975. The notification of the Forest Range Officers as belonging to the 'specified gazetted category' would result in classification of the said post to be a Zonal Cadre Post under para-3 (4) of the Presidential Order.

(4) There is no approval of the Forest Range Officers being the members of the State Forest Service as eligible for being promoted to Indian Forest Service category for the purposes of the Recruitment Rules 1966. His submission is that grant of the Specified Gazetted Category status vide Gazette Notification dated 30.09.2005 and G.O.Ms.No.188 dated 09.09.1993 would not be sufficient to make the Forest Range Officer eligible for consideration for the post under Indian Forest Service. The same does not fulfil the compliance of Rule 2 (g) (i) of the Recruitment Rules 1966, as there was no further approval

by the Central Government in consultation with the State Government, accorded to the Forest Range Officers being members of State Forest Service for being considered as eligible for promotion under the Indian Forest Service.

12. While elaborating the aforesaid argument, learned Advocate General further submitted that (i) if Rule 2 (g) (i) is held to be complied with respect to the Forest Range Officer pursuant to the G.O.Ms.No.188, dated 09.09.1993 and the notification dated 30.09.2005 also placing reliance in G.O.Ms.No.154 dated 18.11.1997, upon being granted the specified gazetted category status, all the posts comprised in Andhra Pradesh Forest Service Rules dated 18.11.1997, such as Forest Settlement Officer, Wood Work Shop Supervisor etc., would also become eligible for promotion to Indian Forest Service, without any further consultation between the Central and the State Governments in that regard i.e. being eligible for being promoted to Indian Forest Service category for the purposes of Recruitment Rules 1966; (ii) From Rule 3 (3) (ii) of the Indian Forest Service (Regulation of Seniority) Rules 1977 also it follows that the consideration for promotion to Indian Forest Service is limited to the category not below the rank of Assistant Conservator of Forests.

13. Learned Advocate General further submitted that the Tribunal erroneously directed the entitlement of the Forest Range Officer on misreading of Rule 2 (g) (i) of the Recruitment Rules 1966. Only the Deputy Conservator of Forest and Assistant Conservator of Forest are being considered as comprising members of the State Forest Service for the purpose of Rule 2 (g) (i) of the Indian Forest Service Recruitment Rules 1966. The direction by the Tribunal to

treat the Forest Range Officers, as 'State Forest Service' and to consider them for appointment to Indian Forest Service on promotion is in the nature of a declaration granted which is in excess of the power and jurisdiction of the Tribunal. He submitted that such declaration amounts to granting equivalence to Forest Range Officer, equal to Deputy Conservator of Forests and Assistant Conservator of Forests, whereas grant of equivalence is exclusively the function of the State and the same could not be granted by the Tribunal.

14. Learned Advocate General placed reliance in the case of ***K. Shailendra Moses & ors. v. State of Telangana & ors.***¹ (W.P.No.23856 of 2016 of Division Bench of Telangana High Court dated 06.01.2021). He also referred to the docket order dated 21.02.2017 in W.P.No.23856 of 2016, which is an order granting time to the learned Assistant Solicitor General to get instructions and clarification "as to whether the post of Forest Range Officer has been recognized as part of 'Forest Service' in terms of the recruitment prescribed under Rule 2 (g) (i) of the Indian Forest Service (Recruitment) Rules 1966". He also referred to the Order dated 14.02.2023 of the Hon'ble Apex Court in SLP (C) No.7194 of 2021 dismissing the SLP filed against the judgment of the Telangana High Court in W.P.No.23856 of 2016.

15. Sri B. Adinarayanarao, learned senior counsel, assisted by Sri A. Rajendra Babu, learned counsel for the 1st respondent, raised the following submissions:

¹ WP.No.23856 of 2016, TGHC,
Decided on 06.01.2021

(1). The Order of the Tribunal does not suffer from any error or flagrant violation of any rule, regulation and law. There is no illegality or irregularity in the order. Consequently, a Writ of Certiorari is not to be issued.

(2). The Deputy Conservator of Forests, Assistant Conservator of Forests and Forest Range Officers are governed by Andhra Pradesh Forest Service Rules. These three category posts are included in Class-A of Andhra Pradesh Forest Service Rules. Rule 3 provides for method of appointment and the appointing authority. Recruitment to the post of Forest Range Officer is by way of issuing separate notifications by Andhra Pradesh Public Service Commission unlike the notifications issued under Group-I services, i.e. separate notification will be issued to fill up the post of Assistant Conservator of Forests and Forest Range Officer by way of direct recruitment. The competent authority/appointing authority for Categories 2 and 3 posts i.e., Assistant Conservator of Forests and Forest Range Officers is the Principal Chief Conservator of Forests. Initially, the recruitment to the posts of Assistant Conservator of Forests and Deputy Conservator of Forests was by the Government. But subsequently, by amendment the power of appointment to the post of Assistant Conservator of Forests was conferred on the Principal Chief Conservator of Forests by G.O.Ms.No.83, dated 31.07.2018.

(3). Vide G.O.Ms.No.159, dated 08.12.2008, the Andhra Pradesh Forest Service Rules 1997 were amended providing for physical requirements and training as to their study. But there is no change in the categories of posts under Second Schedule included in the Andhra Pradesh Forest Service Rules

1997. The Forest Range Officers fulfilled all the requirements as contemplated under the Rules.

(4). The Central Government in consultation with the State Government framed the Indian Forest Service (Appointment by Promotion) Regulations 1966 in pursuance of Rule 8 (1) of Indian Forest Service (Recruitment) Rules 1966. The Regulations provide the mechanism for promotion to the State Officers to the cadre of Indian Forest Service. Regulation No.5 (1) provides that the Committee shall prepare a list of such members of the State Forest Service as held by them to be suitable for promotion to the service. The suitability is determined on the basis of Annual Confidential Reports alone.

(5). Rule 2 (g) (i) of Indian Forest Service (Recruitment) Rules 1966 defines the terms 'State Forest Service' and as per the definition, it means the services connected to the forestry and the members having a gazetted status as the Central Government may in consultation with the State Government approve for the purposes of these rules. The Principal Chief Conservator of Forests recommended to the Government of Andhra Pradesh to declare the post of Forest Range Officer as gazetted post and the State Government issued G.O.Ms.No.188, dated 09.09.1993 declaring the post of Forest Range Officer as gazetted post. Consequently, the Andhra Pradesh Forest Service Rules 1997 were amended by including the post as Category-3 along with Deputy Conservator of Forests and Assistant Conservator of Forests as Category 1 & 2 respectively vide G.O.Ms.No.154, dated 18.11.1997. The same has not been changed. The Forest Range Officer therefore continues in Class-A along with

Assistant Conservator of Forests. He further submitted that the Central Government notified the post of Forest Range Officer as specified gazetted category post vide GSR 620 (E), dated 30.09.2005, which was published in the State Gazette on 23.02.2006, vide G.O.Ms.No.43.

16. In view of the aforesaid, the submission of Sri Adinarayana Rao, learned counsel for the respondents is that the post of Forest Range Officer is gazetted, State Forest Service post, and as such, they are entitled for being considered for promotion by the Selection Committee constituted under Indian Forest Service (Appointment by Promotion) Regulations 1966, like Assistant Conservator of Forests. The criteria for selection is suitability i.e., merit and not seniority as per Regulation 5(1) of Indian Forest Service (Appointment by Promotion) Regulations 1966. Regulation 5 (2) provides for the zone of consideration and it was determined taking into consideration the seniority in service i.e., three times the number of posts determined by the Central Government. He further submitted that the Select Committee is constituted to select the eligible candidates for the panel year 2013 to 2019 and for these different panel years, there are 6, 2, 4, 2, and 2 vacancies respectively. He further submitted that due to non-availability of requisite number of persons for the panel, for the panel years, the select committee would carry forward the vacancies for next panel year.

17. With respect to the 1st respondent, learned senior Advocate submitted that the only reason for non-consideration stated was that Forest Range Officer's posts are not included in the 'State Forest Service' in spite of

the fact that they are so included as they have been declared as gazetted post and the service is connected to forestry. The 1st respondent was entitled for such consideration and denial of consideration for promotion resulted in violation of the fundamental right. Consequently, he submitted that there is no illegality in the order of the Tribunal in directing the present petitioners to consider the petitioner's case for Indian Forest Service if he otherwise fulfilled the requisite qualifications.

18. Sri B. Adinarayana Rao, learned senior counsel, placed reliance in ***B. Amrutha Lakshmi v. State of A.P.***², in support of his submissions. Here, we place on record that though a compilation of cases was filed but during arguments reliance was placed only in the case of ***B. Amrutha Lakshmi*** (supra).

19. Learned Advocate General, in reply, submitted that the judgment of the Hon'ble Apex Court in the case of ***B. Amrutha*** (supra) is inapplicable to the facts of the present case. The contention is that the fact situation in the Hon'ble Apex Court's judgment was different and related to the decision of the State not to consider a class of Officers even though they were treated to be a part of non-State Civil Services and there, the exclusion of consideration of those persons notified as belonging to non-State Civil Service for promotion to Indian Administrative Service was contrary to the rules. But, in the present case, his submission is that the Forest Range Officers do not comprise in the

² (2013) 16 SCC 440

State Forest Service for the purpose of Indian Forest Service (Recruitment) Rules 1966.

20. We have considered the submissions of the learned counsels for the parties and perused the material on record.

21. In view of the submissions advanced, the main controversy is concerning the eligibility of the Forest Range Officers for promotion to Indian Forest Service which centers round the point, whether the Forest Range Officer is a 'State Forest Service' fulfilling all the requirements of the 'State Forest Service' as per the definition under Rule 2 (g) (i) of the Indian Forest Service (Recruitment) Rules 1966.

22. If the answer to the above point is in affirmative i.e., that the service on Forest Range Officer is so included in 'State Forest Service', the question of applicability of the Indian Forest Service (Appointment by Promotion) Regulations, 1966, for promotion to Indian Forest Service would arise and consequently, the claim for consideration of the Forest Range Officer to Indian Forest Service as per the rules and the regulations of 1966.

23. At this stage, we may place on record, and is also evident from the submissions and the rival submissions that the learned counsels for parties are *ad idem* that,

- (i) the service of Forest Range Officer is the "service connected to forestry"
- and,

(ii) that the Forest Range Officer is a gazetted post "specified gazetted category" and included in Andhra Pradesh Forest Service Rules 1997 in Class-A, category No.3.

24. The submission which requires consideration is whether notwithstanding such gazetted status, the Forest Range Officer is or is not included in 'State Forest Service' under Rule 2 (g) (i) and whether something more is required i.e., approval of the Forest Range Officer for purposes of promotion to the Indian Forest Service under the Indian Forest Service (Recruitment) Rules 1966 read with the Regulations 1966, by the Central Government in consultation with the State Government.

25. We would first have an over view of the relevant Act & Rules on the point.

26. The All India Services Act, 1951 (Act No.61/1951) provides to regulate the recruitment conditions of service of persons appointed to the All India Services common to the Union and the States. Section 3 of the Act 61/1951 empowers the Central Government in consultation with the Governments of the States concerned to make rules for the regulation of recruitment and the conditions of service of persons appointed to All India Service. In exercise of powers conferred by Section 3 (1) of the Act 61/1951, the Central Government framed Rules known as "The Indian Forest Service (Cadre) Rules, 1966" (in short 'the Cadre Rules 1966'). The same were published in the Gazette of India dated 01.09.1966. Section 2 (a) of the Cadre

Rules 1966 defines 'Cadre Officer' which means a member of the Indian Forest Service.

27. In exercise of the powers conferred by Section 3 (1) of the Act 61/1951, the Indian Forest Service (Recruitment) Rules 1966, were framed. Section 2 (d) defines 'Service' which means the 'Indian Forest Service'.

28. Rule 2 (g) (i) of the Recruitment Rules 1966 defines 'State Forest Service' which means any such service in State, being a service connected with forestry and the members thereof having gazetted status, as the Central Government may, in consultation with the State Government, approve for the purpose of those Rules.

29. Rule 3 of the Recruitment Rules 1966 provides for 'Constitution of Cadres' that there shall be constituted for each State or group of States an Indian Forest Service Cadre. Rule 4 of the Recruitment Rules 1966 empowers the Central Government to determine the strength and composition of each of the cadres constituted under Rule 3 in consultation with the State Governments. Rule 4 specifies the method of recruitment to the service. It shall be (i) by a competitive examination and (ii) by promotion of substantive members of the State Forest Service. Rule 8 provides 'Recruitment by Promotion'. As per this rule, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations, the Central Government may, from time to time, recruit to the service, persons by promotion from amongst the substantive members of the State Forest Service. Rule 9 provides that number of persons to be recruited

under Rule 8 in any State or group of States, shall not exceed 33-1/3 percent of the number of senior posts under the State Government, Central Deputation Reserve, State Deputation Reserve and the training reserve in relation to that State or to the group of States, in the Schedule to the Indian Forest Service (Fixation of cadre strength) Regulations, 1966.

30. In exercise of power under Rule 8 (1) of the Recruitment Rules, 1966, the Central Government in consultation with the State Government and the Union Public Service Commission, framed "The Indian Forest Service (Appointment by Promotion) Regulation, 1966", which are deemed to have come into force with effect from 01.07.1966, in terms of the Notification dated 17.11.1965. Regulation 5 deals with "Preparation of a list of suitable Officers", which provides that each Committee shall ordinarily meet every year and prepare a list of such members of the State Forest Service, as are held by them to be suitable for promotion to the service. The number of members of the State Forest Service to be included in the list is by the Central Government in consultation with the concerned State Government.

31. The State of Andhra Pradesh framed rules, known as "Andhra Pradesh Forest Service Rules 1997", published vide G.O.Ms.No.154, Environment, Forests Science and Technology (For-V), dated 18.11.1997, in exercise of the powers conferred by proviso to Article 309 of the Constitution of India.

32. The Andhra Pradesh Forest Service comprises of categories of posts.
Class-A comprises of three categories;

- (i) Category-1: Deputy Conservator of Forests including Divisional Forest Officer, etc.,
- (ii) Category-2: Assistant Conservator of Forests including Sub-Divisional Forest Officer, etc.,
- (iii) Category-3: Range Officer including Research Assistant etc.

33. The method of recruitment to Category-2 Class-A, Assistant Conservator of Forests is by direct recruitment and by promotion from Range Officers. The appointing authority for the post of Categories-1 & 2 of Class-A was initially the Government. But, subsequently, vide G.O.Ms.No.83, dated 31.07.2018 EFS & T (Sec.V) Department, amendment was made conferring the power of appointment to the post of Assistant Conservator of Forests on the Principal Chief Conservator of Forests. The method of appointment to Category-3 of Class-A, Range Officer, is by direct recruitment and by appointment by transfer of Deputy Range Officer. The appointing authority is the Principal Chief Conservator of Forests. The G.O.Ms.No.154, dated 18.11.1997 was amended in G.O.Ms.No.159, Environment, Forests, Science and Technology (For-V), dated 08.12.2008, which provided for revised entrance and training rules, for the State Forest Service and Forest Range Officers. However, There is no change in the categories of posts under Rule 2 included in the Andhra Pradesh Forest Service Rules 1997.

34. Coming to the definition of 'State Forest Service'. Rule 2 (g) (i) of the Indian Forest Service (Recruitment) Rules 1966 reads as under:

“2(g): “State Forest Service” means:

- (i) Any such service in a State, being a service connected with forestry and the members thereof having gazetted status, as the Central Government may, in consultation with the State Government, approve for the purpose of these rules; or
- (ii) Omitted.”

35. Under Rule 2 (g) (i) of the Recruitment Rules 1966, the following conditions are required to be fulfilled to fall within the definition of ‘State Forest Service’ for the applicability of the Recruitment Rules 1966 and the Regulations 1966 for a claim of consideration of promotion to Indian Forest Service.

- (i) The service in a State must be connected with forestry;
- (ii) The members of such service in a State connected with forestry, must have gazetted status, and
- (iii) Such a service, as aforesaid, must have approval from the Central Government in consultation with the State Government for the purpose of the Indian Forest Service (Recruitment) Rules 1966;

36. Though, it is not disputed that the Forest Range Officer post is a gazetted post, we may refer to the relevant provisions/notifications referred in this regard, as to how and when the Forest Range Officer post became gazetted.

37. Article 371-D of the Constitution of India provides for Special Provisions with respect to the State of Andhra Pradesh.

38. In exercise of powers conferred under Clauses 1 & 2 of Article 371-D, the President of India made an order called as “Andhra Pradesh Public Employment (Organization of Local cadres and Regulation of Direct

Recruitment) Order, 1975" published vide GSR No.524 (E), dated 18.10.1975, which was republished vide G.O.Ms.No.674, dated 20.10.1975.

39. Para-3 of the Presidential Order empowers the State Government to organize classes of posts in several services and class of several posts under the State into different local cadres for different posts of the State to the extent of the manner provided therein. Clause-(2) of Para No.3 provides that the posts belonging to each 'specified gazetted category' in each department in each zone shall be organized into a separate cadre.

40. Para-3 of the Presidential Order 1975 reads as under:

“Para 3. Organisation of Local Cadres:- (1) The State Government shall, within a period of eighteen months from the commencement of this Order, organize classes of posts in the civil services of, and classes of civil posts under, the State into different local cadres for different parts of the State to the extent, and in the manner, herein after provided:

(G.O.MS.No.794, G.A.(A), Dt.12-11-1976)

{Provided that, notwithstanding the expiration of the said period, the President may by order, require the State Government, whenever he considers it expedient so to do, to organize any classes of posts in the civil services of, and classes of civil posts, under, the State into different local cadres for different parts of the State}

(G.O.Ms.No.34, G.A.D.(SPFA), Dt.24-1-1981)

(2) The posts belonging to the category of Junior Assistant, and to each of the other categories equivalent to, or lower than that of a Junior Assistant in each department in each district shall be organized into a separate cadre.

Explanation: For the purposes of this sub-paragraph, sub-paragraph (1) of Paragraph 6, and sub-paragraph (1) of paragraph 8, a category shall be deemed to be equivalent to or lower than that of a Junior Assistant if the minimum of the scale of pay, of a post belonging to a category or where the post carries a

fixed pay, such fixed pay equal to or lower than the minimum of the scale of pay of a Junior Assistasnt.

(3) The posts belonging to each non-gazetted category, other than those referred to in sub-paragraph (2), in each department in each zone shall be organized into a separate cadre.

(4) The posts belonging to each specified gazetted category in each department in each zone shall be organized into a separate cadre.

(5) Notwithstanding anything contained in sub-paragraphs (3) and (4), the State Government may, where it considers it expedient so to do and with the approval of the Central Government, organize the posts belonging to any of the categories referred to therein, in any department, or any establishment thereof, in two or more continuous zones into a single cadre.

(6) Notwithstanding anything contained in sub-paragraphs (2), (3), (4) & (5), the Central Government may notify the departments in which and the categories of posts for which a separate cadre has to be organized for the City of Hyderabad and on such notification, the posts belonging to each such category in each such department in the said City (other than those concerned with the administration of areas falling outside the said City) shall be organized into a separate cadre and the posts so organized shall be excluded from the other cadres, organized in pursuance of this paragraph, or constituted otherwise and comprising of posts belonging to that category in that department.

(7) In organizing a separate cadre in respect of any category of posts in any department for any part of the State, nothing in this Order shall be deemed to prevent the State Government from organizing or continuing more than one cadre in respect of such category in such department for such part of the State.

(8) Where the Central Government is satisfied that it is not practicable or expedient to organize local cadres under this paragraph in respect of any non-gazetted category of posts in any department, it may, by notification, make a declaration to that effect and on such declaration the provisions of this paragraph shall not apply to such category of posts.”

41. Para-2 (1) (e) of the Presidential Order 1975 defines 'local cadre as under:

“(e) ‘*local cadre*’ means any local cadre of posts under the State Government organized in pursuance of Paragraph 3, or constituted otherwise or any part of the State”

42. Para No.2 (j) of the Presidential Order defines 'Gazetted Category', which means, any gazette category specified in 3rd Schedule to the Presidential Order and includes any other gazette category notified as such by the Central Government. It reads as under:

“(j) ‘*Specified gazetted category*’ means any gazette category specified in the Third Schedule and includes any other gazette category notified as such by the Central Government”

43. The Third Schedule to the Presidential Order notified the specified gazette categories. The specified gazette categories are organized as zonal posts in terms of Para No.2 (m) of the Presidential Order.

44. The gazetted status of the Forest Range Officer was vide the notification of the Government of Andhra Pradesh in G.O.Ms.No.188 Energy, Forests, Environment, Science and Technology (For-IV) Department, dated 09.09.1993, which notification is as under:

“GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Public Services – Forest Department – A.P.Forest Sub-ordinate Service Class-I
– Forest Range Officers – Declaration of Gazetted – Orders – Issued.

ENERGY, FORESTS, ENVIRONMENT, SCIENCES 7 TECHNOLOGY
(FOR.IV) DEPT.

G.O.Ms.No.188

Dated: 9-9-1993
Read the following:-

1. From the Prl.Chief Conservator of Forests, A.P., Hyderabad
Lr.No.32232/88/A1, Dt:30-1-1991

* * *

O R D E R:

Prl. Chief Conservator of Forests in his letter read above had recommended to the Government for declaring the post of Forest Range Officers as Gazetted.

2. Government, after careful consideration, hereby decides that the post of Forest Range Officer in the Forest Department in the Scale of Rs.2750-5960 be declared as Gazetted, without any financial commitment to the Government and without compensatory allowance in lieu of residential attenders.

3. The Prl. Chief Conservator of Forests is requested to send necessary proposals, to consider and issue of amendment to relevant service rules and also to the Presidential Order immediately.

4. This order is issued with the concurrence of Finance and Planning Department vide U.O.No.4957/SF(IF)/93, dated 8-9-1993.

5. The following Notification be published in the Andhra Pradesh Gazette.

NOTIFICATION

The post of Forest Range Officers in Andhra Pradesh Forest Department shall be notified.

(BY ORDER AND IN THE NAME OF GOVERNOR OF ANDHRA
PRADESH)

S. RAY,
PRINCIPAL SECRETARY TO GOVERNMENT”

45. The Government of India, Ministry of Home Affairs, New Delhi, vide Order GSR No.620 (E), dated 30.09.2005, notified the post of Forest Range Officer as 'specified gazette category' for the purpose of the Presidential Order, 1975 from the date of publication of the order in the official gazette.

46. The Government of India, Ministry of Home Affairs, New Delhi, vide Order No.GSR 621 (E), dated 30.09.2005 in terms of proviso to Sub-paragraph

(1) of Paragraph 3 of the Presidential Order, 1975 directed the State Government to organize with effect from the date of publication of the order in the official gazette, the post of Forest Range Officer into local cadres in each zone in the State of Andhra Pradesh.

47. GSR 620(E) and GSR 621(E) vide gazette notification dated 30.09.2005 read as under:

**”MINISTRY OF HOME AFFAIRS
ORDER
New Delhi, the 30th September, 2005**

G.S.R.620(E) – In exercise of the powers conferred by clause (i) of sub-paragraph (1) of paragraph 2 of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, the Central Government hereby notifies the post of Forest Range Officer, Department of Energy, Forest Science and Technology as ‘specified gazette category’ for the purposes of the said Order from the date of publication of this order in the Official Gazette.

{F.No.21012/2/2005-SR}
A. K. SRIVASTAVA, Jt. Secy.”

**“ORDER
New Delhi, the 30th September, 2005**

G.S.R.621(E) – In pursuance of the proviso to sub-paragraph (1) of paragraph 3 of the Andhra Pradesh Public Employment (Organisation of Local Cadres and Regulation of Direct Recruitment) Order, 1975, the President hereby directs that Government of Andhra Pradesh may organize with effect from the date of publication of this Order in the Official Gazette, the post of Forest Range Officer in the Department of Energy, Forest Science and Technology into local cadres in each zone in the State of Andhra Pradesh.

By Order and in the Name of the President.

{F.No.21012/2/2005-SR}
A. K. SRIVASTAVA, Jt. Secy.”

48. The aforesaid orders were published by the State of Andhra Pradesh vide G.O.Ms.No.43, General Administration (SPF) Department, dated 06.02.2006 and published in the Andhra Pradesh Gazette dated 23.02.2006.

49. Thus, the Forest Range Officer is a 'Specified Gazetted Category' for the purposes of the Presidential Order 1975, and is organized into local cadres as Zonal post.

50. The Forest Range Officer post is 'Andhra Pradesh Forest Service' under the Andhra Pradesh Forest Service Rules 1997 and is also a gazetted post.

51. Rule 2 of the A. P. Forest Service Rules 1997 upon which much emphasis was laid by the learned senior counsel for the respondents, is for constitution of the A. P. Forest Service which consists of categories of posts as mentioned therein in which in Class-A, Category-2 the Assistant Conservator of Forests and Category-3 *inter alia*, Range Officer, is included. The Tribunal has also taken the view that since the Assistant Conservator of Forests and the Range Officer though in different category, but they form part of A. P. Forest Service and in the method of recruitment, the appointing authority, qualification, age and physical standards, they stand on the same footing, the claim of the Forest Range Officer for consideration for promotion to the Indian Forest Service cannot be differentiated from the claim of Assistant Conservator of Forests and they are also entitled for such consideration under the Indian Forest Service.

52. In our view, there may be no difference with respect to the qualification, the method of recruitment, appointing authority, the age criteria or the physical standards to the Category-2 Assistant Conservator of Forests posts and Category-3 Range Officer posts in Class-A, for the purposes of the

Andhra Pradesh Forest Service Rules 1997, but when it comes to different recruitment rules i.e., Indian Forest Service (Recruitment) Rules 1966, for promotion to the Indian Forest Service, what becomes relevant is the definition of the 'State Forest Service' as under Rule 2 (g) (i) of the Recruitment Rules 1966. The Forest Range Officer may form part of the constitution of Andhra Pradesh Forest Service, which may be said to be Andhra Pradesh State Forest Service, but this State Forest Service under the Andhra Pradesh Forest Service Rules 1997, has to qualify the definition of the 'State Forest Service' as defined under Rule 2 (g) (i) of the Recruitment Rules 1966 for the purposes of promotion to the Indian Forest Service. The Assistant Conservator of Forests and the Range Officers might have been classified under the same Class-A i.e., Assistant Conservator of Forests in Category-2 and Range Officer in Category-3, but that of its own would not be conclusive of the claim of the Range Officer for consideration of the promotion under the Indian Forest Service (Recruitment) Rules of 1966. Out of the Andhra Pradesh State Forest Service in State Rules 1997, only such service, which is connected to forestry and the members whereof are having gazetted status, and are approved by the Central Government in consultation with the State Government, would be the 'State Forest Service' under the Recruitment Rules 1966 for promotion to Indian Forest Service.

53. Any approval by the Central Government for the purposes of the Indian Forest Service (Recruitment) Rules 1966 has not been brought on record.

54. We may profitably refer to the case of ***Gopal Singh v. State Cadre Forest Officer's Assn.***³ the facts were that the appellant therein Gopal Singh approached the Central Administrative Tribunal when he was holding the post of Assistant Mill Manager (AMM) in the Forest Department of Andaman. When he was appointed initially, he was part of the Forest Department of Andaman and Nicobar Islands, governed by Andaman Forest Department (Class I & Class II gazetted posts) Recruitment Rules, 1963, which were amended on 3-8-1973. These rules provided for recruitment and promotion to the posts of Chief Conservator of Forests, Conservator of Forests, Deputy Conservator of Forests, Assistant Conservator of Forests, Assistant Mill Manager, Senior Assistant Engineer and others. His claim was that in terms of the aforesaid Rules, he deserved to be promoted to the post of Deputy Conservator of Forests and the basis of his claim was that his post of AMM was equivalent in Grade II to the post of Assistant Conservator of Forests, which was a feeder post for the promotion to the post of Deputy Conservator of Forests. His further case was that as per the Indian Forest Service (Appointment by Promotion) Regulations, 1966, he was entitled to be promoted to the post of Deputy Conservator of Forests on the basis of Rule 8 (1) of the Indian Forest Service (Recruitment) Rules, 1966. The Tribunal rejected his claim. The review was however allowed by the Tribunal. The Order was challenged by two separate writ petitions, one by the State and another by the State Cadre Forest Officers Association before the High Court of Calcutta. The High Court of

³ (2007) 9 SCC 369

Calcutta allowed both the writ petitions by common judgment setting aside the judgment of the Tribunal in review. The review applications were also rejected by the High Court. The matter approached the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the appeal and maintained the Order of the High Court.

55. In **Gopal** Singh (supra) the Hon'ble Supreme Court, *inter alia*, held that, firstly, the post of AMM was not connected with forestry. In the present case, the post of Forest Range Officer is connected with forestry on which there is no dispute between the parties. Secondly, important for the present case, the Hon'ble Apex Court, considering Rule 2 (g) (ii) of the Recruitment Rules 1966 which then defined the 'State Forest Service', held that the language of Rule 2 (g) (ii) is plain and simple to mean that for any service to be included in the State Forest Service it would be firstly required to be connected with forestry and secondly it has to be approved by the Central Government for the purposes of those rules. The Hon'ble Supreme Court rejected the submission that the language of Rule 2 (g)(ii) was broad enough to include any other service, as in that case, like the service in the Forest Department of Andaman & Nicobar, so that even such service is not left out of consideration. The Hon'ble Supreme Court also rejected the submission that the words "as may be approved by the Central Government" in Rule 2 (g) (ii) of the Recruitment Rules 1966 was not mandatory and the said approval was not a must. The Hon'ble Supreme Court held that the "meaning is clearly discernible that there would have to be

approval by the Central Government in favour of any service for being included in the State Forest Service”.

56. It is apt to refer paragraphs No.27 and 28 of **Gopal Singh** (supra) as under:

“27. Learned counsel insisted upon us that because of the proviso it is not possible for the appellant to be considered for the promotion to any other cadre than the Union Territories i.e. Andaman & Nicobar. Learned counsel argues that it is no doubt true that the conjoint reading of the 1991 Rules and Rule 2(g)(ii) suggest that it is the post of ACF alone which would be the feeder post for the promotion to the post of DCF. However, the learned counsel relies heavily on the language of Rule 2(g)(ii) and suggests that the language is broad enough to include any other service like the service in the Forest Department of Andaman & Nicobar so that even such service is not left out of consideration. According to Shri Rao, as per the plain language of Rule 2(g)(ii) no prior approval of the State Government is required. Learned counsel suggests that the words “as may be approved by the Central Government” in Rules 2(g)(i) and 2(g)(ii) only show that the Government has the power in future to include any other post. However, the words “*any service in such Central Civil post Class I or Class II, connected with forestry*”

(emphasis supplied) would suggest that every such service in Class I or Class II including the post of AMM would come under the State Forest Service and would be covered under Rule 2(g)(ii). In short the contention is that the clause starting with words “as may be approved ... these Rules” is not mandatory and the said approval is not a must.

28. For this the learned counsel relies on the decision of this Court in *Land Acquisition Officer & Mandal Revenue Officer v. V. Narasaiah* [(2001) 3 SCC 530] wherein in para 14 it has been held that “may be” means “may” or “may not be”. In our opinion the argument is clearly incorrect and would violate the language. The language is plain and simple to mean that for any service to be included in the State Forest Service would be *firstly* required to be **connected with forestry** and **secondly it has to be approved by the Central Government**

for the purposes of these Rules. If we give the meaning as is canvassed by the learned counsel, then there would be no necessity of the words “as may be approved by the Central Government for the purpose of these Rules”. We cannot accept the interpretation. The ruling cited by the learned counsel is in entirely different context. That was the case where the question was as to whether the court could accept in evidence a certified copy of the registered document under Section 51-A of the Act. The Court simply held that this gave a discretion to the court concerned to accept or not to accept such copies in evidence. In our opinion there is no significance in the present provision i.e. Rule 2(g)(ii) of the words “as may be approved” as is suggested by the learned counsel. **On the other hand the meaning is clearly discernible that there would have to be approval by the Central Government in favour of any service for being included in the State Forest Service. We, therefore, reject the contention raised by the learned counsel.”**

57. The definition of the ‘State Forest Service’ as considered in ***Gopal Singh*** (supra), was subsequently substituted.

58. Rule 2 (g)(ii) of the Indian Forest Service (Recruitment) Rules 1966, which came for consideration before the Hon’ble Supreme Court in ***Gopal Singh*** (supra), read as under:

“2 (g)(ii) any service in such Central Civil post: Class I or Class II connected with forestry, as may be approved by the Central Government for the purposes of these Rules.”

59. The present Rule 2(g) (ii) which defines the ‘State Forest Service’, for convenience sake is reproduced again at this place, as under:

“2(g): “State Forest Service” means:

- (i) Any such service in a State, being a service connected with forestry and the members thereof having gazetted status, as the Central Government may, in consultation with the State Government, approve for the purpose of these rules; or
- (ii) Omitted.”

60. Sub-rule (ii) of Rule 2 (g) was omitted in 1997 and the present rule was substituted.

61. A comparative reading of the above quoted Rule 2 (g) shows that the words "connected with forestry" are still there. Further, in Rule 2 (g) (ii), the words were "as may be approved by the Central Government for the purposes of these Rules". In the present Rule 2 (g) (i), the words are "as the Central Government may in consultation with the State Government approve for the purpose of these Rules". So, the difference is that now for the approval by the Central Government, the consultation with the State Government has also been provided. However, the approval by the Central Government for purposes of the Recruitment Rules 1966 is still the requirement. So in our view, the judgment in **Gopal Singh** (supra) of the Hon'ble Supreme Court, on the point involved in the present case that any such service in a State, has to be approved for the purpose of the Recruitment Rules 1966, by the Central Government, still holds the field and is fully applicable. Such approval is must. In the absence of any such approval, in our view, such service i.e., Forest Range Officer's service would not fall within the definition of 'State Forest Service' under Rule 2 (g) (i) of the Recruitment Rules 1966. Once it is not so covered, the Recruitment Rules 1966, and the Regulations 1966 would not attract to the post of Forest Range Officer for consideration for the promotion of Forest Range Officer in Indian Forest Service.

62. The submission of the learned counsel for the respondent is that for the post of Assistant Conservator of Forests, also there is no approval from the Central Government for promotion to Indian Forest Service.

63. We are of the view, that in this writ petition the question of the Assistant Conservator of Forests being covered or not under Rule 2 (g) (i) of the Recruitment Rules 1966 is not for our consideration. What is under challenge is the Order of the Tribunal. The Tribunal passed the Order in favour of the respondent-Forest Range Officer. Therefore, the question is if the Forest Range Officer falls within the definition of 'State Forest Service' or not, and depending there upon, the legality, validity and the correctness of the Order of the Tribunal.

64. In ***Gopal Singh*** (supra), a contention was further raised that there was no approval of the Central Government to the service of Assistant Conservator of Forests and therefore, the requirement of the approval of the Central Government was of no consequence. The Hon'ble Supreme Court observed that the question was not as to whether there was any approval of Assistant Conservator of Forests, the question was whether there was approval to the service of AMM. There was a clear cut finding by the High Court that there was no such approval at least none which was proved before the High Court.

65. Relevant part of Para – 29 of ***Gopal Singh*** (supra) reads as under:

"29.Further the question is not as to whether there was any approval of ACF, the question is whether there was an approval to the service of AMM and there is a clear-cut finding by the High Court that there was no such

approval at least none which was proved before the High Court. **When the language is plain, we do not look hither and thither to interpret the same and in our opinion the language of this provision is extremely clear and unambiguous. A plain reading of the Rule clearly suggests that there would have to be approval for any service being included in the State Forest Service.**”

66. We are of the further view that even if the argument that the Assistant Conservator of Forests is not approved for the purpose of the Recruitment Rules 1966 for promotion to the post of Indian Forest Service by the Central Government, be acceptable, even then on that ground, the claim of the respondent-Forest Range Officer to be considered for promotion as directed by the Tribunal cannot be sustained *de horse* the Recruitment Rules of 1966.

67. In ***K. Shailendra Moses*** (supra) the Division Bench of the High Court of Telangana held that the Forest Range Officers under Rule 2 of the State Forest Service Rules, are included in the State Forest Service, however, the posts included in the State Forest Service have to be approved under Rule 2 (g) (i) of the Indian Forest Service (Recruitment) Rules 1966 by the Central Government. Forest Range Officers is not a service as approved by the Central Government for the purpose of the Rules under Indian Forest Service (Recruitment) Rules 1966 or the Indian Forest Service Regulations 1966 for appointment by promotion to India Forest Service.

68. In ***K. Shailendar Moses*** (supra), the petitioners therein being substantive members in the cadre of Forest Range Officers had also completed 8 years of service on that post, but it was held by the Division Bench of the

High Court of Telangana, that the said completion of 8 years in the cadre of Forest Range Officers, was of no avail.

69. Paragraph-34 of ***K.Shailendra Moses*** (supra) reads as under:

“34. Rule 4 (2) (b) of the IFS (Recruitment) Rules provides the method of recruitment to Indian Forest Services, one by a competitive examination and by promotion of substantive members of the State Forest Service. Under Rule 2 (Constitution) of the State Forest Service Rules, Forest Range Officers are included in State Forest Service, however, the posts included in the State Forest Service have to be approved under Rule 2 (g) of the IFS (Recruitment) Rules by the Central Government. Forest Range Officers is not a service as approved by the Central Government for the purpose of the Rules under the IFS (Recruitment) Rules or the IFS Regulations 1966 for appointment by promotion to IFS and as such the petitioners being substantive members in the cadre of Forest Range Officers and completed 8 years of service in that post is of no avail.”

70. The judgment in ***K. Shailendra Moses*** (supra) has been affirmed by the Hon'ble Apex Court by dismissal of SLP (C) No.7194 of 2021 vide judgment dated 14.02.2023.

71. The Tribunal erred in making equivalence of the post of Forest Range Officer to that of Assistant Conservator of Forests. It has been well settled by the Hon'ble Supreme Court that the grant of equivalence is not the function of the Court or Tribunal. We are of the view that at least at the initial stage, where there is no consideration by the Authority competent i.e., the State or the Central Government as the case may be, the exercise by the Tribunal to hold the post of Forest Range Officer as much as the post of Assistant Conservator of Forests is wholly unjustified and uncalled for, though

the grant or refusal of equivalence by the competent authority may be open to judicial review afterwards on the limited grounds.

72. In ***Guru Nanak Dev University v. Sanjay Kumar Katwal & Anr.***⁴ the Hon'ble Apex Court reiterated that equivalence is a technical academic matter. It cannot be implied or assumed. It is apt to refer para-15 of ***Guru Nanak Dev University*** (supra) as under:

“15. The first respondent has passed his MA (OUS) from Annamalai University through distance education. **Equivalence is a technical academic matter. It cannot be implied or assumed.** Any decision of the academic body of the university relating to equivalence should be by a specific order or resolution, duly published. The first respondent has not been able to produce any document to show that the appellant University has recognised MA (English) (OUS) of Annamalai University through distance education as equivalent to MA of appellant University. Thus, it has to be held that the first respondent does not fulfil the eligibility criterion of the appellant University for admission to the three year law course.”

73. In ***Zahoor Ahmad Rather v. Sheikh Imtiyaz Ahmad***⁵ the Hon'ble Apex Court held that the State, as an employer, is entitled to prescribe qualifications as a condition of eligibility, after taking into consideration the nature of the job, the aptitude required for efficient discharge of duties, functionality of various qualifications, course content leading up to the acquisition of various qualifications etc. Judicial review can neither expand the ambit of the prescribed qualifications nor decide the equivalence of the

⁴ (2009) 1 SCC 610

⁵ (2019) 2 SCC 404

prescribed qualifications with any other given qualifications. Equivalence of qualification is a matter of State, as recruiting authority, to determine.

74. It is apt to refer para-26 of **Zahoor Ahmad Rather** (supra) as under:

“26. We are in respectful agreement with the interpretation which has been placed on the judgment in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] in the subsequent decision in *Anita* [*State of Punjab v. Anita*, (2015) 2 SCC 170 : (2015) 1 SCC (L&S) 329] . The decision in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on the provisions of Rule 10(a)(ii). Absent such a rule, it would not be permissible to draw an inference that a higher qualification necessarily presupposes the acquisition of another, albeit lower, qualification. The prescription of qualifications for a post is a matter of recruitment policy. The State as the employer is entitled to prescribe the qualifications as a condition of eligibility. It is no part of the role or function of judicial review to expand upon the ambit of the prescribed qualifications. **Similarly, equivalence of a qualification is not a matter which can be determined in exercise of the power of judicial review. Whether a particular qualification should or should not be regarded as equivalent is a matter for the State, as the recruiting authority, to determine.** The decision in *Jyoti K.K.* [*Jyoti K.K. v. Kerala Public Service Commission*, (2010) 15 SCC 596 : (2013) 3 SCC (L&S) 664] turned on a specific statutory rule under which the holding of a higher qualification could presuppose the acquisition of a lower qualification. The absence of such a rule in the present case makes a crucial difference to the ultimate outcome. In this view of the matter, the Division Bench [*Imtiyaz Ahmad v. Zahoor Ahmad Rather*, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the High Court was justified in reversing the judgment [*Zahoor Ahmad Rather v. State of J&K*, 2017 SCC OnLine J&K 936] of the learned Single Judge and in coming to the conclusion that the appellants did not meet the prescribed qualifications.

We find no error in the decision [*Imtiyaz Ahmad v. Zahoor Ahmad Rather*, LPA (SW) No. 135 of 2017, decided on 12-10-2017 (J&K)] of the Division Bench.”

75. The Tribunal based such equivalence on consideration of the criteria, with respect to the qualification, the method of recruitment, appointing authority, the age criteria and on the physical standards. The question would be not only with respect to the above considerations, but the question of equivalence would also require consideration of various other factors, inclusive of such as functions and the duties of the posts.

76. We may not be understood as holding that, there is no equivalence or that there is equivalence between the posts of Assistant Conservator of Forests and Range Officer in the Andhra Pradesh Forest Service Rules, but what we are observing is that such equivalence could not be considered by the Tribunal and based thereon the Forest Range Officer could not be held to be covered in the definition of 'State Forest Service' under Rule 2 (g) (i) of the Indian Forest Service (Recruitment) Rules 1966.

77. We are of the further considered view that the question of equivalence was also of no relevance, because even if it be taken that, since there is categorization of the Assistant Conservator of Forests and Forest Range Officer under the Andhra Pradesh Forest Service Rules 1997, in Class-A, may be in different category, Categories-2 and 3 respectively, and even if the criteria on which the Tribunal held Forest Range Officer as equivalent to Assistant Conservator of Forests be taken as correct and equally applicable to both the posts, still unless such equivalent post i.e., Forest Range Officer is approved by

the Central Government for the purposes of Recruitment Rules 1966, the same shall not be the 'State Forest Service' under Rule 2 (g) (i) for the purpose of the promotion to Indian Forest Service under the Recruitment Rules 1966.

78. In **B. Amrutha Lakshmi** (supra), upon which reliance has been placed by Sri B. Adinarayana Rao, learned senior advocate for the respondent, it was held that once a candidate comes into the zone of consideration and satisfies all the requirements, including that of outstanding merit and ability, he cannot be told that merely because he is junior in the seniority, his name will not be forwarded for consideration. In the said case, the rule required that from amongst the outstanding officers, 15 names were to be forwarded to the Central Government, and hence it was possible that amongst those 15 a junior officer might as well figure, depending upon the assessment of his merit. He could not be eliminated merely on the ground that he was a junior officer and that if selected, he would write the Annual Confidential Reports of his superiors. The appellant therein satisfied all the requirements of being a gazetted officer in substantive capacity and completed more than requisite 8 years of continuous service on the relevant post. She also fulfilled the age criteria and there was no dispute about her outstanding merit and ability. Her claim was rejected by the Central Administrative Tribunal. At the stage of the High Court, it was observed that just because she satisfied the criteria, the name could not be forwarded as in the view of the High Court, the Commissioner of Commercial Taxes had the power to restrict the zone of consideration in sending the names above the level of Additional Commissioners and Joint Commissioners, though

as per the rules, the number of vacancies to be filled was 3 and number of candidates to be recommended would be 5 times i.e., 15. The Hon'ble Apex Court considered the question with respect to such restriction to be permissible under the rules and held that if the rules for selection contain a requirement, the same has to be applied uniformly and strictly, and none from the eligible group could be eliminated from being considered on any criteria other than those which were provided under the rules.

79. In Paragraph 19 and 20 of ***B. Amrutha Lakshmi*** (supra) the Hon'ble Apex Court observed as under:

“**19.....** It is for the State Government to lay down by rules as to how the outstanding merit and ability is to be assessed, and over how much period. After all these tests are applied, the number of persons to be recommended will not be very large. However, **once a candidate comes into the zone of consideration, and satisfies all the requirements, including that of outstanding merit and ability, he cannot be told that merely because he is junior in the seniority, his name will not be forwarded for consideration.** The rule requires that from amongst the outstanding officers, 15 names are to be forwarded to the Central Government, and hence it is possible that amongst these 15, a junior officer may as well figure, depending upon the assessment of his merit. He cannot be eliminated merely on the ground that he is a junior officer, and that if selected he will write the ACRs of his superiors.

20. We have got to accept that, **if the rules for selection contain a requirement, the same has to be applied uniformly and strictly, and none from the eligible group can be eliminated from being considered on any criteria, other than those which are provided in the rules.** If there is a criteria laid down for selection, the administration has to confine to the same, and it cannot impose an additional criterion over and above whatever has been laid down. If that is done, it will no longer remain an exercise of discretion, but will result into discrimination. It will mean treating similarly situated

employees dissimilarly, and denying equal opportunity to some of them in the matter of public employment on the basis of a criterion which is not laid down, resulting into violation of Article 14 and Article 16(1) of the Constitution of India. If the rules were to provide that in the event of large number of persons coming into the zone of consideration, the names of the seniormost alone will be forwarded, then it would have been a different situation. In the absence of any such restrictive rule, as in the present case, the decision of the respondents cannot be justified.”

80. In our view, in the present case, the post of Forest Range Officer does not qualify under the State Forest Service within the meaning of Rule 2 (g) (i) of the Indian Forests Service (Recruitment) Rules 1966. Consequently, we are of the considered view that the principle of law as laid down in ***B. Amrutha Lakshmi*** (supra) cannot be applied to the facts of the present case in favour of the respondent, as they do not fall within the zone of consideration.

81. Thus considered. We hold that,

- (1) the Forest Range Officer service, is not a 'State Forest Service' within the meaning of Rule 2 (g) (i) of the Indian Forest Service (Recruitment) Rules 1966; as the same has not been approved by the Central Government, in consultation with the State Government for the purposes of the Indian Forest Service (Recruitment) Rules 1966, which approval is must;
- (2) the Forest Range Officer of Andhra Pradesh Forest Service do not fall in the zone of consideration for promotion to the post of Indian Forest Service under the Indian Forest Service (Recruitment) Rules 1966 and the Regulations 1966;

(3) the impugned judgment of the Central Administrative Tribunal cannot legally be sustained.

82. In the result, the impugned Order of the Tribunal is quashed. The Writ Petition is allowed.

83. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

B. V. L. N. CHAKRAVARTHI, J

Date: 22.12.2023
Dsr

Note:
LR copy to be marked
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