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GOPAL SINGH

v.

STATE CADRE FOREST OFFICERS' ASSOCIATION AND ORS.

MAY 15, 2007

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[H. K. SEMA AND V.S. SIRPURKAR, JJ.]

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Forest Act, 1927—Section 2(2) & 32(a)—Indian Forest Service (Recruitment) Rules, 1966—Rules 2(g)(ii), 4 & 8—Indian Forest Service (Service) Rules, 1966—Indian Forest Service (Appointment by Promotion) Regulations, 1966—Regulation 5(2)—Indian Forest Service (Initial Recruitment) Regulations, 1966—Indian Forest Department Class Service (Fixation of Cadre Strength) Regulations, 1966—Andaman Forest Service (Fixation of Cadre I & Class II Gazetted Posts) Recruitment Rules, 1963 as amended in 1973—Andaman & Nicobar Forest Service Rules, 1991—5, 14 & 17—Petition by employee holding the post of Assistant Mill Manager before Tribunal claiming promotion to the post of Deputy Conservator of Forests by treating his post as equivalent to the post of Assistant Conservator of Forest a feeder post—Tribunal allowing the petition—High Court dismissing the Writ Petition preferred by the State—Correctness of—Held, the post of Assistant Mill Manager is not connected with forestry and is not approved by the Central Government for being included in the State Forest Service under IFS (Recruitment) Rules 1966—Post is not equivalent to the post of Assistant Conservator of Forest under the Rules—Hence, claim for promotion to the post of Deputy Conservator of Forest rejected.

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Appellant was initially appointed as part of the Forest Department of Andaman & Nicobar Islands which was governed by Andaman Forest Department (Class I & Class II Gazetted Posts) Recruitment Rules, 1963 as amended in 1973. The appellant was gradually promoted to the post of Assistant Mill Manager (AMM). The appellant filed an Original Application before Central Administrative Tribunal claiming promotion to the post of Deputy Conservator of Forests (DCF) contending that his post of AMM was equivalent to the post of Assistant Conservator of Forests (ACF), which is a feeder post under 1963 Rules as amended in 1973; and that he was eligible for inclusion in the list of officers of the Andaman Forest Service for appointment on promotion to the post of DCF specified in Schedule to Regulation 5 of Indian

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Forest Service (Appointment by Promotion) Regulations, 1966.

Respondent-State filed objections before the Tribunal contending that the appellant was in the Technical side and that he could have no claim to the post on ACF and DCF which are on the forestry side; that the recruitment to the posts are governed by Indian Forest Service (Recruitment) Rules, 1966; that the posts of ACF is a separate cadre and they alone were eligible for induction in the Indian Forest Service (Appointment by Promotion) Regulations, 1966; that the post of AMM is not concerned with forestry; that the AMM was not included as a feeder cadre for promotion to the post of DCF in 1963 Rules nor was it a post of equivalent grade to the post of ACF; and that after the constitution of Indian Forest Service during 1966, all the posts of DCF were encadred into the IFS and therefore 1963 Rules have not application.

The Tribunal dismissed the Original Application of the appellant accepting the objections raised by the States. The appellant filed a Review Application before the Tribunal. The Tribunal allowed the Review Application holding that AMM and ACF were equivalent and feeder posts for promotion to the post of DCF under 1963 Recruitment Rules; that AMM is also connected with forestry; that the holder of the post of AMM fell within the category of officers referred to in Rule 2(g) of IFS (Recruitment) Rules, 1966 for the purposes of inclusion in the select list of Andaman and Nicobar Forest Service to be considered for promotion to the Union Territory cadre.

The order of the Tribunal was challenged by the State and State Cadre Forest Officers' Association by filing Writ Petitions before High Court. The High Court allowed the Writ Petitions. The High Court held that the post of AMM was only of a technical nature and could not be said to be 'connected with forestry'; that the post of AMM was outside the IFS (Recruitment) Rules, 1966; that only the post of ACF is the feeder post for promotion to the post of DCF; that there was no approval granted by the Central Government regarding the service of AMM as envisaged in Rule 2(g)(ii) of the IFC (Recruitment) Rules, 1966; that the Tribunal exceeded its Review jurisdiction without pointing any error apparent on the face of the record;.

In appeal to this Court, the appellant contended that the language of Rule 2(g)(ii) of the IFC (Recruitment) Rules, 1966 is broad enough to include any other service in Class I and Class II including the post of AMM; that the approval of the Central Government under the Rule is not mandatory; that

- A the post of AMM is connected with forestry by giving a broad meaning; that any service which would have even a distant relation with the subject of forestry would be liable to be included in the category of “connected with forestry”; that since the post of AMM was included in the unamended Rules of 1963 along with others like ACF and DCF, it must be held to be a post connected with forestry; and that the functions of the Forest Officer under the Indian Forest Act, 1927 has some similar functions of AMM and hence the post of AMM is connected with forestry.

Dismissing the appeal, the Court

- C HELD: 1.1. The language in Rule 2(g)(ii) of Indian Forest Service (Recruitment) Rules, 1966 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 the interpretation of the appellant of Rule 2(g)(ii) is accepted, then there would be no necessity of the words “as may be approved by the Central Government for the purpose of these Rules”. The Court cannot accept the interpretation of the appellant. 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. The language of this provision is extremely clear and unambiguous.

- E [Paras 13 and 14] [601-E, F; 602-C, D]

Land Acquisition Officer & Mandal Revenue Officer v. Narasaiah, [2001] 3 SCC 530, distinguished.

- F 1.2. Merely because the post of AMM was included in the unamended Rules of 1963, that by itself would not make it “connected with forestry”. In order to be a post “connected with forestry”, the test would be the actual duties and powers of the particular post and the qualifications required. An AMM has no duty regarding the forest. He has to merely run and control the further cutting of timber which has been brought to the mill. He does not have even a distant connection with the forest or the growth and development thereof.
- G He has no place in the policy making even in the forestry or the allied subjects regarding the forest. His duties are not concerned with the flora and fauna of the forest. No material was produced that the AMM had any such duty directly retalable to the forest. [Para 16] [603-C, D, E, F]

- H 1.3. The essential qualifications provided in 1963 Rules before and after amendment and the Promotion Rules in 1973 suggests that the post of AMM

was more technical based than forestry based. A

[Paras 17 and 18] [604-A-E]

1.4. From 1963 till 1973, the post of AMM could not be held to be a feeder post for the promotion to the post of DCF as it was not a post of equivalent grade with the post of ACF as even the pay scale of the post of AMM was not equivalent to that of the ACF. Bringing on par with the pay scale of ACF would not make any difference because by 1966, the Rules of the Central Government had already come on the anvil which provided a clear cut definition for State Forest Service and as if that was not sufficient, the 1991 Rules certified everything which created a new service altogether and included only ACF for the purposes of being promoted to the post of DCF which post by then was already included in the All India IFS Cadre. Hence, the contention of the appellant that the post of AMM was equivalent in grade to the ACF and was also "connected with forestry" has to be rejected. B C

[Para 19] [604-F, G; 605-A]

Mullaperiyar Environmental Protection Forum v. Union of India & Ors., [2006] 3 SCC 643, distinguished. D

1.5. A Forest Officer under section 2(2) read with section 32(a) of the Indian Forest Act, 1927 has other duties connected with forest and merely because sawing and cutting of the timber come within his duties which is similar as that of AMM, the AMM will not become a post "connected with the forestry". The AMM's duty is only connected with the mill. The AMM does not have to take a decision with regard to how the trees will have to be grown or cut in the forest and in what manner. [Para 20] [605-C] E

1.6. There is no single reason the Review judgment of the Tribunal as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed nor it was discussed. The Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and the Tribunal has traveled out of its jurisdiction to write a second order in the name of review its own judgment. F

[Para 25] [606-G, H; 607-A] G

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1041-1044 of 2004.

From the Final Judgment and Order dated 05.12.2000 of the High Court of Calcutta in W.P. (CT) No. 209 with 246 of 1999 and Judgment and Order dated 06.02.2002 of the High Court of Calcutta, Circuit Bench at Port Blair, H

A Andaman and Nicobar Islands in RVW No. 16 and 17 of 2000.

P.P. Rao, Sr. Adv., Sanjeev Sachdeva, Sumesh Dhawan, Abhishesk Gupta and Anshuman Ashok for the Appellant.

B A.K. Ganguly, Sr. Adv., Prashant Kumar, Gopal K. Jain, Shiraz Contractor Patodia, Priyanka Sharma, Ashok Bhan, Asha G. Nair, D.S. Mehra, Sushma Suri and P. Parmeshwaran for the Respondents.

The Judgment of the Court was delivered by

C **V.S. SIRPURKAR, J.** 1. This judgment shall dispose of four Civil Appeals, they being Civil Appeal Nos.1041-1044 of 2004, all of which have been filed by the present appellant.

D 2. The appellant who is an employee of the Forest Department of the Andaman & Nicobar Islands comes before us in the above appeals challenging a common judgment passed by the High Court in two writ petitions whereby the judgment in favour of the writ petitioner passed by the Central Administrative Tribunal (hereinafter referred to as "Tribunal" for short) was upset allowing the writ petitions. The appellant has also challenged the further orders passed by the High Court dismissing the Review Petitions filed by the appellant. The High Court vide its judgment set aside the order of E the Tribunal and allowed two writ petitions, one filed by the State Cadre Forest Officers Association and another by the Andaman & Nicobar Administration. They were W.P. C.T.No.209 of 1999 and W.P.C.T.No.246 of 1999. The judgment of the Tribunal was itself passed in review whereby the Review Petition filed by the appellant was allowed and the earlier judgment passed by the Tribunal was upset and the Original Application filed by the F appellant was allowed. The following facts would be necessary to understand the controversy involved.

G 3. The appellant, at the relevant time when he approached the Tribunal, was holding the post of Assistant Mill Manager (hereinafter referred to as "AMM" for short) in the Forest Department of Andaman. The Service Profile of the appellant is as under:

H "He started his service as a Casual Labour on 12.7.1976. He was appointed as Draftsman on adhoc basis on 20.7.1976 and thereafter as Assistant Constructional Engineer w.e.f. 26.12.1980 and was posted in Saw Mill Division, Chatham where he continued till March, 1984 in

that capacity. In March, on the basis of the recommendations of the Departmental Promotion Committee for Group B post, he was promoted as Assistant Mill Manager, Saw Mill Division vide notification dated 16.3.1984. His claim is that thereafter he was posted to supervise the construction work at Rangat and Rangat Bay. He further claimed that he was assigned the duty of supervision and inspection of the Saw Mill at Betapur. He also claimed that he was also directed to exercise the powers and authority of Assistant Conservator of Forest though at intervals. Thus he continued to be posted at Rangat, Middle Andamans as Assistant Mill Manager from July, 1984 to June, 1992 during which period he had also been assigned the duties of Assistant Conservator of Forest from time to time. He, therefore, claims that he enjoyed the same power and authority of Assistant Conservator of Forest and for this he relied on an order dated 9.12.1993.”

When the petitioner was appointed initially, he was part of the Forest Department of Andaman & Nicobar Islands governed by Andaman Forest Department (Class I & Class II Gazetted Posts) Recruitment Rules, 1963 (hereafter referred to as “the 1963 Rules”) which were amended on 3.8.1973. Both these Rules provide for the 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. The claim of the appellant, as it originally stood, was that in terms of the aforementioned Rules, he deserved to be promoted to the post of Deputy Conservator of Forests (hereinafter referred to as “DCF” for short). The basis of this claim was that his post of AMM was equivalent in Grade-II to the post of Assistant Conservator of Forests (hereinafter referred to as the “ACF” for short) which was a feeder post for the promotion to the post of DCF. His further case was that as per the Indian Forest Service (Appointment by Promotion) Regulations, 1966 [hereafter referred to as the “IFS (Appointment by Promotion) Regulations, 1966] dated 17.11.1965 he was entitled to be promoted to the post of DCF on the basis of Sub Rule (1) of Rule 8 of the Indian Forest Service (Recruitment) Rules, 1966 [hereinafter referred to as the “IFS (Recruitment) Rules, 1966].

4. The 1963 Rules, as they initially stood, provided that there were in all seven posts of DCF in the pay-scale of Rs.740-1150-1250. Column 10 thereof provides “*that the recruitment would be by promotion, failing which by deputation. For promotion it was provided that it would be from the Assistant Conservator of Forests of the Andamans Forest Department or*

A *officers holding posts in an equivalent grade in the Adamans Forest Department with not less than 5 years service in the grade*". The other mode of recruitment was deputation with which we are not concerned. At Serial No.4 is the post of Assistant Conservator of Forests. The Rules suggest that there are nine posts which were Class-II gazetted non-ministerial posts carrying the pay-scale of Rs.350-25-500-30-590-EB-30-800-EB-30-830-35-900. Column 7
B which provides the qualifications reads as under:

"Essential:

Associateship Diploma of the Forest Research Institute and Colleges, Dehradun or equivalent.

C Candidates selected for training at Dehradun will be required to possess the following educational qualifications:

Degree in Natural Science, Maths, Geology, Mechanical Engineering or Agriculture of recognized University or equivalent qualification."

D In so far as the post of AMM is concerned, it appears at Serial No.5, which is also a Class-II Gazetted non-ministerial post carrying the pay-scale of Rs.350-25-500-30-590-EB-30-800-EB-30-800 if the post is filled by the direct recruitment. However, the pay-scale is different in case this post is filled in by ACF which pay-scale is identical with the ACF pay-scale which we have quoted earlier, meaning thereby the AMM post had a slightly lower pay-scale as compared to the post of ACF. Column No.7 which provides the qualification for the post of AMM is as under:

"Essential:

Experience of timber trade and sawing practice for about five years.

F Qualifications relaxable at Commission's discretion in case of candidates otherwise well qualified.

Desirable:

A degree in Engineering or Science."

G These Rules underwent a slight change when they were amended in 1973. The 1973 amendment changed the Schedule in so far as the requirements (educational qualifications, etc.) for the post of ACF and AMM are concerned. Now the essential qualifications required for the post of ACF were as under:

H "At least 2nd class degree in Natural Sciences, Mathematics, Statistics, Geology, Mechanical Engineering, Civil or Chemical Engineering,

Agriculture or Economics of a recognized University or equivalent. Graduate in pure Mathematics, Statistics, must have had biology, physics or chemistry as a subject in Higher Secondary or Matriculation or equivalent.”

We are not concerned with the other essential qualifications which pertain to physique, etc. We must, however, know that these were the essential qualifications for the post of ACF. The pay-scale also remained identical. Now, for the first time, the “essential” qualification was provided for the post of AMM which was as under:

“Essential: (i) A degree in Civil, Mechanical or Chemical Engineering or Master’s degree in Chemistry or recognized university or equivalent, (ii) 3 years experience of timber or sawing practice or both in total. (Qualification relaxable at the discretion of the UPSC in case of candidates otherwise well qualified).

The pay-scale was now increased and it was Rs.350-25-500-590-EB-30-830-35-900, which is identical to the post of ACF. However, it was provided that if the ACF was appointed in the post of AMM, he would draw his grade’s pay. There was also amendment in respect of the recruitment of both these posts. The relevant columns in respect of both the posts, i.e., ACF and AMM at the time of 1963 Rules and at the time of amendment in 1973 are given below in juxtaposition:

Post	1963 Rules	1973 Rules
ACF	Promotion – Rangers of the Andaman Forest Department (with 10 years service in the grade)	Promotion – Trained Forest Rangers of Andaman Forest Department having seven (7) years service in the grade rendered after appointment thereto on a regular basis.
AMM	Transfer, failing which by direct recruitment	Promotion – Assistant Constructional Engineer and Superintendent Timber Treatment Plant and Seasoning Kiln with 3 years service in the respective grades. Transfer – Assistant Conservator of Forests possessing at least 3 years.

5. On the basis of these Rules, it was contended by the appellant before

A the Tribunal that particularly after the amendment in 1973 the post of AMM became equivalent to that of ACF. The 1963 Rules as well as 1973 Rules were still in vogue and, therefore, there was a channel for promotion to the post of DCF from the post of ACF as was originally provided and now from the post of an equivalent grade. Since the 1973 the post of AMM became equivalent to the post of ACF and, therefore, he was also bound to be considered for promotion to the post of DCF as per the 1963 Rules as amended in 1973. The appellant also relied upon the Gradation Lists from which the appellant sought to read the equivalence of his post to the post of ACF.

C 6. In his Original Application, the appellant also mentioned the new Recruitment Rules, viz., Andaman & Nicobar Forest Service Rules, 1991 (hereinafter referred to as the "1991 Rules") issued on 25.7.1991 constituting a central service to be known as the Andaman and Nicobar Islands Forest Service with two grades, namely, Time Scale and Selection Grade. The selection grade was put under Central Civil Grade A and the Time Scale in Central Civil Grade B. According to these Rules all the ACFs working in the Andaman and Nicobar Forest Service were to be placed in either of the above two grades. These Rules excluded all other State Forest Service Grade B officers except ACF. He complained against the position that for constitution of the new service the cases of only ACFs were to be submitted to UPSC excluding all other grades under Andaman & Nicobar Forest Service Grade B Officers. He claimed that he made the representations to this effect, but the same was rejected. On these contentions he finally claimed that he was eligible firstly according to the Recruitment Rules of 1963/1973 for promotion to the grade of DCF and was also eligible for inclusion in the list of officers of the Andaman Forest Service for appointment on promotion to the post of DCF specified in Schedule of Rule 5 of IFS (Appointment by Promotion) Regulations, 1966.

G 7. This claim was opposed by the State which raised contentions that there were two channels of promotion in the Forest Department, i.e., Channel of Forestry and Technical Channel. It was pointed out that the applicant was in the Technical Channel as Assistant Mill Manager with promotional avenue to the post of Production Manager Grade-A under the Recruitment Rules and he could have no claim to the post on the forestry side and the posts of ACF as well as DCF are on the forestry side. It was pointed out that after the constitution of Indian Forest Service and All India Service with effect from 1.7.1966 all the posts of DCF and Conservator of Forests available in A&N Islands were encadred with IFS and recruitment to the above cadre posts was

governed by the IFS (Recruitment) Rules, 1966. It was further pointed out that the posts of ACF were of separate cadre of the State Forest Service and they alone were eligible for induction in the IFS (Appointment by Promotion) Regulations, 1966. It was also stated that the definition given under the IFS (Recruitment) Rules, 1966 of the term of "State Forest Service" in the State being a service connected with forestry. Only the members thereof having gazetted status as the Central Government may, in consultation with the State Government, approve for the purposes of those Rules or any service in such Central Civil posts of Class-I and Class-II connected with forestry as may be approved by the Central Government could walk into the IFS. It was pointed out that AMM was not such a post as it was not even concerned with the forestry. It was further pointed out that the post of ACF alone was classified as A&N Island Forest Service under para 20A of the A&N Island Forest Service and under para 20A of the A&N Forest Department Code, 1975. It was pointed out that the post of AMM was classified as gazetted staff outside the cadre of A&N Forest Service along with other gazetted posts such as Veterinary Officer, Accounts Officer, Senior Assistant Engineers, etc. As regards 1963 Rules, the Department contended that the AMM was not included as a feeder cadre for promotion to the post of DCF in the Recruitment Rules of 1963 nor was it a post of equivalent grade to the post of ACF. It was further clarified that after the constitution of Indian Forest Service during 1966 all the posts of DCF were encadred into the Indian Forest Service and, therefore, Recruitment Rules, 1963 had no application thereto. It was pointed out that only promotional channel available to the appellant was the post of Production Manager. The State also raised an objection regarding the limitation.

8. The Tribunal, on the basis of these, pleadings accepted the objections raised by the respondent State and rejected the Original Application. The Tribunal also, in its detailed judgment, recorded a finding, firstly that the appellant could not be said to be in State Forest Service within the meaning of IFS (Recruitment Rules), 1966 and secondly the said post could not be connected with forestry. The Tribunal also compared the posts of ACF and AMM and pointed out that the two posts were not comparable to each other. It further observed that scope for the promotion to the post of DCF, as per the 1963 Rules, no more existed after the encadrement of the post of DCF in the IFS. It noted that there were only 7 posts of DCF, they being, DCF (Depot Division), DCF (Mill Division), DCF (Sericulture), DCF (Works Plan), DCF (Utilisation Division), DCF (Planning/statistics) and DCF (Wildlife). The Tribunal noted that there was no other post of DCF besides the abovementioned encadred posts which, as per Rule 8 were required to be

A filled by only State cadre officers. The Tribunal, therefore, observed that unless a person is brought to the cadre of IFS, the cadre post cannot be filled in. It was also pointed out that long before the promotion of the applicant as AMM in 1984, the post of DCF was taken away from the ambit of 1963 Rules as amended and as such there was no existing right conferred by the 1963 Rules as amended in 1973 on the appellant which is taken away by the new Rules. Because of IFS (Service) Rules, 1966 and 1991 Rules, the post of AMM could not be made a feeder post for IFS cadre. The Tribunal also referred to the Regulations, namely, Indian Forest Service (Initial Recruitment) Regulations, 1966 and Indian Forest Service (Appointment by Promotion) Regulations, 1966 and pointed out from Regulation 5 thereof that such feeder cadre has to be the members of "State Forest Service" and as per the Rules of 1991, the appellant could not be viewed as a member of the State Forest Service. The Tribunal also took into consideration the argument regarding the Gradation Lists relied upon by the petitioner as they existed on 1.1.1989 and 1.1.1990 and came to the conclusion that these gradation lists were erroneous and could not be relied upon to come to the conclusion that the AMM was a member of A&N Forest Service. It, therefore, came to the conclusion that even if the appellant was a member of "A&N Forest Department", he could not be said to be a member of the "State Forest Service" as envisaged in IFS (Recruitment) Rules 1966. The Tribunal also noted that a new avenue was, however, made available for the technical post of AMM in 1988 and it was also pointed out that the newly created post of Production Manager was equivalent to DCF as regards classification and pay-scales. The Tribunal also gave a specific finding that the post of AMM was not connected with forestry. In that the Tribunal noted the promotion channel to the post of ACF vis-à-vis the AMM and pointed out that those in the feeder posts to the promotion of ACF were essentially the persons connected with forestry whereas in case of AMM such was the counter position. In that view the Tribunal rejected the Original Application filed by the appellant.

9. This order was thereafter challenged by the appellant by filing a Review Application. The Tribunal took a completely contrary stand in the Review and allowed the Original Application of the appellant. In the name of writing a Review Order, the Tribunal wrote a fresh order. This is apart from the fact that we do not find any reason having been given by the Tribunal for reviewing the earlier order. The Tribunal re-framed three questions for decision. They were:

H (i) Whether the applicant was rightly excluded from the gradation list

of the Andaman Forest Service for promotion to the post of DCF in view of the Recruitment Rules of 1973 as also from the selection list of Andaman Forest Service for appointment on promotion to the cadre post of Indian Forest Service in terms of Regulation 5 read with Rules 8/9 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966.

(ii) Whether the applicant was entitled to seek direction to prepare the gradation list of the officers of the Forest Department of Andaman & Nicobar Islands as on 1.1.1994 in terms of the prevailing Recruitment Rules, 1963 as amended in 1973 in terms of Regulation 5 of the Indian Forest Service (Appointment by Promotion) Regulations, 1966.

(iii) Whether the applicant was entitled to seek direction upon the respondents to fill up the post of Dy. Conservator of Forest by way of promotion treating the applicant at par with the Assistant Conservator of Forests in terms of Recruitment Rules, 1963 and in terms of Rule 5 of Indian Forest Service (Appointment by Promotion) Rules, 1966."

The Tribunal came to the conclusion firstly that the AMM and ACF were cadre posts of Andaman Forest Department under Recruitment Rules, 1963. It pointed out that the Recruitment Rules, 1963/1973 were framed under Article 309 of the Constitution while the Code of 1975 was with the approval of Ministry concerned and, therefore, by promulgation of Code of 1975, the conditions of service could not be changed and if the Code is found inconsistent to the Recruitment Rules, it was, to that extent, bound to be ignored. It further came to the conclusion that since the earlier post of AMM was renamed or re-designated as DCF and since under the new set up there was one post of DCF in the Mill Division of Andaman Forest Department, therefore, the Mill Division was connected with forestry. The Tribunal further came to the conclusion that the post of AMM and ACF were equivalent and feeder posts for promotion to the post of DCF. The Tribunal came to a finding that if Rule 2(g)(ii), Rule 4(2)(b), Rule 8 of IFS (Recruitment) Rules, 1966 are read along with the proviso to Explanation I under Regulation 5(2) of the IFS (Appointment by Promotion) Regulations, 1966 which were framed in pursuance of Sub-Rule (1) of Rule 8 of IFS (Recruitment) Rules, 1966 and in consultation with the State Government and Union Public Service Commission, the officers belonging to the category of Rule 2(g) of the Recruitment Rules, 1966 can be considered for promotion to the Union Territory cadre of Forest Department of Andaman for the purposes of inclusion in the select list. It was further

A found that there was an object of consideration for promotion to the Union Territory cadre for publication of the notification incorporating the proviso into the proviso to Explanation I of Regulation 5(2) of the IFS (Appointment by Promotion) Regulations, 1966 and therefore, there was no further notification required for the consideration of the case of the officers belonging to the category of Rule 2(g) of the IFS (Recruitment) Rules, 1966. it was further found by the Tribunal that the Central Government had already decided to consider the cases of the officers including the holder of the post of AMM who fell within the category of officers referred to in Rule 2(g) for the purposes of inclusion in the select list of A&N Forest Service to be considered for promotion to the Union Territory cadre. The Tribunal in para 16 recorded a finding that the appointment to the Union Territory Cadre posts specified in the Schedule of IFS (Fixation of Cadre Strength) Regulations, 1966 can be made not only from the post of ACF but also from the Gazetted Officers of Class I & II posts of such service as specified in Rule 2(g)(i)(ii) of the Recruitment Rules having 8 years continuous service. On these grounds, the Original Application was allowed and the Tribunal directed the respondents to take necessary steps forthwith for the consideration of the applicant's case for promotion to the post of DCF.

10. This order was challenged by two separate writ petitions, first by the State and the second by the Association called State Cadre Forest Officers Association. These writ petitions were allowed by the High Court of Calcutta by a common judgment setting aside the order of the Tribunal. The Review Applications challenging the same also were disposed of by a separate common judgment. These two orders have fallen for our consideration in the present appeals.

11. The High Court judgment delivered by the Division Bench in fact consists of two concurring judgments. Justice P.K. Ray framed two questions. They were:

- (1) Whether the Tribunal was competent to declare the two posts of ACF and AMM as equivalent posts.
- (2) Whether the post of AMM under the cadre of A&N Island Forest Department would be entitled to have consideration for promotion to the post of DCF which was encadred post of Indian Forest Service."

On both the questions the learned Judge found against the appellant. On the first question the learned Judge held that it was not for the Tribunal to re-

write the Recruitment Rules, particularly when the Rules did not provide such equivalence. Further the learned Judge held that because of 1991 Rules, it was only the post of ACF which was made a feeder post for the promotion to the post of DCF and it was not for the Tribunal to direct that the post of AMM should also be included in such feeder post. The learned Judge also found that even the channels of promotion for the post of ACF and AMM were different and the post of AMM was only of technical nature and could not said to be "connected with the forestry" and, therefore, the post of AMM was outside the IFS (Recruitment) Rules, 1966 and the IFS (Appointment by Promotion) Regulations, 1966, more particularly Rule 2(g)(ii). The learned Judge also noted that while ACF could be appointed as AMM, the AMM could not, however, be transferred to the post of ACF. The learned Judge clearly found that the post of ACF and the feeder post to the ACF were essentially connected with forestry whereas the post of AMM and the feeder posts thereto could not be said to be connected with forestry. On this ground the learned Judge allowed the writ petitions and set aside the order of the Tribunal.

12. A separate concurring judgment was also delivered by Justice S.B. Sinha (as His Lordship then was). He framed a question:

"Whether despite coming into force of 1991 Rules could the petitioner claim his promotion to the post of DCF under the 1963 Rules.

The learned Judge took a complete stock of the first judgment of the Tribunal and the findings returned therein. Learned Judge found that besides the Rules mentioned earlier some new Rules were framed in 1988 providing for the promotion to the post of Production Manager in Andaman & Nicobar Forest Department Recruitment Rules which created a separate channel of promotion to AMM, Senior Assistant Engineer, Mechanical Engineer, etc. The learned Judge also found that by 1991 Rules a new service was brought into existence consisting of only the ACF. The learned Judge also held that the post of AMM was a technical post and the post of ACF was forestry based post. The learned Judge gave a very clear finding that the Tribunal had exceeded its review jurisdiction in passing the impugned order inasmuch as the Tribunal had failed to point out any error apparent on the face of the record. The learned Judge took a complete stock of 1963 Rules and the IFS (Recruitment) Rules, 1966 and the Regulations framed thereunder as also the amendments made in 1973. The learned Judge came to the conclusion that the post of AMM had nothing to do with the forestry. The learned Judge then noted

A 1991 Rules and more particularly Rules 5, 14 and 17 thereof and concluded that by reason of the Rules framed in 1991, a different post was created whereby the 1963 Rules in so far as they apply to the post of ACF were impliedly repealed. The learned Judge further held that even if it could be held that 1963 Rules survive, they had to be read subject to the provisions of the later Rules. The learned Judge, as a matter of fact, found that there was no approval granted by the Central Government regarding the service of AMM as envisaged in Rule 2(g)(ii) of IFS (Recruitment) Rules, 1966. The learned Judge also laid a great stress on the terminology connected with “forestry” and came to the conclusion that the intention of the Legislature was to take the forestry out from the technical section in relation to the encadred post. Further relying on the decision of this Court in *State of U.P. v. J.P. Chaurasia & Ors.*, [1989] 1 SCC 121 the learned Judge came to the conclusion that the equation found by the Tribunal in the post of AMM and ACF was a thorough misreading on the part of the Tribunal. On these grounds the learned Judge concurred with the judgment of Justice Ray that the Tribunal’s second judgment passed in Review Application was liable to be set aside.

13. Shri Rao, Senior Advocate, painstakingly took us through the 1963 Rules, the amendments made in 1973 as also IFS (Recruitment) Rules, 1966 and the Regulations made thereunder. Our attention was invited specifically to Rule 2(g)(ii) and Rule 4(1) of the IFS (Recruitment) Rules read with third proviso to Regulation 5(2) and first proviso to Explanation I of IFS (Appointment by Promotion) Regulations, 1966. Rule 2(g)(ii) is 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.”

Rule 4 which provides for method of recruitment to the service suggests that the Central Government may recruit to the service any person from amongst the members of the State Forest Service and adjudge suitably in accordance with such Regulations made by the Central Government. It also provides that such member who is covered under Rule 2(g)(ii) shall be allocated only to the cadre of Union Territory. Reference was also made to Regulation 5(2) and first proviso to Explanation I thereof. Regulation 5(2) provides the modalities in which the selection by way of promotion is to be made. The concerned proviso on which the learned counsel relies is as under:

“Provided that the officers belonging to any service referred to in Item

(ii) of Clause (g) of Rule 2 of the Recruitment Rules, shall not be eligible to be considered for promotion to any cadre other than the Union Territories cadre.” A

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 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 Rule 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” 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. For this the learned counsel relies on the decision of this Court *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 51A of the Act. The court simply held that this gave a discretion to the concerned court 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 B
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A 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.

B 14. It was tried to be further suggested that there was no approval of the Central Government to the service of ACFs and, therefore, the requirement of the approval of the Central Government was of no consequence. We have noted that firstly it was nobody’s case that there was no approval of the Central Government to the service of ACF as envisaged in Rule 2(g)(ii). There is no argument to that effect. Further the question is not as to whether there was any approval of the 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 atleast 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.

E 15. The matters do not stop there. The second contention is that any such service, in order to be included in the State Forest Service must be connected with forestry and AMM is such service. Learned counsel very interestingly argued that we would have to give a broad meaning to the word “connected with forestry”. According to the learned counsel the words “connected with” would broaden the scope and then if the broad meaning of the word is to be given, then it would not be necessary for the concerned service to be *only a forestry* post and any other service which would have even a distant relation with the subject of forestry would be liable to be included in the category of “connected with forestry”. The argument is extremely interesting, however, lacks the merits. In order to buttress his contention, the learned counsel argues that the post of CCF, CF, DCF, ACF and AMM were all covered under the 1963 Rules before the amendment in 1964. These were the Forest Department posts and the only reason why these posts were included in the IFS was because they all were connected with the forestry. The learned counsel further says that at that time there was a promotional avenue for the AMM to the post of DCF as the post of AMM and ACF were all equivalent grade. Learned counsel points out that by amendment of Rules in 1964, the post unconnected with forestry were added

to the Schedule of 1963 Rules. They being the posts of Senior Asstt. Engineer, Veterinary Officer and Accounts Officer, etc. From this the learned counsel says that since the post of AMM was included in the unamended Rules of 1963, it must be held to be a post connected with forestry and further since the post of AMM which was equivalent to the post of ACF in grade could be a feeder post for the promotion to the post of DCF and as such the post of AMM would be connected with forestry.

16. We are afraid on both the contentions the learned counsel was wrong. Firstly, merely because the post of AMM was included in the unamended Rules of 1963, that by itself would not make it "connected with the forestry". In order to be a post "connected with the forestry", the test would be the actual duties and powers of the particular post and the qualifications required. In our view merely because the post of AMM was clubbed with the others like CCF, CF, DCF, ACF and was also mentioned in 1963 Rules would not make it a post "connected with forestry". In this behalf, High Court has given very good reasons to suggest that the post is not "connected with the forestry". It is clear from the facts that an AMM has no duty regarding the forest, he has to merely run and control the further cutting of timber which has been brought to the mill. He does not have even a distant connection with the forest or the growth and development thereof. He has no place in the policy making even in the forestry or the allied subjects regarding the forest. His duties are not concerned with the flora and fauna of the forest. There is a very clear cut finding given by the High Court on this issue as also by the Tribunal in its first order. No attempt was made to show as to how the High Court was wrong in any manner in concluding that the AMM had no concern with the forest. No material was brought before us to suggest that the AMM had any such duty directly relatable to the forest. We, therefore, confirm the finding of the High Court in that behalf.

17. The High Court while giving that finding has also considered the educational qualifications required. The qualifications required for AMM in the unamended Rules were 5 years experience of timber trade and sawing practice. In sharp contradiction to this in the unamended Rules the qualifications for ACF were Associateship Diploma of the Forest Research Institute and Colleges, Dehradun or equivalent with the educational qualifications like degree in Natural Science, Maths, Geology, Mechanical Engineering or Agriculture of recognized University or equivalent qualification. In the unamended Rules of 1963 these qualifications were not at all there for AMM. The essential qualifications for the post of ACF, therefore, clearly

A suggest that for being ACF one has to have a degree in the subjects and also the diploma of the recognized Forest Research Institute. Barring the experience of the timber trade and sawing practice of five years, there was no essential qualifications in the unamended Rules for the post of AMM. The degree in science was only a desirable qualification and not essential one. In 1973 after

B the amendment the post of AMM also required the essential qualifications of a degree in Civil, Mechanical or Chemical Engineering or Masters Degree in Chemistry or recognized University or equivalent and three years experience of timber or sawing practice while the essential qualifications for the post of ACF was the degree in Natural Science, Maths, Statistics, Geology, Mechanical Engineer, Civil or Chemical Engineering, Agriculture or Economics, etc.

C Therefore, one thing is clear that atleast till 1973 there was no necessity on the part of the AMM to be a degree-holder or to have a degree in any subject "connected with forestry" nor was a diploma of Forest Research Institute was required unlike ACF. It would be clear from this that again in 1973 the degree that was required was only in Civil, Mechanical or Chemical Engineering or Masters Degree in Chemistry the subjects which have nothing to do with

D forest. Further, unlike the ACF qualifications there was no necessity on the part of the AMM to have Biology, Physics or Chemistry as subjects in Higher Secondary or Matriculation or equivalent. This itself suggests that the post of AMM was more technical based than forestry based.

E 18. Even when we consider the Promotion Rules in 1973, the promotion to the post of ACF was to be from amongst the trained Forest Rangers of Andaman & Nicobar Forest Department having seven years experience while for the promotion to the post of AMM, the Assistant Constructional Engineer and the Superintendent, Timber Treatment Plant and Seasoning Kiln with three years experience were entitled who have no concern with forest. This

F suggests that the post of AMM was of a technical nature while the post of ACF was connected with forestry.

G 19. This is further apart from the fact that from 1963 till 1973, the post of AMM could not be held to be a feeder post for the promotion to the post of DCF as it was not a post of equivalent grade with the post of ACF as even the pay scale of the post of AMM was not equivalent to that of the ACF. We have clarified this position in para 4 of this judgment. It is true that pay-scale was brought on par with the pay scale of ACF but that by itself, in our opinion, would not make any difference because by 1966 the Rules of the Central Government had already come on the anvil which provided a clear cut

H definition for State Forest Service and as if that was not sufficient, the 1991

Rules clarified everything which created a new service altogether and included only ACF for the purposes of being promoted to the post of DCF which post by then was already included in the All India IFS Cadre. The contention, therefore, that the post of AMM was equivalent in grade to the ACF and was also "connected with forestry" has to be rejected. A

20. A feeble argument was tried to be raised that the definition of "Forest Officer" given in Section 2(2) of the Indian Forest Act read with Section 32(a) thereof suggests that the functions of the Forest Officers include the cutting, sawing, conversion and removal of trees and timber, etc. The argument has no basis as besides those duties the Forest Officer has other duties connected with forest and merely because sawing and cutting of the timber come within his duties which is similar as that of AMM, the AMM will not become a post "connected with the forestry". The AMM's duty is only connected with the mill. The AMM does not have to take a decision with regard to how the trees will have to be grown or cut in the forest and in what manner. B C

21. Shri Rao relied upon the decision of this Court in *Mullaperiyar Environmental Protection Forum v. Union of India & Ors.*, [2006] 3 SCC 643 and more particularly para 28 thereof. This decision perhaps has been relied upon only to show that the term "forest" covers even the water channels, creeks, reservoirs, streams, lakes, etc. In our opinion the decision is not at all apposite to the present subject. We, therefore, do not agree with the learned counsel that firstly the post of AMM has connection with the forestry and in order to so hold it is necessary for us to give a broad meaning to the words "connected with forestry". In our opinion firstly the post of AMM cannot be held to be equivalent post to the post of ACF and secondly it cannot be held to be "connected with forestry". D E F

22. There is no dispute that by now all the posts of DCF are included in the IFS Cadre and there is no post now remaining in the Andaman & Nicobar which would still be covered under the 1963 Rules. Therefore, we reject the argument of the learned counsel that if not under the All India Cadre atleast under the 1963 Rules, which according to the learned counsel still survive, the appellant would be entitled to the promotion to the post of DCF. We are in complete agreement with Justice Sinha who has held that because of the subsequent Rules, the 1963 Rules would have to be read as amended to that extent. We were not addressed on that aspect of the judgment of Justice Sinha nor was that part assailed by the learned counsel in his address. G H

A 23. Learned counsel for the State specifically drew our attention to the 1991 Rules which came into existence on 25.7.1991. Rule 3 of those Rules specifically provides the constitution of service and its classification. The Rule creates two grades, namely, Time Scale and Selection Grade. It is further provided that post in the Selection Grade shall be Central Civil Group A post and those in Time Scale shall be Central Civil Post Group B post. Rule 4 provides for the strength of the service which would be as provided in the Schedule while Rule 5 provides for the method of recruitment. Rule 5 provides that 25% of the vacancies would be filled in by direct recruitment while the remaining vacancies shall be filled in by promotion by selection. Rule 5(1) provides that the officers who have completed not less than eight years of regular service in the category of "Rangers" would be considered for promotion. C The Rules also provide for physical fitness, vide Rule 10. Rule 17 speaks of the initial appointment to the service and specifically provides that the existing regular incumbents to the post of ACF (Group B Gazetted) in the Forest Department including those who are under Diploma Course Training at State Forest Service Colleges would be deemed to have been appointed to the to D the service at the initial constitution thereof. When we see the Schedule, we get the authorized strength of the service and the nature of the post included and we find only the post of ACF Selection Grade and Time Scale to be included in the Schedule. According to the learned counsel for the State this would mean that the other posts are specifically excluded from the Andaman & Nicobar Island Forest Service. E Once this position is clear, there will be no question of the appellant claiming his case to be considered for promotion.

24. It was suggested lastly by Shri Rao that till now no domicile of the Andaman & Nicobar Island has been considered for promotion to IFS and if the appellant succeeds, he would be the first said person. We cannot entertain this sentimental argument as indeed the appellant cannot be viewed as belonging to the Forest Service. F

25. The learned counsel for the State also pointed out that there was no necessity whatsoever on the part of the Tribunal to review its own judgment. Even after the microscopic examination of the judgment of the G Tribunal we could not find a single reason in the whole judgment as to how the review was justified and for what reasons. No apparent error on the face of the record was pointed, nor was it discussed. Thereby the Tribunal sat as an appellate authority over its own judgment. This was completely impermissible and we agree with the High Court (Justice Sinha) that the H Tribunal has traveled out of its jurisdiction to write a second order in the

name of reviewing its own judgment. In fact the learned counsel for the A
appellant did not address us on this very vital aspect.

26. Under the circumstances, for the reasons shown above, we are of
the clear opinion that the appeals have no merits and must be dismissed. It
is accordingly ordered to be dismissed. We, however, pass no order as to B
costs.

B.S.

Appeals dismissed.