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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.49 OF 1998

Cuttack, this the 23rd day of April, 1998

Sri Dukhishyam Patnaik Applicant

Vrs.

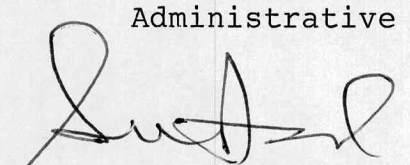
Union of India and others ... Respondents

FOR INSTRUCTIONS

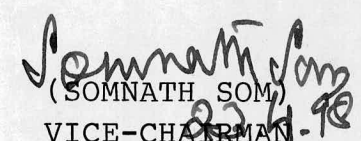
1. Whether it be referred to the Reporters or not? Yes .

2. Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not?

NO .


(S.K. AGRAWAL)
MEMBER (JUDICIAL)

23/4/98


(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.49 OF 1998

Cuttack, this the 2004 day of April, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER(JUDICIAL)

.....

Sri Dukhishyam Patnaik,
aged 56 years,
son of late Chaturbhuja Patnaik
President,
Tribal Development Co-operative
Corporation Ltd., Bhubaneswar,
Plot No.1897, Sriramnagar, Old Town
Bhubaneswar

Applicant

By the Advocates -

M/s S.K.Mohanty
S.P.Mohanty
P.K.Lenka &
S.K.Das

Vrs.

1. Union of India
represented through Secretary,
Ministry of Environment and Forests,
Paryavaran Bhawan,
C.G.O.Complex, Lodi Road,
New Delhi-3.
2. State of Orissa,
represented by the Chief Secretary,
Government of Orissa,
Bhubaneswar.
2. Principal Secretary, Government of Orissa,
Forest & Environment Department,
Bhubaneswar.
4. Secretary to Government of Orissa,
Welfare Department,
Bhubaneswar.
5. Shri Bhaskar Chandra Mohapatra,
Principal Chief Conservator of Forests,
Bana Bhawan,
Chandrasekharapur,
Bhubaneswar

Respondents

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By the Advocates

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Mr.K.Ch.Mohanty
Government
Advocate
&
Mr.U.B.Mohapatra
A.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to repatriate him to his cadre post of Principal Chief Conservator of Forests regularising his period of deputation to the post of President-cum-Managing Director, Tribal Development Co-operative Corporation of Orissa Ltd. by declaring the post which he holds on deputation as being equal to that of Principal Chief Conservator of Forests in respect of duties and responsibilities required under the Rules and to pass such other order as may be deemed just and proper. There was also a prayer for interim relief for a direction to the respondents not to post the petitioner to any other non-cadre post pending disposal of the Original Application. The prayer for interim relief was disposed of in order dated 27.2.1998 holding that the petitioner has not been able to make out a case that he is going to be posted to some other ex-cadre post. It was also mentioned in this order that in case the applicant is transferred and the transfer is not in accordance with rules and instructions, then the petitioner would be free to approach

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the Tribunal. But it would not be proper for the Tribunal to put a ban on the transfer of the applicant, as asked for by him. Subsequently, the petitioner again came up with MA No.220/98 where he submitted that he is likely to be posted as Officer on Special Duty-cum-Special Secretary in the Forest & Environment Department and he wanted such transfer order to be stayed. After hearing the learned counsels of both sides, it was ordered that in case the petitioner is actually transferred to that post, then he should not be relieved from his present post till 7.4.1998. This order has been continued till today and the petitioner is at present continuing as President of Tribal Development Co-operative Corporation of Orissa Ltd.

2. The facts of this case, according to the petitioner, are that he belongs to 1964 batch of Indian Forests Service and is admittedly the seniormost Indian Forest Service officer in the Orissa Cadre after retirement of Choudhury Gourahari Mishra from the post of Principal Chief Conservator of Forests. In order dated 1.3.1996 of General Administration Department at Annexure-2 he had been promoted to the rank of Principal Chief Conservator of Forests and in order dated 1.3.1996 issued by Forest & Environment Department, at Annexure-2/1, he was posted as Principal Chief Conservator of Forests (Wild Life) relieving Choudhury Gourahari Mishra who was transferred and posted as Principal Chief Conservator of

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Forests. The post of Principal Chief Conservator of Forests (Wild Life), Orissa, is an ex-cadre post and the same was created in the year 1992. While the applicant was working as Principal Chief Conservator of Forests (Wild Life), in order dated 24.2.1997 of Forest & Environment Department (Annexure-3) his services were placed at the disposal of Welfare Department for appointment as Chairman-cum-Managing Director of Tribal Development Co-operative Corporation of Orissa Ltd. (for short, TDCCOL) and one B.C.Mohapatra was posted as Chief Conservator of Forests (Wild Life) against the post of Principal Chief Conservator of Forests (Wild Life) held by the applicant. The Welfare Department in their order dated 27.2.1997 appointed the petitioner as President-cum-Managing Director of TDCCOL in place of Shri J.N.Poddar, IAS, who had retired. Accordingly, the applicant joined as President-cum-Managing Director of TDCCOL on 5.3.1997. The applicant has stated that at the time of posting of the petitioner as President-cum-Managing Director of TDCCOL, that post was not declared as an ex-cadre post nor was concurrence of Government of India obtained before posting the petitioner to that post. It is submitted by the petitioner that in accordance with the circular dated 11.6.1993 issued by Ministry of Environment & Forests (Annexure-5) the attention of the State Government had been drawn to Indian Forests Service (Cadre) Rules, 1966, which prohibit deputation of a cadre officer for service under the Central Government or another

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State Government or other bodies owned or controlled by the Central Government or by another State Government without the express consent/concurrence of the Central Government, i.e., the Ministry of Environment & Forests as the Cadre Controlling Authority. Government of India have pointed out that notwithstanding this several instances have come to their notice that State Governments in violation of the provisions contained in the Indian Forests Service (Cadre) Rules, 1966 are nominating I.F.S. officers borne on State Cadres for deputation at the Centre and to other State Governments including nominations for deputation abroad for training/award of Fellowships/foreign assignments, etc., without the express consent of the Ministry of Environment & Forests. Government of India in this circular stated that this is a serious lapse and is violative of the provisions of All India Services Act, 1951 and Rules framed thereunder. Accordingly, the State Governments were advised to strictly follow the procedure laid down in the various Rules under the All India Services Act and positively ensure that prior cadre clearance of the Ministry of Environment & Forests is obtained for nomination of I.F.S. officers for deputation outside the parent cadre whether within India or abroad. (Emphasis supplied). The petitioner states that in this case prior concurrence of Government of India was not obtained before posting the petitioner to the post of

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President-cum-Managing Director of TDCCOL and secondly, the post of President-cum-Managing Director of TDCCOL was not declared equivalent in status and responsibility to the post of Principal Chief Conservator of Forests even though such declaration is a statutory requirement. It is further submitted that under sub-rule (1) of Rule 9 of Indian Forests Service (Pay) Rules, 1968, no member of the Service can be appointed to a post other than a post specified in Schedule III to the said Rules, unless the State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule. Accordingly, the petitioner has stated that his deputation to the post of President-cum-Managing Director of TDCCOL should be held as illegal. It is further stated that even though the petitioner has joined that post on 5.3.1997, so far the terms and conditions of deputation have not been communicated to him and the equivalence of the post has also not been declared. In case of previous incumbent, Shri J.N.Poddar, IAS, in the order dated 10.6.1996, in which his services were placed at the disposal of the Welfare Department for appointment as Chairman-cum-Managing Director of TDCCOL, that post was declared equivalent in status and responsibility to the post of Principal Secretary to Government, provided in the IAS cadre

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of the State. This notification is at Annexure-6. The petitioner further states that in order to accommodate one B.C.Mohapatra, IFS of 1965 batch of Orissa Cadre, as Principal Chief Conservator of Forests, the applicant was posted as President-cum-Managing Director of TDCCOL, in violation of All India Services Act, IFS (Cadre) Rules, 1966 and the standing instructions of Government of India, referred to earlier. It is further stated that in Orissa Cadre there is only one cadre post of Principal Chief Conservator of Forests and one ex-cadre post of Principal Chief Conservator of Forests (Wild Life) and the applicant being the seniormost officer in the Cadre, is entitled to be appointed as Principal Chief Conservator of Forests, but his legitimate rights have been denied to him. It is further submitted that in the meantime in a circular dated 5.1.1998 one R.C.Patra, OAS (Senior Grade) was appointed as Managing Director of TDCCOL and on his joining, the petitioner had ceased to become Managing Director and would have to function only as the President of TDCCOL. The applicant has made several representations. The last one dated 16.1.1998 is at Annexure-10 for his appointment to the cadre post of Principal Chief Conservator of Forests. But no action has been taken on his representations and the petitioner understands from reliable sources that the Government is contemplating to transfer him to another ex-cadre post without considering his

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claim for being posted to the cadre post of Principal Chief Conservator of Forests to which he is entitled under the Rules. In view of this, the applicant has come up with the prayers referred to earlier.

3. Respondent no.3 in his counter has not denied the submissions of the applicant about his being the seniormost officer in the cadre on retirement of Choudhury Gourahari Mishra and regarding his appointment as Principal Chief Conservator of Forests (Wild Life) and thereafter as President-cum-Managing Director, TDCCOL. It has been submitted by the State Government that before posting of the petitioner as President-cum-Managing Director, TDCCOL, it was not necessary to declare the post as an ex-cadre post of I.F.S.cadre and prior clearance of Government of India was not necessary as TDCCOL is owned and controlled by State Government. The State Government have further submitted that steps have been taken to declare equivalence and in order dated 21.3.1998 the post of President-cum-Managing Director, TDCCOL, has been declared equivalent in status and responsibility to the post of Principal Chief Conservator of Forests. This order issued by Forest & Environment Department is dated 21.3.1998 and is at Annexure-R-3/1. At Annexure-R-3/2 is an order dated 25.3.1998 of Forest & Environment Department sanctioning deputation of the petitioner to TDCCOL for a period of one year

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from 5.3.1997 till 4.3.1998 or till his reversion to the Department whichever is earlier. Respondent no.3 has further stated that Department of Personnel & Training in a circular dated 13.7.1995, which has been enclosed to the counter, have clarified the position with regard to creation of ex-cadre posts and posts as temporary addition to the Cadre in All India Services. In this circular, the Department of Personnel & Training have pointed out that State Governments are competent to make temporary addition to All India Services cadre under the respective Cadre Rules. They are also competent to declare posts not specified in Schedule III to the Pay Rules of respective Services as equivalent to the scheduled posts in the light of the comparative status and responsibilities of the posts or to dispense with the said equation under Rule 9 of the Pay Rules. The Department of Personnel & Training had clarified in their letter dated 10.1.1974 that while State Governments are competent to take the above actions, they are not competent to do so retrospectively and action under these rules can have only prospective effect. The Department of Personnel & Training have pointed out that it is not unusual for the State Governments to post an officer to a particular post, whether cadre or ex-cadre, and thereafter issue formal orders either creating the post on ex-cadre basis or as a temporary addition to the cadre, or equating the post under rule 9 of the Pay Rules if the post is not included in Schedule III of the Pay

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Rules of the concerned Service. There is usually a time-gap between assumption of charge of a post by an officer and all issuance of formal sanction orders in this regard. In these cases, formal references are required to be made to this Department for regularisation of the pre-equated period by resorting to the provisions of rule 3 of the Residuary Matters Rules. In this circular, the Department of Personnel & Training have stated that it will be in order to assume that the gap, if any, between joining a particular post and formal issue of orders creating that post or equating that post with a scheduled post is only technical or procedural in nature, as such orders of posting of an officer on promotion or to an ex-cadre post at the senior levels has the approval of the Cabinet of the respective State Governments, the highest authority in the State. Therefore, the Department of Personnel & Training have stated that where duration of such ex-cadre post does not exceed six months, the approval of Department of Personnel & Training for retrospective creation of posts or retrospective equation of posts under the concerned Cadre Rules or Pay Rules respectively would not be required. But for any such relaxation exceeding six months, approval of Department of Personnel & Training would have to be taken. It is specifically laid down in the last paragraph that this circular also apply mutatis mutandis in cases of officers belonging to Indian Police Service and the Indian

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Forests Service. Basing on this circular, it has been urged by the State Government in their counter that no illegality has been caused by deputing the petitioner as President-cum-Managing Director, TDCCOL, without prior declaration of that post as equivalent to one of the posts in Schedule III of the IFS (Pay) Rules. The State Government have further stated in their counter that they are competent to post an eligible officer as Principal Chief Conservator of Forests and not necessarily the seniormost officer. It is further submitted that an earlier representation dated 25.6.1997 filed by the petitioner for appointment to the post of Principal Chief Conservator of Forests has been considered and rejected. The last representation dated 16.1.1998 at Annexure-10 of the petition is being processed. It is further stated that Government of India, Ministry of Environment & Forests in their letter dated 8.1.1998, which is at Annexure-11 of MA No.76/98 filed by the petitioner, have drawn the attention of the State Government to the representation dated 10.11.1997 filed by the petitioner addressed to the State Government regarding his appointment to the cadre post of Principal Chief Conservator of Forests. In this letter dated 8.1.1998, Government of India have pointed out that the applicant is the seniormost IFS officer and as such due regard should be given to his seniority while making the appointment to the highest post in the Service. There is also a direction that the representation of

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the petitioner be considered on merit under intimation to the Ministry. Respondent no.3 has stated that reply to this letter is being sent to Government of India. In view of the above, the State Government (respondent no.3) have opposed the prayer of the petitioner.

4. The applicant in his rejoinder has reiterated that without declaring equivalence, he should not have been posted as President-cum-Managing Director, TDCCOL. He has further stated that according to instructions of Government of India, on the basis of number of cadre posts of Principal Chief Conservator of Forests, only an equal number of ex-cadre posts in the rank of Principal Chief Conservator of Forests should be created and there is only one cadre post of Principal Chief Conservator of Forests and there is already an ex-cadre post of Principal Chief Conservator of Forests (Wild Life). The State Government cannot create a second ex-cadre post as President-cum-Managing Director, TDCCOL. It has also been stated by the petitioner in the rejoinder that the post of President-cum-Managing Director, TDCCOL is under the Welfare Department and is under the control of General Administration Department and therefore, Forest & Environment Department cannot issue the order of equivalence under the provisions of Rules of Business of Government of Orissa. It has been further

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stated that a careful reading of the circular dated 11.6.1993 (Annexure-5) makes it clear that the requirement of prior cadre clearance of Government of India is for nomination of IFS officers for deputation outside the parent cadre and in this case, by his posting as President-cum-Managing Director, TDCCOL, he has been deputed outside the cadre and therefore, prior concurrence of Government of India is required in accordance with the above circular. It has been further stated by the petitioner in MA No. 220/98 that General Administration Department in their order dated 28.3.1998 have created an ex-cadre post of O.S.D.-cum-Special Secretary to Government in the Forests & Environment Department in the scale of pay of Rs.24050-650-26000/- in the IFS cadre with effect from the date the post is actually filled up and this ex-cadre post has been declared equivalent in status and responsibility to the post of Principal Chief Conservator of Forests in the IFS cadre. In the memo to this order, the Forest & Environment Department have been requested not to fill up the post of President, TDCCOL, in the rank of Principal Chief Conservator of Forests as per advice of the Finance Department. The petitioner has stated that later on in an order dated 6.4.1998, in supersession of this order dated 28.3.1998, the General Administration Department have created a post of Officer on Special Duty in the scale of pay of Rs.24050-650-26000/- in the

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IFS cadre and this ex-cadre post has been declared equivalent in status and responsibility to the post of Principal Chief Conservator of Forests provided in the IFS Cadre. In this order also, in the memo a direction has been issued to Forest & Environment Department not to fill up the post of President, TDCCOL in the rank of Principal Chief Conservator of Forests. The petitioner has stated that from the above recital of facts, it is clear that he is going to be transferred from the post of President, TDCCOL to the post of Officer on Special Duty in Forest & Environment Department and in view of this, he has urged the granting of reliefs referred to earlier in this order.

5. The learned Government Advocate has filed MA No.237 of 1998 praying for vacation of the order that the petitioner should not be relieved in case he is transferred. To this petition, he has enclosed an order dated 7.4.1998 posting the petitioner as Officer on Special Duty in Forest & Environment Department against an ex-cadre post created in General Administration Department G.O dated 6.4.1998. As earlier noted, in order dated 3.4.1998 it was directed that the petitioner should not be relieved from his present post in case he is transferred. At that time, no transfer order was issued. Subsequently, on consideration of MA No.237/98, in order dated 16.4.1998, this interim order has been continued till date.

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6. We have heard Shri S.K.Mohanty, the learned lawyer for the petitioner, Shri K.C.Mohanty, the learned Government Advocate appearing for State Government, and Shri U.B.Mohapatra, learned Addl.Standing Counsel appearing for Union of India, who has adopted the counter and the submissions made by the learned Government Advocate. Learned lawyer for the petitioner has also submitted a list of Annexures with date-chart and we have also taken that into account.

7. It has been submitted by the learned lawyer for the petitioner that the applicant was posted as President-cum-Managing Director, TDCCOL, without the prior concurrence of Government of India and also without declaring that post equivalent in status and responsibility to the post of Principal Chief Conservator of Forests borne in the IFS cadre. In the O.A., the prayer is for a direction to the State Government for equating the post of President-cum-Managing Director, TDCCOL, equivalent in status and responsibility to the post of Principal Chief Conservator of Forests. At the time of hearing of the petition, it was submitted by the learned lawyer for the petitioner that the State Government, while declaring the post of President-cum-Managing Director, TDCCOL, equivalent in status and responsibility to the post of Principal Chief Conservator of Forests, have indulged in

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colourable exercise of their power under Rule 9 of IFS (Pay) Rules, 1968. In support of his contention, he has submitted that under Rules of Business the General Administration Department is in charge of creation of temporary and ex cadre posts in Indian Police Service and Indian Forest Service cadres. But in this case, the order of equivalence has been issued by Forest & Environment Department in their order dated 21.3.1998 (Annexure-R-3/1). It has been submitted by the learned lawyer for the petitioner that the Forest & Environment Department is not authorised to issue the order of equivalence and this should be issued by General Administration Department. It has been further submitted that this order of equivalence has been issued without application of mind and in colourable exercise of power of the State Government. According to the learned lawyer for the petitioner, this is borne out by the fact that even though in the order the post of President-cum-Managing Director, TDCCOL, has been declared equivalent in status and responsibility to the post of Principal Chief Conservator of Forests in the cadre, in the memo addressed to Ministry of Environment & Forest, a request has been made to declare the post of President-cum-Managing Director, TDCCOL, equivalent in status and responsibility to the post of Principal Chief Conservator of Forests from 5.3.1997 to 6.1.1998 and there is a further request that the

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post of President, TDCCOL may be equated to the post of Principal Chief Conservator of Forests from 7.1.1998 onwards as Shri Patnaik (the applicant) is working only as President of that organisation upon joining of another officer as Managing Director, TDCCOL. It has been submitted that the posts of President-cum-Managing Director and President, TDCCOL, have both been declared equivalent to the post of Principal Chief Conservator of Forests. According to the learned counsel for the petitioner this shows that the order of equivalence has been issued without application of mind and in colourable exercise of power. It has been further submitted by the learned counsel for the petitioner that the post of Officer on Special Duty-cum-Special Secretary in the Forest & Environment Department and subsequently the post of Officer on Special Duty in the Forest & Environment Department have been created in the face of an order issued by Finance Department urging economy in the matter of creation of posts. Further it is submitted that these posts and the post of President-cum-Managing Director, TDCCOL were declared equivalent in status and responsibility to the post of Principal Chief Conservator of Forests keeping the post of Principal Chief Conservator of Forests (Wild Life) unfilled by an officer of the rank of Principal Chief Conservator of Forests on regular basis. This, according to the learned lawyer for the petitioner, is not in accordance with the advice

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of Government of India conveyed in their letter dated 3.11.1997 at Annexure-13 from the level of the then Minister of Environment & Forests to the Chief Ministers of all States stating that in view of importance of wildlife, the post of Chief Wildlife Warden should be at the level of Principal Chief Conservator of Forests. Lastly, it has been claimed that the petitioner being the seniormost officer in the IFS cadre, by convention he should be posted as Principal Chief Conservator of Forests.

8. The learned Government Advocate appearing for State government has submitted that prior concurrence of Government of India was not necessary before posting the petitioner as President-cum-Managing Director, TDCCOL and thereafter as President, TDCCOL and subsequently as Officer on Special Duty, Forest & Environment Department. He has also submitted that there is no requirement under the rules that the post of President-cum-Managing Director, TDCCOL, should have been declared equivalent in status and responsibility to the post of Principal Chief Conservator of Forests prior to the posting of the petitioner to that post. In support of this, he has referred to the letter dated 13.7.1995 to which reference has already been made. He has also contested the submission that equivalence has been declared in this case without application of mind and in colourable exercise of power.

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Lastly, he has contested the submission that as per convention the petitioner being the seniormost officer of the IFS cadre should be posted as Principal Chief Conservator of Forests. His case is that so long as his pay and allowances as Principal Chief Conservator of Forests are protected and he is posted to work in a post which has been declared equivalent to the post of Principal Chief Conservator of Forests, the petitioner has no right to claim to be posted as Principal Chief Conservator of Forests.

9. The contention of the learned Government Advocate that before posting of the petitioner as President-cum-Managing Director, TDCCOL, it was not necessary to declare the post equivalent to a cadre post in the IFS cannot be accepted in view of specific provision of Rule 9(1) of IFS (Pay)Rules, 1968. A similar provision in the Indian Administrative Service (Pay)Rules, i.e., Rule 9(1) came up for consideration of the Hon'ble Supreme Court in the case of E.P.Royappa v. State of Tamil Nadu and another, AIR 1974 SC 555, and their Lordships have explained the purpose behind that Rule in the following words:

"....This rule is intended to provide a safeguard for the protection of a member of the Indian Administrative Service. Sub-r.(1) enacts that no member of the Indian Administrative Service shall be appointed to a post other than a post specified in Schedule III, or in other words, to a non-cadre post unless the Government makes a declaration that such non-cadre post is "equivalent

in status and responsibility" to a post specified in the said Schedule, i.e., to a cadre post. If the State Government wants to appoint a member of the Indian Administrative Service to a non-cadre post created by it, it cannot do so unless it makes a declaration setting out which is the cadre post to which such non-cadre post is equivalent in status and responsibility. The making of such a declaration is a sine qua non of the exercise of power under sub-r.(1). It is not an idle formality which can be dispensed with at the sweet will of the Government. It has a purpose behind it and that is to ensure that a member of the Indian Administrative Service is not pushed off to a non-cadre post which is inferior in status and responsibility to that occupied by him...."

As regards the question as to whether the order of equivalence can be passed after the member of the Service has been posted to a non-cadre post, their Lordships of the Hon'ble Supreme Court observed as follows:

".....The determination of equivalence is, therefore, made a condition precedent before a member of the Indian Administrative Service can be appointed to a non-cadre post under sub-r.(1). It is mandatory requirement which must be obeyed....."

In the instant case, the petitioner was posted as President-cum-Managing Director, TDCCOL, in orders dated 24.2.1997 and 27.2.1997 (Annexures 3 and 4) and the order of equivalence was issued only on 21.3.1998 (Annexure-R-3/1). This is in plain violation of the statutory requirement and the law as laid down by the Hon'ble Supreme Court in **E.P.Royappa's case (supra)**. But as the petitioner has already joined as President-cum-Managing Director, TDCCOL and thereafter has been

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functioning from 7.1.1998 as President, TDCCOL and his post has been declared equivalent, in the meantime, to the post of Principal Chief Conservator of Forests in the cadre, this part of his prayer has already been met.

10. As regards the submission of the learned lawyer for the petitioner that these orders of equivalence have been issued without application of mind and in colourable exercise of power, in E.P.Royappa's case (supra), in paragraph 82 of the judgment, the Hon'ble Supreme Court had mentioned, in the context of an officer of Indian Administrative Service, that it is open for the member of the Service to contend, notwithstanding the declaration of equivalence, that the non-cadre post to which he is appointed is in truth and reality inferior in status and responsibility to that occupied by him and his appointment to such non-cadre post is in violation of Article 311 or Articles 14 and 16. But their Lordships of the Hon'ble Supreme Court have pointed out that in such a case, the burden of establishing this would undoubtedly be very heavy and the court would be slow to interfere with the declaration of equivalence made by the Government. The Government would ordinarily be the best judge to evaluate and compare the nature and responsibilities of the functions and duties attached to different posts for declaring equivalence. Their Lordships have

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further observed as follows:

".....But where it appears to the Court that the declaration of equivalence is made without application of mind to the nature and responsibilities of the functions and duties attached to the non-cadre post or extraneous or irrelevant factors are taken into account in determining the equivalence or the nature and responsibilities of the functions and duties of the two posts are so dissimilar that no reasonable man can possibly say that they are equivalent in status and responsibility or the declaration of equivalence is mala fide or in colourable exercise of power or it is a cloak for displacing a member of the Indian Administrative Service from a cadre post which he is occupying, the Court can and certainly would set at naught the declaration of equivalence and afford protection to the civil servant....."

But in this case, besides urging that the order of equivalence has been done without application of mind and in colourable exercise of power and besides making a reference that the post of President-cum-Managing Director, TDCCOL, is far-removed from the nature and responsibilities of the functions and duties of Principal Chief Conservator of Forests, the applicant has not given any details as to how the order of equivalence passed with regard to the post is not correct. In any case, as the Hon'ble Supreme Court has laid down, it is primarily for the Government to judge and Courts should be slow to interfere with such matters.

11. The second contention of the learned lawyer for the petitioner is that the order of equivalence should have been issued by the General Administration Department. Even

though, according to the Rules of Business, creation of posts in the I.F.S. is a subject-matter of General Administration Department, declaration of equivalence, according to us, should properly be a subject of Forest & Environment because they are in a better position to judge the duties and responsibilities of the post of Principal Chief Conservator of Forests and compare the same with the post of President-cum-Managing Director, TDCCOL. The relevant entry of Rules of Business relating to General Administration Department does not specifically mention about declaration of equivalence being a subject of General Administration Department. This contention, therefore, cannot be accepted and is rejected.

12. The third contention of the learned lawyer for the petitioner is that prior concurrence of Government of India should have been taken for posting of the petitioner outside the parent cadre as the circular at Annexure-5 clearly stipulates. But in such cases, the concurrence of Government of India has in any case to be obtained. The requirement of prior concurrence as laid down in Annexure-5 cannot be taken to be an exorable rule because while managing the State Government may be required to post an officer to a non-cadre post. But in such cases clearance of Government of India must be obtained at the earliest opportunity and before such posting is done, as we have already mentioned, declaration of equivalence will have to be issued. It is not necessary to consider this matter further because the prayer is for declaration of equivalence and this has already been done.

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13. As regards the question about ban order of Finance Department, it is only necessary to say that notwithstanding this ban order, the Finance Department themselves

have concurred in the creation of post of Officer on Special Duty in Forest & Environment Department and therefore, this point is without any merit. One aspect, however, requires to be stated. As earlier noted, initially one post of Officer on Special Duty-cum-Special Secretary in Forest & Environment Department was created with the concurrence of Finance Department and that order was substituted by creation of a post of Officer on Special Duty without giving that officer any Secretarial status. This order has also been concurred by the Finance Department. From a reference to these two orders, it does appear that the order refers to the same concurrence of the Finance Department, i.e. the same U.O.I. number. But deficiency, if there is at all anything, in obtaining the concurrence of the Finance Department in creation of post by the second order dated 6.4.1998 is not a matter to be questioned by the applicant.

14. The last submission made by the learned lawyer for the petitioner is that the applicant is the seniormost officer in the IFS cadre and by convention, he should be posted as Principal Chief Conservator of Forests. It has been further submitted in the rejoinder that this aspect has not been controverted by the respondents in their counter. In course of hearing, it has been submitted by the learned Government Advocate that in the post of Officer on Special Duty, to which the applicant has been transferred in order dated 7.4.1998, his pay and allowances are fully protected and the post has been declared equivalent to the cadre post of Principal Chief Conservator of Forests in compliance with Rule 9(1) of IFS (Pay) Rules and therefore, the petitioner cannot claim as of right to be appointed

*Government Advocate
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as Principal Chief Conservator of Forests. It is the undoubted legal position that there is no statutory rule or any instruction that the seniormost officer should be appointed as Principal Chief Conservator of Forests. The Government of India in their letter forwarding the representation of the petitioner have advised the State Government to give due consideration to his seniority and the State Government, according to their counter, have considered the representation and have rejected the same. Besides absence of any rules or instructions requiring the seniormost I.F.S. officer to be posted as Principal Chief Conservator of Forests, there is also another aspect of this matter, i.e., the Tribunal cannot direct the Government to post an officer to a particular post. This ^{is} entirely within the domain of the State Government and therefore, this contention of the petitioner must fail and is rejected.

15. The other point urged in this regard is that the petitioner should not be posted to any ex-cadre post. In this respect also there is no rule or instruction to this effect. Moreover, in Orissa Cadre there is only one post of Principal Chief Conservator of Forests and according to the instructions there can only be one other post in the same rank as a non-cadre post. That post is Principal Chief Conservator of Forests (Wild Life) in lieu of which post in a way the State Government have created the post of Officer on Special Duty. Thus the petitioner's prayer that he should not be posted to any ex-cadre post in effect means that he should be posted as Principal Chief Conservator of Forests, a prayer which we have already dealt with earlier. In consideration of the above, we hold that one part of the prayer of the petitioner about declaration of equivalence of the post of President-cum-Managing Director, TDCCOL has already been met by the State Government and the petitioner has not been able to make

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out a case for the other part of his prayer.

16. Lastly, the learned lawyer for the petitioner has emphasised the prayer that the Tribunal should pass such other orders as may be deemed just and proper. This is mentioned in paragraph 8(iii) of the prayer portion of the O.A. But the learned lawyer for the petitioner did not spell out what is the nature of the prayer which he considers just and proper besides what we have dealt with already. In view of this, we hold that the petitioner has not been able to make out a case for granting any other relief prayed for by him.

17. In the result, therefore, the petition fails and is rejected but, under the circumstances, without any order as to costs. The interim order granted earlier also stands vacated.


(S.K.AGRAWAL)

23/4/98
MEMBER (JUDICIAL)


(SOMNATH SOM)

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VICE-CHAIRMAN

AN/PS