CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NOS. 136/2001, 137/2001 & 138/2001

TUESDAY, THIS THE 22nd DAY OF OCTOBER, 2002.

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDNAN, JUDICIAL MEMBER

O.A. NO. 136/2001

1. N. Sasidharan S/o K. Nanu
Divisional Forest Officer
Kottayam
residing at River view,
Nagampadom
Kottayam-686 006.

2. B. Muraleedharan S/o Bhavanth
Deputy Conservator of Forests (aDmn)
Foret Headquarters
Trivandrum-14
residing at Souparnika,
Thazhithola
Kottiyam, Quilon. Applicants

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. State of Kerala
represented by Chief Secretary to Government
of Kerala, Secretariat
Trivandrum.

2. Union of India represented by the Secretary
to Government of India
Ministry of Environment & Forests
Pariavanam Bhavan
CGO Complex, Lodi Road,
New Delhi.-110 003

3. Union Public Service Commission
represented by its Secretary,
Dholpur House,Shajahan Road,
New Delhi-110 009

4. Jupudi Prasad S/o J. David
Conservator of Forests, Social Forestry
NSC, Edappally, Ernakulam residing at
H.No. 27, Neputune Country, Chilavanoor
Kochi-682 020. ...Respondents

By Advocate Mr.Shri Hari Rao, ACGSC for R 2 & 3
Mr. Ranjit A, GP for R1
Mr. K. P. Dandapani for R4

O.A.No. 137/2001

1. S. Gopalakrishnan S/o Sreekumar
Deputy Conservatory of Forests(Protection)
Forest Headquarters

Thiruvananthapuram
residing at Forest Quarters 3-B
Forest Headquarters,
Thiruvananthapuram-14.

2. E. Pradeepkumar S/o Damodaran
Divisional Forest Officer
Civil Statiion Buildings
Kozhikode
residing at Karthika apartments
Pipeline Road,
Kozhikode.

3. V.V. Mohanan S/o Velayudhan
Divisional Forest Offier
Chkalakkudy
residing at Divisiional Forest Officers Quarters
Chalakkudy.

Applicants

By Advocate Mr.M.r. Rajendran Nair

Vs

1. State of Kerala
represented by Chief Secretary to Government
of Kerala. Secretariat
Trivandrum.

2. Union of India represented by the Secretary
to Government of India
Ministry of Environment & Forests
Pariavanam Bhavan
CGO Complex, Lodi Road,
New Delhi.-110 003

3. Union Public Service Commission
represented by its Secretary,
Dholpur House, Shajahan Road,
New Delhi-110 009

4. Noyal Thomas S/o U.V. Thomas
Divisional Forest Officer, Malayattoor
residing at DFO's Bungalow
Forest Colony, Kodanadu P.O.
Ernakulam district -683 544.....

..Respondents

By Advocate Mr. S. K. Balachandran, ACGSC for R 2 & 3
By Advocate Mr. Ranjit A, GP for R1
By Advocate Mr. K.P. Dandapani for R4

O.A. NO. 138/2001

1. N.K. Sasidharan S/o P. Raghavan
Divisional Forest Officer
Trivandrum
residing at Chandrakantham, Forest Office Lane
Trivandrum.

2. K.V. Subramanian S/o K.S. Venkataraman
Deputy Conservator of Forests, Project Cell,
Trivandrum
residing at forest Quarters,
Trivandrum.

3. Mohandas G. S/o K. Gopalakrishnan
Divisional Forest Offier, Munnar
residing at D.F.O's Quarters, Munnar. Applic ant

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. State of Kerala
represented by Chief Secretary to Government
of Kerala, Secretariat
Trivandrum-1.

2. Union of India represented by the Secretary
to Government of India
Ministry of Environment & Forests
Pariavanam Bhavan
CGO Complex, Lodi Road,
New Delhi.-110 003

3. Union Public Service Commission
represented by its Secretary,
Dholpur House, Shajahan Road,
New Delhi-110 009

4. Prakriti Srivastava D/o T.S. Srivastava
Divisional Forest Officer, Nilamur North
residing at Nilambur.

5. D. Jayaprasad S/o Manivelu
Divisional Forest Officer
Palakkad
residing at DFO's Bungalow, forest Colony,
Palakkad

6. Noyal Thomas S/o U.V. Thomas
Divisional Forest Officer, Malayattoor
residing at DFO's Bungalow
Forest Colony, Kodanadu P.O.
Ernakulam district -683 544.

7. D.K. Verma LS/o Nageshwar
DEputy Conservator of Firests (wild Life)
Forest Headquarters
Thiruvananthapuram
residing at Thiruvananthapuram.

8. K.A. Mohammed Noushad S/o K.M. Abubacker
Deputy Conservator of Forests,
Research (South)
Thiruvanantehapuram.

Respondents

By Advocate Mr. Rajendrakumar M., ACGSC for R 2 & 3
By Advocate Mr. Ranjit A, GP for R1
By Advocate Mr. K.P. Dandapani for R4-8

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the issues involved in these three Original Applications are similar these OAs were heard together and are being disposed of by this common order. For the purpose

of convenience th details in O.A. 136/2001 are considered and the law laid down would be applicable to the other two OAs.

O.A.No. 136/2001

2. The applicants two in number claiming denial of appropriate date of appointment by promotion to the Indian Forest Service and the consequent denial of appropriate year of allotment filed this O.A. against A4 order dated 29.6.2000 issued by the first respondent and A5 order dated 20.12.2000 issued by the second respondent. The applicants on being advised by the Kerala Public Service Commission for undergoing training in the State Forest Service College, Burnihat successfully underwent two years training there. They were appointed as Probationary Assistant Conservators of Forests(ACF) with effect from 1.5.78. According to them they became eligible to be considered for appointment by promotion to Indian Forest Service w.e.f. 1.1.1985 in accordance with Indian Forest Service (Appointment by Promotion) Regulations 1966 as they completed 8 years of service including two years of training which they had undergone. As they were not considered by the Selection Committee for the year 1985 and for several subsequent years because their seniority was fixed illegally and they were ranked below a large number of promotee Assistant Conservators of Forests, the applicants and others similarly situated challenged the erroneous seniority list before the Hon'ble High Court of Kerala. In O.P. No. 5238/87 filed by the second applicant and connected cases the seniority lists and the orders of confirmation were set aside and directions were issued to prepare and finalise proper seniority list and to grant confirmations and promotions on that basis. The judgment was

confirmed in W.A. NO. 878/94 and connected cases and the appeals were dismissed by the Hon'ble Supreme Court by judgment dated 1.9.98 in the case of C.K. Antony Vs. B. Muraleedharan & Others JT (1998)6 SC 11. Accordingly fresh seniority list of Assistant Conservator of Forests in the Kerala State was prepared. In A1 final seniority list as on 1.5.78, the applicants were at rank No. 13 and 14. O.A. 285/95 filed by the second applicant and other OAs filed by some other direct recruits highlighting their claim for being considered for appointment to the Indian Forest Service in accordance with Indian Forest Service (Appointment by Promotion) Regulations, 1966 were disposed of by this Tribunal by A2 common order dated 18.1.91. They claimed that in these OAs the question whether training period could be taken into account for calculating the 8 years of service in terms of proviso to Regulation 5 of Indian Forest Service (Appointment by Promotion) Regulation, 1966 was considered. On the basis of pre-revised seniority list applicants were considered for appointment by Promotion to IFS and the first applicant was appointed as per the notification dated 28.2.95 and 2nd applicant was appointed as per notification dated 18.1.99. The Review Selection Committee for the year 1985, 86 and 87 met on 8.1.1999. But when the files reached the UPSC certain vested interests interfered with a view to exclude their two years training period in the State Forest Service College Burnihat. As there was delay in finalising the selections for appointment by promotion to Indian Forest Service on the basis of revised seniority list, applicants approached this Tribunal praying for direction to the respondents to complete the process of Review Selection Committee for appointment by promotion to Indian Forest Service for the years 1985, 86 and 87 by approving the select list and notifying the appointments including those of the

applicants w.e.f. the relevant dates on which they were due. By A3 order dated 16.9.99 in O.A. 324/99 this Tribunal directed the third respondent to finalise the select list as expeditiously as possible at any rate not later than a period of two months from the date of receipt of a copy of the order and directed the 2nd respondent to take further action pursuant thereto as expeditiously as possible and within one month thereafter. The select list prepared by review selection committee was not given effect to. The review selection committee again met in January, 2000 but this time the applicants were considered only for the year 1988. Accordingly by A4 notification dated 29.6.2000 issued by respondent No. 2 the dates of appointment of applicants were prepared as 26.5.88. Thereafter the applicants were granted the year of allotment and seniority as per A5 order dated 20.12.2000. The year of allotment of the applicants was 1983. According to the applicants there were clear vacancies in Indian Forest Service Kerala Cadre (Promotion Quota) as on 1.1.1985 and thereafter against which the applicants should have been appointed but for the appointment of their juniors in A1 in the category of Assistant Conservators of Forests. They claimed that S/Shri V.K.Ramachandran, Abraham Varghese, K.Nanu Nair, M. Ibrahimkutty, M.Radhakrishnan and many others were in Indian Forest Service during 1984 and thereafter Mr. Babuji, A. George and K.G. George were appointed by promotion to IFS Kerala Cadre w.e.f. 22.5.1985 and in 1986 respectively and they were given 1980 and 1981 respectively year of allotment. If the vacancies were assessed including those occupied by juniors who were appointed by promotion to IFS, applicants would have been found eligible for being appointed to IFS w.e.f. 1.1.85 or immediately thereafter. Even if the 2 years training period was excluded in reckoning 8 years service requirement, they

would have been eligible for appointment by promotion to IFS on 1.1.1987 onwards and undoubtedly there were vacancies in the IFS Kerala cadre but for the illegal promotions granted to the juniors. Therefore A4 and A5 orders to the extent they did not grant appropriate dates of appointment by promotion and consequential years of allotment to applicants were illegal. They also submitted that the promotion quota of IFS Kerala Cadre for 1985, 86 and 87 were not properly calculated and that inspite of specific direction of this Tribunal, respondents did not consider the claim of the applicants for the year 1985, 86 and 87. It was also submitted by them that the period of training undergone by the applicants were to be reckoned for counting 8 years service. They sought the following reliefs through this O.A.

> i. declare that Annexures A4 and A5 to the extent they deny appropriate date of appointment by promotion to the Indian Forest Service and year of allotment to the applicants are illegal.
>
> ii. To declare that the applicants are entitled to be considered for appointment by promotion to the Indian Forest Service on completion of 8 years of service as Assistant Conservators of Forest including the period of training which they have undergone and
>
> iii. To direct the respondents to consider the cases of applicants for appointment by promotion to IFS on the basis of Annexure A1 revised seniority, by holding review selection Committee for the relevant years, viz. 1985, 1986 and 1987 and to grant them appointment to Indian Forest Service with effect from the earliest due date and to grant resultant year of allotment with all consequential benefits including arrears of salary and further promotions.
>
> iv. Grant such other reliefs as may be prayed for and the Court may deem fit to grant and
>
> v. Grant the costs of this Original Application.

3. Respondent No.3-Union Public Service Commission filed reply statement in which they explained the background of not approving the recommendations of the Review Selection Committee of 8.1.1999. On facts they submitted that a meeting of the Review Selection Committee was held on

17.1.2000 to review the select lists from the year 1985 to 1994-95 for selection of State Forest Service Officers for promotion to IFS cadre of the Kerala and the applicants were appointed to IFS vide Government of India Notification dated 29.6.2000 (Annexure A-4). It was submitted by them that in view of the interpretation made by the Union Government that under Regulation 5(2) of IFS Promotion Regulation any training period prior to actual appointment as ACFs in State Forest Service, Kerala could not be counted towards determining their 8 years eligibility service for promotion to IFS and the admission of the Government of Kerala that the two years training undergone by SFS officers at SFS college, Burnihat was a pre-service training undergone by them and had not been counted for the purpose of determining seniority in SFS, they (UPSC) did not approve the recommendations of the Review Selection Committee of 8.1.1999.

4. The 4th respondent filed separate reply statement. According to him there was no positive direction in O.A. 285/85 and that they were eligible for consideration for promotion to IFS w.e.f. 1.1.1985. Relying on Rule 5 of Kerala Forest Service Special Rules and R.4(i) dated 19.7.1995 it was submitted that the training in the Forest Research Institutes and Colleges was an essential qualification fixed for appointment as ACF and that the said training was only a study course. Reliance was also placed on R.4(ii) agreement to be executed by the selected candidates like the applicants.

5. The first and second respondents filed separate reply statements justifying their action and resisting the claim of the applicants. It was submitted that as per Govt. decision

two years training referred to by the applicants could not be counted for computing 8 years of continuous service required under IFS (Appointment by Promotion) Regulations.

6. Applicant filed rejoinder.

7. The 4th respondent filed further reply statement to the rejoinder filed by the applicant.

8. Heard the learned counsel for the parties. All the counsel for the parties submitted elaborate argument notes also.

9. The learned counsel for the applicant Shri M. R. Rajendran Nair submitted that the sole question in this case was whether the period of training undergone by the applicants could be counted for the purpose of determining the minimum period of 8 years required for appointment by promotion to Indian Forest Service (IFS) as per the (Appointment by Promotion) Regulation, 1966. Referring to Explanation-II to Regulation 5(2) of the Indian Forest Service (Appointment by Promotion) Regulation he submitted that the Diploma Course undergone by the applicants in the Forest Service College, Burnihat was a course referred to in the said Explanation-II. He submitted that as per the notification issued by the Kerala Public Service Commission, the Commission advised the applicants by memoranda similar to the one dated 31.5.76 received by the second applicant to undergo training in State Forest Service College, Burnihat. There were no separate advice memos issued for the purpose of appointment as Assistant Conservator of Forests in the case of the applicants. Referring to Rule 5 of the Kerala Forest Service (Special Rules), Rule 2(12), 2(1) and 2(6) of Kerala

State and Subordinate Service Rules 1958 which defined the terms "Recruited Direct"' "Appointed to Service" and "Duty" learned counsel submitted that applicants were to be treated as recruited as direct on the date of notification of the Public Service Commission which was prior to the date of advice and when the applicants were undergoing training prescribed for the service the same must be deemed to be on 'duty' as a member of the service. The learned counsel further submitted that the question whether the period of training was liable to be counted for computing the minimum period of 8 years of service which was a prerequisite under Regulation 5(2) was raised in O.A. 285/85 and the order of this Tribunal in that O.A. had become final, and hence the respondents were bound by that decision. Learned counsel for the applicant submitted that Kerala and other States, Union of India and UPSC had consistently held the meaning of Explanation-II of IFS (Appointment by Promotion) Regulation 1966 as one permitting the period of training in the Forest Training College, Burnihat reckoned as qualifying service for 8 years.

10. Shri HariRao appearing on behalf of Respondent 2 and 3 submitted that rules clearly indicated that seniority of direct recruits to ACFs should be determined by date of appointment as ACFs which in other words would mean that training period prior to the appointment as ACFs would not be counted for seniority of ACFs. He relied on the judgments of the Hon'ble Supreme Court in Prafulla Kumar Swain & Anr. Vs. Prakash Chandra Mishra and Ors (1991 Suppl.3 SC 131) in support of his submissions. It was also submitted by him that as per advice of the Govt. of Kerala, the service prior to actual appointment as Probationer was not counted for the purpose of determining seniority in the State Forest Service.

He submitted that the Regulations did not provide for counting the period of study prior to appointment in the State Forest Service. He submitted that there was no room for any doubt regarding interpretation of Explanation II under Rule 5(2) and that the period of training undertaken by the applicants prior to their appointment as ACFs would not count for determining their eligibility for Appointment by Promotion to IFS.

11. Smt. Sumathi Dandapani for the 4th respondent submitted that against the move of the State Government for inclusion of pre-service training period of the applicants and other similarly placed persons, for appointment to IFS, some directly recruited IFS officers represented to the State Government and Government of India. In the earlier cases filed before this Tribunal and the Hon'ble High Court of Kerala the IFS officers were not parties. Since their seniority would also be adversely affected, on representation, the Hon'ble High Court of Kerala directed, the Government of Kerala to present the representation of direct recruit IFS officers before the Review Selection Committee. The Review Selection Committee was also directed to consider the representations and pass orders on the points raised in the representation. She also submitted that when Shri Muraleedharan the second applicant was aware that a review petition was filed by IFS officers in the High Court in the Writ Appeal preferred by the State of Kerala against the Single Judge's directions in O.P. No. 1262/96 for considering him for promotion, he should have impleaded the IFS officers also since if the relief sought by them was granted the same would be upsetting their (IFS Officers) seniority also. According to her whether the training period was to be taken for determining the qualifying service of 8

years for being considered for appointment by promotion to IFS is a factor coming within the purview of the State. The period of training of two years had not been counted for determining the seniority as it was against Rule 4, 5 and 8 of the Kerala Forest Service Rules. Unless and until the Rules 5 and 8 were amended the applicants could not claim for counting the period of training since they had not entered the service and got appointment as Assistant Conservators of Forests during 1976-78. The applicants had not so far approached the State Government for brining in any amendment as done in other States. Without approaching the Kerala State they could not get any relief to that effect from this Tribunal. She also submitted that it was clear from Rule 5 of the Kerala Forest Service (Special) Rules that a directly recruited Assistant Conservator of Forest would be given practical training for a period of 2 years from the date of his appointment as Probationary Assistant Conservator. The applicants were only invited for a study course of Diploma. Referring to the clauses in the agreement elaborately, she submitted that as per the said agreement the Government had no obligation to provide the applicants any employment. According to her the various clauses in the agreement would clearly show that it was a study course to fully train the applicants. According to her, Rules vary from State to State. Referring to IFS (Appointment by Promotion) Regulations 1966 she submitted that not less than 8 years of service either substantive or officiating in the State Forest Service was required for becoming eligible for consideration for appointment by Promotion to IFS. According to her applicants became eligible for consideration for appointment only on 1.7.87. She also submitted that the applicants were eligible for appointment to IFS only if their names were considered and recommended by the Departmental Promotion

Committee. The applicants were considered in the DPC which was convened in 1987 and in 1988. Hence they were actually considered by the Review DPC in 1987 and 1988. She further submitted that the minimum qualifying service was not the only criterion for appointment to IFS; factors like availability of vacancies, suitability of the officer, pendency of disciplinary cases etc would all determine the selection and appointment of the applicants by promotion. She cited the following judgments in support of her submissions:-

(i) C.K. Antony V. B. Muraleedhran & Ors (JT 1998 (6) SC 11)

(ii)R.S. Ajara and Others Vs. State of Gujarat and Others (1997 (3) SCC 641)

(iii) Mohinder singh Vs. State of Haryana and Others(1989 (3) SCC 93)

12. The learned counsel for the State of Kerala referred to the Regulations for IFS (Appointment by Promotion) Regulations 1966 and the Explanation to Sub Regulation (2) of the Promotion Regulations and submitted that it did not indicate that the training period before appointment as ACF should be counted while determining the eligibility of 8 years service. According to him the said Explanation II was not to be read in isolation. He also submitted that for determining the eligibility of State Forest Services officers for appointment by promotion to IFS the relevant Kerala Forest Service Rules were also required to be referred to. He referred to Rule 5(a), (b), (c) and (d) and submitted that the same would clearly indicate that the seniority of Assistant Conservators of Forest would be determined by their dates of appointment as Assistant Conservators of Forest. According to him the training period of two years would not be counted for determining the seniority in the State Forest Service. It was the seniority in the State Forest Service

which would ultimately determine the appointment. He referred to Civil Appeal No.11527/95 by C.K.Antony Vs. B. Muraleedharan and submitted that the Hon'ble Supreme Court in the said judgment had held that in the case of direct recruits the seniority would be counted from the date of appointment as a Probationer Assistant Conservator of Forest. Referring to rule 8 of the Special Rules and Rule 27(a) of Kerala State Subordinate Rules, he submitted that by virtue of specific provision of Rule 8, direct recruit Assistant Conservator of Forests could count seniority from the date of his appointment as Probationary Assistant Conservator of Forest. He also cited the judgment of the Hon'ble Supreme Court in Prafula Kumar Swain and another Vs. Prakash Chandra Mishra and Others in support of his submissions. He submitted that the Govt. of India on merit had maintained that training of the applicants was actually prior to their appointment and the training period would not count for determining their seniority in State Forest Service and the same could not be faulted.

13. We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and have perused the documents brought on record.

14. We find from the pleadings and the submissions of the parties that the issue to be considered in this O.A. is whether the action of the official respondents in excluding the period of training undergone by the applicants in the State Forest Institute, Burnihat for computing the minimum period of 8 years of qualifying service required under Regulation 5(2) of Indian Forest Service (Appointment by

Promotion) Regulations 1966 is legally sustainable, in the light of Explanation-II below Regulation 5(2) of the Promotion Regulations.

15. Regulation 5(2) reads as follows:

"5(2) The Committee shall consider, for inclusion in the said list, the cases of members of the State Forest Service in the order of seniority in that service of a number which is equal to three times the number referred to in sub-regulation(1):

Provided that such restriction shall not apply in respect of a State where the total number of of eligible officers is less than three times the maximum permissible size of the Select List and in such a case the Committee shall consider all the eligible officers

Provided further that in computing the number for inclusion in the field of consideration, the number of officers referred to in sub-regulation (3) shall be excluded

Provided also that the Committee shall not consider the case of a member of the State Forest Service unless, on the first of January of the year in which it meets, he is substantive in the State Forest Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post(s) included in the State Forest Service.

X X X X X

Explanation II: In computing the period of continuous service for the purpose of this regulation there shall be included any period during which an officer has undertaken-

(a) training in a diploma course in the Forest Research Institute and Colleges, Dehradun or

(b) such other training as may be approved by the Central Government in consultation with the Commission in any other institution.

16. We find that the applicants claim that the course undergone by the applicants is a course covered under Explanation-II relying on the definition of the terms "Recruited Direct" "Appointed to Service"&"Duty" given in the

Kerala State Forest Service (Special) Rules. They also rely on the judgment of the Hon'ble High Court in Lakshamanan Vs. State of Kerala (1995 KLT 115) in support.

> "The relevant statutory provision relating to what is meant by 'duty' would be available in the Kerala State and Subordinate Service Rules 1958-Rule 2(1) and (6) respectively. Rule 2(1) makes in clear that a person who is appointed to a service when he commences the probation, instruction or training prescribed for the members thereof. equally well R. 2(6) tells us what is understood by a person said to be on 'duty'. A person is said to be on duty when he is performing the duties on the post or he is undergoing the probation, instruction or training prescribed for such service."

17. Rule 5 of the Kerala State Forest Service (Special Rukles) is as follows:

> "Training:- (a) A person selected for being subsequently appointed as Assistant Conservator by direct recruitment shall undergo a special course of study at the Forest College, Dehra Dun, for such durations as may be prescribed by the Government of India from time to time. If any candidate is prevented by sickness or any other adequate cause from appearing at the final examination at Dehra Dun, at the end of the Course, the State Government may allow him to appear at the next final examination. On successful completion of the course, he shall be appointed as Assistant Conservator on probation subject to availability of vacancy.
>
> (b) He shall not be entitled to any pay while undergoing the courses of study prescribed in sub rule (a). During the period he shall, however, be paid a stipend at such rate as the State Government may from time to time sanction. He shall be granted in respect of the journeys performed by him while undergoing the course of study prescribed in the rule, actual expenses as authorised by the rules relating to the said course of study, and also travelling allowances for joining his appointment in the State after successfully completing the course, as prescribed under the rules in force in the State.
>
> (c) The whole of the expenses for the course of study at Dehra dun shall be met by the Sate Government. The person selected for the course shall execute a bond with two sureties for all sums which in any way may be expended paid or incurred by the State Government in respect of his courses of study at the Forest College, Dehra Dun and also a separate agreement in such forms as may be prescribed by the State Government from time to time undertaking to serve the said Government in the Forest Department fora period of at least seven years after successfully completing his training at Dehra dun.

(d) A directly recruited probationary Assistant Conservator shall be given practical training for a period of two years from the date of his appointment as probationary assistant Conservator. He shall be paid during this period of his practical training. The pay and allowances admissible to an Assistant Conservator and the period of this training would count for purpose of increments, leave, pension,etc."

18. We find that under the Kerala State Subordinate Service Rules, 1958 Rule 2(1) defines "Appointed to Service." The said definition is as follows:

"A person is said to be 'appointed to service' when in accordance with these rules applicable at the time, as the case may be he discharges for the first time duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof

Explanation:- The appointment of a person holding a post borne on the cadre of one service to hold additional charge of a post borne on the cadre of another service or to discharge the current duties thereof does not amount to appointment to the later service."

19. Rule 2(12) defines the term "Recruited Direct'. The said Rule reads as under:

"A candidate is said to be recruited direct to a service, class, category or post when, in case the appointment has been done in consultation with the Commission, on the date of the notification by the Commission inviting applications for recruitment and in any other case at the time of appointment..."

20. Rule 2(b) defines "duty" as follows:

"A person is said to be "on duty" as a member of a Service:-

(a)when he is performing the duties of a post borne on the cadre of such service or is undergoing the probation, instruction or training prescribed for such service:
(b)....."

21. We find from the definition of training reproduced by us above that the applicants and similar other persons were selected for being appointed as Assistant Conservator of Forests only subsequently i.e. after their training in the State Forest Training Institute, Burnihat. It is also evident from the definition that the applicants were not entitled for any pay while undergoing the course of study.

22. Hon'ble High Court of Kerala in Antony C.K. Vs. Muraleedhran and Others (!995 (2) KLT 807) considered the definition of 'Appointed to Service' and came to the conclusion that the second applicant in this O.A. Sri Muraleedharan was appointed as Assistant Conservator of Forests Probationer on 1.5.78. It was also held that he was advised by the Public Service Commission for training on 31.5.76 and that it was after successful completion of the training that the joined service on 1.5.78.

23. Hon'ble Supreme Court in C.K.Antony Vs. Muraleedharan (JT 1998 (6) SC 11) held as follows:

> "7. Bearing the above broad conclusions in mind, we may now look into the factual aspects in these cases. The Kerala Public Service Commission advised for training of the directly recruited ACFs some time in May, 1976, 1977 and November, 1978. The Petitioners in OP NOs. 5238/87, 1971/87 and 1388/87 before the High Court <u>were direct recruits to the cadre of ACF and were appointed as Probationar after successful completion of that training on 1.5.78, 1.5.79 and 1.11.80 respectively.</u> The bone of contention of the appellants is that they were appointed long prior to the appointments of the above said direct recruits and, therefore, they must be given seniority over and above the said direct recruits. It is true that the appellants were appointed earlier in point of time to the appointments of the direct recruits. But the point is that they were not appointed in accordance with the rules in the sense they were not appointed against the permanent vacancies intended for recruits by transfer. They were all appointed temporarily as a stop-gap arrangement. As a matter of fact, before the Division Bench of the High Court the State was called upon to produce the seniority list and also the cadre strength of ACF. The Division Bench has observed that the State did not come forward with

consistent factual aspect regarding the seniority list and the cadre strength. The High Court in paragraphs 19 and 20 has observed as follows:

> 10. In paragraph 13 of the counter affidavit dated 31.12.1994, the Chief Conservator of Forests (Protection) stated that the sanctioned strength of Assistant Conservator of Forests as on 1.5.78 is 29. 14 of which are permanent and 15 are temporary. While we come to the additional affidavit dated 10.1.1955 sworn toby the same Chief Conservator of Forests (Protection), what we see is that he asserts that on 1.5.1978 there were 29 cadre posts of Assistant Conservators of Forests in the Department. From this, it may lead to an inference that the cadre strength of Assistant Conservators of Forests as on 1.5.1978 was 29. Actually, this stand taken by him in the additional affidavit dated 10.1.1995 is not correct. As on 1.5.1978, the strength of the cadre, permanent posts of Assistant Conservators was only 14 and not 29 as is not stated.
>
> 20. From the above discussion, we come to the conclusion that the strength of Assistant Conservators of Forests, permanent cadre, has been 14 as on 1.5.1978. As on 1.5.1978, from exhibit P-10 order referred to earlier, it is evident that respondents 4 to 7 were only Rangers. They were not regularly promoted to the cadre of Assistant conservators of Forests. Their promotion to the cadre was purely under Rule 9(a)(i) of the General Rules. The promotion can by no stretch of imagination confer on them any right to the post, namely, the post of Assistant Conservators of Forests."

It is evident from the above that the applicants were appointed to the State Forest Service only w.e.f. 1.5.78.

24. From Explanation II under Regulation 5(2) of the Indian Forest Service (Appointment by Promotion) Regulation extracted earlier we find that the Training that could be included for the purpose of computing 8 years of continuous service should be a training which had been undertaken by an officer. The question is whether the applicants were officers at the time of undergoing the training in the State

Forest Institute, Burnihat between 1976-78. The Hon'ble Supreme Court in Mohinder Singh Vs. State of Haryana and Others had held the term 'Officer' as follows:

> "6. None of the parties has placed any definition of the term 'officer' from any Haryana statute. It is not the contention of counsel appearing to the term. In such a situation, the common parlance meaning for any of the parties that the administrative orders gave a definition 'officer' has to be accepted for the purpose of finding out whether Inspectors and Sub Inspectors held the post of Officer. The ordinary dictionary meaning of the term 'officer' is:
>
> > a person appointed or elected to a position of responsibility or authority in a Government, society, etc.
>
> Stroud's Judicial dictionary (5th edn.)has given a variety of instances of'Officer' with reference to different statutes. Some of the instances given therein do support Mr. Rao's stand that an Inspector or Sub Inspector would indeed be an 'officer' inasmuch as under statutory orders made in exercise of powers conferred under the essential Commodities Act on the State Government, authority has been vested in these categories of officers to exercise jurisdiction.
>
> 7. Black's Law dictionary states:
>
> > In determining whether one is an 'officer' or 'employee' important tests are the tenure by which a position is held, whether its duration is defined by the statute or ordinance creating it, or whether it is temporary or transient or for a time fixed only by agreement whether it is created by an appointment or election, or merely by a contract or employment by which the rights of the parties are regulated whether the compensation is by a salary or fees fixed by law, or by a sum agreed upon by the contract of hiring.
>
> A person invested with the authority of an office has been treated as an officer.
>
> 8. In Words and Phrases (Permanent Edition Volume 29-A) an 'officer' has been stated to mean:
>
> > a person who is invested with some portion of the functions of government to be exercised for the public benefit.
> >
> > If the powers and duties reposed in the incumbent of a position are such that he exercises the function of the sovereignty the incumbent is an 'officer' regardless of the name by which he may be designated.

If these tests are applied, the appellant who held an office and was clothed with functions of sovereignty was an officer.

25. The question is applying the ratio of the judgment of the Hon'ble Supreme Court in the above case whether the applicants in this O.A. can be treated as an "officer" while they were undergoing training. Hon'ble High Court of Kerala and the Hon'ble Apex Court already held that they were appointed as Probationary ACF only on 1.5.78. As the applicants were not officers when they were undergoing training in the State Forest Institute Burnihat, we are of the view that the said training would not come under the purview of Explanation-II. Moreover, the applicants were only paid stipend during the course of training and hence we are of the view that under the third proviso to Regulation 5(2) they could not be considered as 'members' of the Kerala State Forest Service and also said to have put in service in a substantive or officiating capacity during the period spent in the Forest Training Institute, Burnihat.

26. If as claimed by the applicants, the period of training undergone by the applicants is taken into consideration for computing the service of 8 years, the same would create an anomalous situation, in that the said period when the applicant had been paid only stipend and which had not been considered "Service" for the purpose of seniority by the Hon'ble High Court of Kerala and Hon'ble Apex Court would get counted for eligibility for IFS appointment by promotion. In our view a person can derive the benefits flowing from a service only from the date of entering into a service.

27. Learned counsel for the applicant submitted that an explanation to a provision was for the purpose of explaining the words contained in the provision and that an explanation

may be added to include something within or to exclude something from the ambit of the main enactment. According to him the rule making authority thought that without an explanation the training period prior to actual appointment would not be included in reckoning the required minimum qualifying service of 8 years. According to him if the period of training undergone by the applicants was not reckoned the explanation would be redundant and redundancy could not be attributed to legislation.

28. We find from the Regulation 5(2) reproduced earlier that under the third proviso therein, a member of the State Forest Service for considering his case for appointment by promotion to IFS should on the first of January of the year, (i) be substantive and (ii) have completed not less than 8 years continuous service whether officiating or substantive in the posts included in the State Forest Service. On a plain reading of (ii) above we are of the view that persons like the applicants when they were undergoing training in the State Forest Institute, Burnihat and were being paid stipend could not be stated to be holding any post included in the State Forest Service, in substantive or officiating capacity. In our view the Explanation had been included so that where a person who had been appointed as ACF and sent for training did not lose the benefit of service of the said two years on the ground that the said person was not discharging the duties of ACF in a substantive/or officiating capacity. In our view the said explanation cannot be given the meaning as given by the learned counsel for the applicant. The explanation has to be read harmoniously with the Regulation 5(2) and its provisos. If the periods of training of the applicants are counted, the same can result in juniors

becoming eligible for consideration to IFS and seniors not being eligible. We hold that such an interpretation can never be the intention of the rule making authority.

30. Hon'ble Supreme Court in R.S. Ajara and Others Vs. State of Gujarat and Others (1997) 3 SCC 641) held as follows:

> "11. The 1981 Rules differ from similar rules framed in the State of Orissa which came up for consideration before this Court in Prafulla Kumar Swain V. Prakash Chandra Mistra. In that case this Court has considered the provisions of the Orissa Forest Service Class-II Recruitment Rules, 1959 and the regulations made thereunder relating to appointment on the post of Assistant Conservator of Forests. The said rules made provision for appointment on the post of Assistant Conservator of Forests by promotion as well as by direct recruitment and persons selected by direct recruitment were required to undergo a course in Forestry for a period of two years and they were to be appointed after successful completion of training at the institution. The question was whether service was to be reckoned from the date of actual appointment to the service or from the date of selection for training and the period of training could be counted for the purpose of seniority. It was held that seniority had to be reckoned from the actual date of appointment in view of the fact that there was an express provision in regulation 12(c) wherein it was prescribed "such service will count only from the date of appointment to the service after successful completion of the course of training". This Court was of the view that in view of the said provision the period of training could not be counted for the purpose of seniority.

31. The Hon'ble Supreme Court specifically held that in the light of the provisions contained in the relevant rules the period of training could not be counted for seniority in that case. Nothing has been brought by the applicants to show that in the State of Kerala the training period underwent by the applicants would be counted as service for any purpose.

32. Similarly in Prafulla Kumar Swain Vs. Prakash Chandra Misra and Others (1993 Suppl. 3 SCC 181) the Hon'ble Supreme Court set aside the decision of the Tribunal by which the Tribunal held that the petitioner before it being a direct recruit of the year must be treated as such and confirmed and promoted as a direct recruit of the year 1979. This decision of the Tribunal was set aside by the Hon'ble Supreme Court.

33. Another ground taken by the applicants was that the respondent in O.A. 285/85 had conceded that the two years period would be reckoned for counting towards qualifying service of 8 years of the service and the said judgment in O.A. 285/85 having become final the respondents could not resile from the said stand. According to the second respondent it is only the rule position which was indicated by the Union of India in O.A. 285/85 before this Tribunal. We find from the order of this Tribunal in O.A. 285/85 and other OAs that at that time the principles adopted by the State Government for assignment of seniority of Direct Recruits and departmental transferees were different.

34. In that context the Hon'ble Supreme Court has held that the applicants are entitled for seniority only from the date they had become Probationary Assistant Conservator of Forests. Further, when the direct recruits of IFS like the 4th respondent had approached the Tribunal through O.A. 1539/98 and 1637/98 the said OA were dismissed by this Tribunal at the admission stage itself. However, pursuant to the Hon'ble High Court's order dated 5.1.99 by which it directed the Chief Secretary of Kerala State to forward the representations submitted by the applicants therein to the Review Selection Committee. The Hon'ble High Court also

directed the Review Selection Committee to consider it on merits along with other eligible candidates. While the State Govt. agreed with the said recommendations of the Committee, the Govt. of India, Ministry of Environment and Forests disagreed with the same. The UPSC wanted the view of the Govt.. of India who after consulting the DOP&T interpreted the provisions of Explanation II of para 5(2) under the Promotion Regulations with reference to the Kerala Service Rules and decided that as the training underwent by the direct recruits in Kerala was prior to the actual appointment as Probationary Assistant Conservator of Forests that training period could not be counted for computing 8 years service. It is this fresh decision which is a subject matter in this O.A. Hence in our view the earlier order of the Tribunal could not act as resjudicata on the respondents.

35. Even though the applicants submitted that other States such as Orissa were counting the period of training in the Forest Service Colleges, they had not produced any material to substantiate that the said training in those States were imparted to such officials prior to their appointment as ACFs. Examples of Karnataka and Tamilnadu quoted by them in the rejoinder is not supported by relevant rules of the State Governments to show whether the Assistant Conservator of Forests referred to therein can count the said period of training of 2 years for the purpose of seniority as ACF.

36. In the light of the detailed analysis given above we hold that the applicants cannot claim the two years training period for the purpose of computing the 8 years service required under Regulation 5(2). In this view of the matter the decision of the Union of India and the consequent

conclusions arrived at by the Review Selection Committee cannot be faulted. Thus we are of the view that the applicants who were appointed as ACF on probation from 1.5.78 completed 8 years on 1.5.86 and would be eligible for consideration for appointment by promotion to IFS only after that date. In the result we hold that the applicants are not entitled for the reliefs sought for in this OA No. 136/2001 and hence this O.A. is liable to be dismissed.

O.A. 137/2001

37. The three applicants herein were advised by the Kerala Public Service Commission for undergoing training in State Forest Service College in December, 1983. They successfully underwent two years training in the State Forest Service College, Coimbatore from 1.1.84 to 31.12.85. Thereafter they were appointed as Probationary Assistant Conservator of Forests from 22.3.1986. Their period of waiting from 1.1.1986 to 24.3.86 was regularised treating the period as duty for all purposes. They were confirmed in the cadre of Assistant Conservator of Forests w.e.f. 1.1.86. By A2 notification dated 28.6.2000 they were appointed to IFS with effect from 31.12.1995 and by A3 dated 20.12.2000 their year of allotment was decided as 1991. They claimed that they became eligible for being considered for appointment to IFS by Promotion w.e.f. 1.1.92 in accordance with IFS (Appointment by Promotion) Regulation, 1966 as they completed 8 years of service including the period of training. They sought the following reliefs through this O.A.

> (i) Declare that Annexures A2 and A3 to the extent they deny appropriate date of appointment by promotion to the Indian Forest Service and year of allotment to the applicants are illegal.

To declare that the applicants are entitled to be considered for appointment by promotion to the Indian Forest Service, on completion of 8 years of service as Assistant Conservator of Forests including the period of training which they have undergone and

(iii) to direct the respondents to consider the cases of applicants for appointment by promotion to IFS on the basis of Annexure A1 revised seniority, by holding review selection Committee for the relevant years and to grant them appointment to Indian Forest Service with effect from the earliest due date and resultant year of allotment with all consequential benefits including arrears of salary and further promotions.

(iv) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

(v) Grant the cost of this Original Application.

O.A. 138/2001

38. The three applicants in this O.A. successfully underwent training in the State Forest Service College, Coimbatore from 26.1.80 to 31.1.82 and they were appointed as Probationary Assistant Conservator of Forests from 1.11.81, 1.2.82 and 1.2.82 respectively. They were confirmed in the category of ACF w.e.f. 1.11.81, 1.2.82 and 1.2.82 respectively. By A3 notification dated 28.6.2000 they were appointed to Indian Forest Service with effect from 22.10.1992, 22.10.1992 & 12.8.1993 and by A4 dated 20.12.2000, their year of allotment was notified as 1988. According to them they became eligible to be considered for appointment by promotion to IFS w.e.f. 1.1.1988, 1.1.1989 and 1.1.1989 respectively as they completed 8 years of service including the period of training which they had undergone Having not been considered for appointment to IFS as claimed by them they filed this O.A. seeking the following reliefs:

(i) Declare that Annexures A3 and A4 to the extent they deny appropriate date of appointment by promotion to the Indian Forest Service to the applicants are illegal.

To declare that the applicants are entitled to be considered for appointment by promotion to the Indian Forest Service, on completion of 8 years of service as Assistant Conservator of Forests including the period of training which they have undergone and

(iii) to direct the respondents to consider the cases of applicants for appointment by promotion to IFS on the basis of Annexure A1 revised seniority, by holding review selection Committee for the relevant years and to grant them appointment to Indian Forest Service and year of allotment with all consequential benefits including arrears of salary and further promotions.

(iv) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and

(v) Grant the cost of this Original Application.

39. The grounds advanced by the applicants and the pleas of the respondents in the above two OAs are similar to the ones advanced in O.A. No. 136/2001. Following our findings in OA No. 136/2001, we hold that applicants in these two OAs are not entitled for the reliefs sought for and the above two OAs are also liable to be dismissed.

40. Accordingly we dismiss the three Original Applications OA No. 136/01, 137/01 and 138/01 leaving the parties to bear their respective costs.

Dated the 22nd October, 2002.

Sd/-
K.V.SACHIDANANDAN
JUDICIAL MEMBER

Sd/-
G.RAMAKRISHNAN
ADMINISTRATIVE MEMBER

APPENDIX

APPLICANTS' ANNEXURES

O.A. 136/2001

A1 True copy of the seniority list of State Forest Service Officers (Assistant Conservator of Forests) as on 1.5.78

A2 True copy of the order dsated 18.1.91 in; O.A. ;No. 285/85 of this Hon'ble Tribunal

A3 True copy of the Order dated 16.9.99 in O.A. No. 324/99 of this Tribunal.

A4 True copy of the Notification No.17013/9(I)/99-IFS.II dated 29.6.2000 issued by the 2nd respondent to the applicants

A5 True copy of the order No. 17013/9(I)/99-IFS.II dated 20.12.2000 issued by the 2nd respondent.

A6 True copy of of the Notification No. 10713/8/1089-IFS.II dated 27.11.89

A7 True copy of the Notification No. 08/89-IFS-II Dated 26.3.1990

A8 True copy of the merit list of 1979-81 course of State Forest Service College Burnihat.

A9 True copy of the merit list of 1980-82 course of State Forest Service Coilege Coimbatore-2.

A-10 True copy of the agreement dated 30.10.79 between S. Puttabudhi and the Govt.

A11 True copy of the relevant extract of 1997 civil list of the IFS.

Respondents Annexures

R4(i) Copy of Govt. order GO(MS) 218/75/AD dated 19.7.75

R4(ii) Copy of agreement form to be entered into before training.

R4(iii) Copy of the notification published by the Andhra Pradesh Govt. on 29.12.83.

R4(iv) Copy of order in O.A. 1538/98 & 1624/98 dated 1.3.99 passed by this Tribunal

R4(v) True copy of the recommendation of the UPSC dated 11.11.99 addressed to the Secretary to the Govt. and also Chief Secretary of State of Kerala.

O.A. 137/2001

Applicants' Annexures

A1 True copy of the Order No. G.O.(Rt) No. 282/96/F &WLD dated 20.7.1996 together with the Seniority list of State Service Forest Officers (Assistant Conservator of Forests) as on 1.1.5.86 issued by the 1st respondent.

A2 True copy of the Notification No. 17013/09/99-IFS.II dated 28.6.2000 issued by the 1st respondent.

A3 True copy ofthe Order No. G. O. (Rt) No. .282/96-F& WLD dated 20.7.96 together with the Seniority list of State Service Forest Offciers (Assistant Conservator of Forests) as on 1.5.86 issued bythe 1st respondent.

Respondents' Annexures -- As in O.A. 136/01

O.A. 138/2001

A1 True copy ofthe Order No. G. O. (Rt) No. 282/96-F& WLD dated 20.7.96 together with the Seniority list of State Service Forest Offciers (Assistant Conservator of Forests) as on 1.5.86 issued bythe 1st respondent.

A2 True copy of the order dated 23.9.99 in O.A. 1638/98 of this Tribunal

A3 True ccpy of the Notification No. 17013/9/99-IFS-II dated 28.6.2000 issued by the 1st respondnet.

A4 True copy of Order No. 17013/9(ii)/99-IFS.II dated 20.12.2000 issued by the 2nd respondent.

Respondents' Annexures -- As in O.A. 136/01

CERTIFIED TRUE COPY
Date 25.X.02

Section Officer (Judl)