

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

(11)

O.A. No. 258/99
T.A. No.

199

DATE OF DECISION 22.12.1999

S.P.Mathur

Petitioner

Mr. R.C.Joshi

Advocate for the Petitioner (s)

Versus

Union of India and Anr.

Respondent

Mr. L.N.Boss, Mr. U.D.Sharma and **Advocate for the Respondent (s)**
Mr. A.K.Bhandari

CO-RAM :

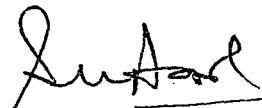
The Hon'ble Mr. S.K.AGARWAL, JUDICIAL MEMBER

The Hon'ble Mr. N.P.NAWANI, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *Yes*.
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?


(N.P.NAWANI)

Adm. Member


(S.K.AGARWAL)

Judl. Member

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 22.12.99

OA No.258/1999

S.P.Mathur S/o Late Shri Amba Lal Mathur, aged 59 years residing at C-119, Mangal Marg, Bapu Nagar, Jaipur.

.. Applicant

Versus

1. Union of India through the Secretary, Ministry of Environment and Forest, Parayavaran Bhawan, CGO Complex, Lodi Road, New Delhi.
2. State of Rajasthan through the Chief Secretary to the Government, Rajasthan, Jaipur.
3. Shri V.C.Sancheti, Principal Chief Conservator of Forests, Rajasthan, Jaipur.

.. Respondents

Mr.R.C.Joshi, counsel for the applicant

Mr. L.N.Boss, counsel for respondent No.1.

Mr. U.D.Sharma, counsel for respondent No.2

Mr. A.K.Bhandari, counsel for respondent No.3

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

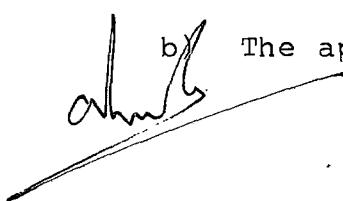
ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has sought the following reliefs:

"a) The impugned orders dated 23/9/1998 and 21/1/1999 passed by the State of Rajasthan may be declared illegal, ultra vires and un-constitutional and may be quashed and set aside.

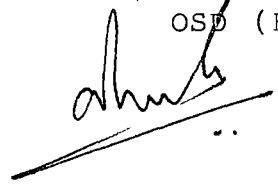
b) The applicant may be restored to his original post of



Principal Chief Conservator Forest, Rajasthan,
Jaipur.

c) The applicant may be awarded Rs. 10,00,000 (Rs. Ten
lacs) as compensation for the harassment, hardship
and mental torture and agony suffered by the
applicant due to illegal acts of the State of
Rajasthan in passing the impugned orders."

2. The facts as stated by the applicant and relevant to the controversy are that upto 1996 there existed only one post of Principal Chief Conservator of Forest (for short, PCCF) in the State Government. On 28.9.96, one temporary ex-cadre post of PCCF (Forest Settlement and Working Plan) was created and declared equivalent in status and responsibilities to the IFS cadre post of PCCF (Ann.A5). The applicant was promoted to the cadre post of PCCF after due selection by the Screening Committee on 30.11.1996 (Ann.A7) and Shri D.C.Sood was appointed PCCF (Working Plan and Forest Settlement). The Selection Committee had in fact considered names of 6 officers to the level of Chief Conservator of Forest including the applicant and respondent No.3 for selection to the two posts of PCCF and selected, on the basis of seniority-cum-merit, the applicant and Shri D.C.Sood. On 15 July, 98 respondent No.3, Shri V.S.Sancheti was promoted to the post of Additional PCCF in the scale of Rs. 22400-525-24000 (Ann.A9) based on the recommendation made by the 5th Central Pay Commission for creating an inter-mediary scale between the post of Chief Conservator of Forests and PCCF. On 23 September, 1998, all of sudden on the eve of the Assembly Elections of the State, the applicant was transferred from the post of PCCF to a non-existing post of Officer on Special Duty (Forest) (for short, OSD (Forest) and by the same order respondent No.3, who is 4

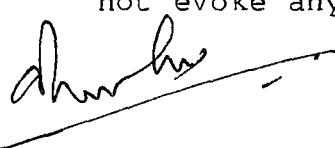


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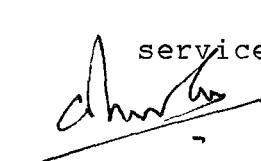
years junior to the applicant, was promoted as PCCF in place of the applicant. The respondent No.3 assumed the charge of the office of PCCF on 24.9.1998 when the applicant was away to Bikaner.

3. It is alleged by the applicant that the previous Government for the ulterior motive chose to consider the junior officer, respondent No.3, who was at that time only ~~an~~ Additional PCCF for the top post of PCCF even though Shri D.C.Sood, PCCF and 2 years senior to respondent No. 3 was available. The applicant submitted various representations to the Chief Secretary/Chief Minister against such transfer (Ann.A10 to Ann.A12) but no reply was forthcoming. The applicant was also put under great amount of humiliation and harassment in terms of making available to him personal staff and office accommodation etc. On further representation being made by the applicant against the transfer and bringing to the notice of the State Govt., that no post of OSD exists and such a post has been created only to give undue favour to respondent No.3 , the Government of Rajasthan with an intention to cover up this malafide act issued an order dated 21.1.99 for sanction for creation of the said post with a changed name as Advisor (Forest) for the period 25.9.98 to 28.2.99 and declaring it equivalent in status and responsibilities to the IFS cadre post of PCCF. The creation of this post from 24.9.98 clearly showed that the order dated 21.1.99 was with retrospective effect and the State Government has no power to issue a retrospective order with respect to the declaration of the equivalency. Further detailed representaiton made by the applicant Ann.A21 and A22 also did not evoke any response.



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4. The case of the applicant is based on the premise that no member of the IFS can be appointed to a post other than a post specified in third schedule under Rule 9(1) of the Indian Forest Service (Pay) Rules, 1968 (for short, Pay Rules, 1968) unless the State Government or the Central Government makes a declaration that the said post is equivalent in status and responsibilities to a post specified in the said schedule. This power of declaration has to be exercised by the Government reasonably and keeping in mind the status and responsibilities of the given post and the specified post in the third schedule are comparable but the post of PCCF and the OSD and Advisor (Forest) has no such comparision and for the period no duties were specified for the newly created post, it has to be said that the post has no status. It has also been stated that the State Government has not exercised its powers to declare equivalency in a reasonable and bonafide manner. On the other hand, it was with an arbitrary motive to extend undue benefit to respondent No.3. It has also been stated that when the applicant was transferred to the post of OSD (Forest) on 23.9.1998, the said post did not exist as per rule 9 of the Pay Rules, 1968 and it was on 21.1.1999 that the State Government sanctioned creation of this post with a changed name as Advisor (Forest) for the period 25.9.1998 to 28.2.1999 and it was declared that this post is equivalent in status and responsibilities to the cadre post of PCCF. Not only retrospective equivalence but the creation of the post is bad in law and even the schedule of the cadre strength rules were not modified. In fact, under the provisions of the Rules, no power has been given to the State Government to issue a retrospective order with respect to declaration of equivalency under the provisions of Section 9(1) so that no member of the service shall be appointed unless a declaration of equivalency

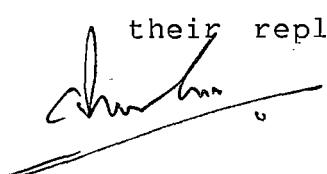


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made by the relevant Government. Thus a bare reading of the provision makes it clear that such declaration has to be made prior to the appointment and not afterwards and the order dated 21.1.1999 is therefore bad in law, arbitrary, void and liable to be quashed. It has also been contended that since declaration of equivalence is sine-qua-non for making the transfer order to ex-cadre post and where no declaration is made a subsequent order of declaration cannot cure the initial effect and, therefore, the transfer order of 23.9.1998 also is void being illegal, without any authority and is, therefore, liable to be set-aside. It has also been stated that the post of Advisor (Forest) was created by the State Government without any justification when there was no allocation of work for the post. As per Rule 9(7), the number of the ex-cadre posts of the rank of PCCF cannot exceed the number of cadre posts of PCCF except with the prior approval of the Central Government. There already existed one ex-cadre post of PCCF (Work Plan and Forest Settlement), prior approval should have been obtained before creation of the post of Advisor (Forest) in the same scale of pay as that of PCCF.

5. Notices of the OA were sent to the respondents, both official and private and their replies have been taken on record. The applicant has filed a rejoinder to the reply filed on behalf of respondents Nos. 2 and 3. An additional reply for taking certain documents on record has also been filed on behalf of respondents Nos. 2.

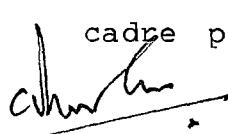
6. The respondent No.1 in their reply has stated that promotions and appointments within the State cadre are the concern of the State Government. However, at another place in their reply it is stated that since the cadre post in the



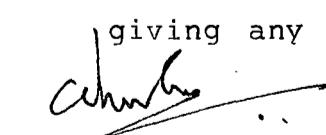
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grade of PCCF is only one, senior most IFS officers with due regard to their merit-cum-seniority may be consider for promotion to the grade of PCCF and post filled accordingly. It has also been stated that it is primarily the concern of the State Government i.e. respondent No.2, who would explain the position in regard to the contentions raised by the applicant and it has to be ensured that the appointments and promotion within cadre are made in accordance with the provisions of the relevant rules. It has also been stated that in terms of sub-rule 7 of Rule 9 of Pay Rules, 1968, the State Government can create only one ex-cadre post in the cadre of PCCF i.e. in the scale of Rs. 24000-650-26000 and creation of more than one post in that grade requires prior approval of the Central Government.

7. Respondent No.2 in their reply have strongly contested the case of the applicant. It appears from their reply that they have not denied the facts as stated by the applicant in paragraph 3 above. It has been stated by the State Government that vide order dated 23.9.1998 the State Government decided to transfer the applicant from the post of PCCF to the newly created post of OSD (Forest) and promote and post respondent No.3, who was functioning as Additional PCCF, as PCCF. Respondents No.3 was already functioning as Additional PCCF and was considered suitable for promotion to the post of PCCF, his promotion to the said post was proper and justified and the averment that he was four years junior to the applicant has no relevance. It has also been stated that subsequent to the issuance of the order dated 21.1.1999, by which an ex-cadre post of Advisor (Forest) had been created and was declared equivalent in status and responsibilities to the cadre post of PCCF under Rule 9 of the Pay Rules, 1968, a



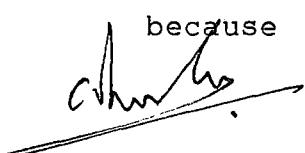
corrigendum (Ann.R2/1) to the order of even number dated 23.9.1998 was issued vide No.F.5(3) Pers/AI/98 dated 23.1.1999 by which the post of Advisor (Forest) Rajasthan was substituted for the post of OSD. It has, therefore, been contended that the applicant is deemed to have been appointed to the post of Advisor (Forest) w.e.f. 25.9.1998. The allegation that the applicant was transferred from the post of PCCF on 23.9.1998 just on the eve of the Assembly Elections is denied as being not correct as the Assembly Elections were held on 25.9.1998 i.e. after two months of such transfer. As regards the averment that though Shri D.C.Sood, PCCF was senior and available but the previous Government for the ulterior motives, chose to consider the junior officer respondent No.3 for the post of PCCF, it has been stated that Shri Sood was already holding the post of PCCF and as such there was no necessity or requirement to disturb him. The applicant cannot, in fact, have any grievance about non-posting of Shri Sood. Shri Sood has himself not aired such a grievance and the applicant has no locus standi to air his grievance and make ~~wild~~ allegations. It is relevant to state that the said respondent No.3, having placement after Shri Sood, was the senior most available and was already holding the post of Additional PCCF, thus no undue favour has been given to respondent No.3. Respondent No.2 has vehemently denied the averments of alleged ulterior motive, being utterly baseless, malacious and preposterous. In fact, since the applicant has been posted as Advisor (Forest) which post was also in the pay scale of Rs. 24000-650-26000 and declared equivalent in status and responsibilities to the post of PCCF, no injury or prejudice was caused to the applicant. There was, therefore, no requirement of cancelling the said order dated 23.9.1998 or giving any reply to the representation made by the applicant



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for cancelling of the said order. As regards the averments that there being only one cadre post of PCCF and one ex-cadre post having already been created, the State Government was not competent to create another ex-cadre post without obtaining the prior approval of the Central Government as required under rule 9(7), it has been stated on behalf of respondent No.2 that since the post of Advisor (Forest) had been created as new post for the first time, certain administrative problems needed to be sorted out and the matter in any case is entirely between the cadre controlling authority and the State Government and the applicant has no right to question the same and that even ex-post-facto sanction can be obtained by the State Government. It has been asserted that it cannot, therefore, be alleged that the whole exercise of transfer and declaration of equivalence has become illegal and void. With regard to alleged illegal transfer and the applicant having been put to great amount of humiliation and harassment, it has been stated that initially the State Government had considered it proper to utilise the services of the applicant by designating him as OSD but on further consideration, it was thought proper to indicate his status by designating him as Advisor (Forest) and that is why a corrigendum dated 23.9.1999 was issued. No doubt, the declaration of equivalence has been made effective from 25.9.1998 by the order dated 21.1.1999 but the said retrospective declaration is only a mere technicality and did not cause any serious injury or prejudice to the applicant and his emoluments and status from 25.9.1998 has been duly and properly protected.

The question of the post of Advisor being either superior or inferior to the post of PCCF has no relevance at all because both these posts have been declared equivalent



enjoying similar pay scales and status. It is the prerogative of the State Government to post any officer to the post of PCCF, who is considered suitable for manning the post and the Tribunal may perhaps not, while exercising its powers of judicial review, like to go into the question of which officer should have been posted as PCCF, specially when both the positions are equivalent in status and responsibilities and pay scales. The applicant cannot question the prerogative of the Government to create a post and to put any suitable officer thereon and such action falls within the administrative competence of the State Government. In any case, it is not for the Hon'ble Tribunal to go into the said question and examine whether the status and duties attached to the aforesaid post are equal or not when the statutory declaration of equivalence has been made by the State Government. As the post of Advisor (Forest) had been created for the first time, certain initial administrative problems like allotment of office room, placement of appropriate staff etc. did arise but these problems were solved and the applicant has been provided with all the facilities befitting his status. He has been allotted work related to quality improvement in the plantations, model of plantation of J.F.M. areas and any other technical matter referred to him by the Secretary, Forest. As regards the averment that respondent No.3 was elevated to the post of PCCF without even calling the meeting of the Screening Committee, it has been submitted that in the guidelines regarding appointment to the senior post in IFS issued by the Ministry of Environment and Forests vide their letter dated 31.1.1985, there is no provision for constituting the Screening Committee and, therefore, the State Government has the discretion whether to convene or not convene the Screening Committee meeting for such appointments.



However, it is relevant that respondent No.3 had already been promoted as Additional PCCF on the recommendations of the Screening Committee and, therefore, the suitability of respondent No.3 for appointment to the post of PCCF was duly and properly considered at the highest level in the State Government on the basis of the service record and after approval thereof by the competent authority i.e. the Chief Minister, respondent No.3 was posted as PCCF. Such procedure being in vogue has, therefore, been followed in the case of respondent No.3. The respondents No.2 has categorically denied that the applicant has been put to great amount of harassment, insult and humiliation as there was no intention at any time by the State Government to cause harassment or humiliation to the applicant. The applicant is, therefore, not entitled to grant of any relief as stated in para 8 of this Application and the OA may be dismissed.

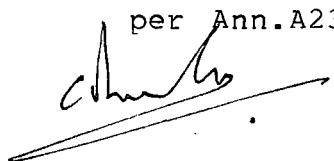
8. The reply of respondent No.3 is more or less on the lines of the reply of the State Government, the respondent No.2. He has quoted rule 3(3) of the Pay Rules, 1968 according to which the selection on the post of PCCF has to be made "on merit with due regard to seniority" and if the applicant's statement that the Screening Committee has selected him and Shri Sood suitable for the post of PCCF on the basis of seniority-cum-merit is taken as true, then the entire process of ^{his} selection stands vitiated. It has also been stated that it is not for the first time that the State Government has created ex-cadre post in the highest level and has subsequently issued sanction for creation of the said post. In 1990, Shri K.K.Kotia, an allottee of year 1959 who was working as PCCF and by order dated 22.8.90 Shri Kotia was appointed as Advisor (Forest), ^{in a} newly created ex-cadre post and in his place Shri N.K.Khullar

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an allottee of 1961 was promoted as PCCF by the same order superseding Shri O.P.Pareek, an officer of 1960 year of allotment (Ann.R3/6). It was only vide order dated 5.11.1990 i.e. after 3 months that sanction was issued for creation of the ex-cadre post of Advisor (Forest) and the same order contained equivalence as required under rule 9 of the Pay Rules, 1964 (Ann.R3/8). Further, the applicant himself is junior to Sri G.S.Gupta, Chief Conservator of Forest (Projects) and Shri Gupta was superseded by the applicant when the applicant was promoted to the post of PCCF in the year 1996 after retirement of Shri R.S.Bhandari. It is, therefore, contended that there has been no illegality in making declaration of equivalency in the case of the applicant after creation of the post. The very fact that the post of Advisor (Forest) has been created and declaration of equivalence also made, the requirements of Pay Rules have been met. It has been emphasised that seniority is not the only criteria by which posts of Chief Secretary, Director General of Police and PCCF are filled, the suitability of officers for filling up such posts are judged by the Government and that this prerogative of the State Government has been upheld in various judgments of the Apex Court and High Courts. The applicant has only been transferred and not superseded like in the case of Shri G.S.Gupta. It has also been contended that it is not necessary that the approval of the Central Government under rule 9(7) should be obtained prior to the creation of the post, it can also be ex-post-facto approval.

9. A rejoinder has also been filed on behalf of the applicant in which it has been essentially averred that the post of PCCF and Advisor (Forest) are not equivalent since as per Ann.A23, the person occupying the post of PCCF is to be



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the Principal Advisor of the State Government and, therefore, the Advisor (Forest) is necessarily lower in status than PCCF. Some duties have been assigned to the Advisor (Forest) only after filing of this OA and it reveals the malafide intention of the State Government. It has also been stated that apart from the breach of Pay Rules, the respondent have flouted the second proviso of rule 4(2) of the IFS (Cadre) Rules, 1966 which provide that the State Government concerned may add for the period not exceeding one year to a cadre one or more posts carrying duties and responsibilities of alike nature to the cadre post. It has also been stated that vide order/letter dated 21.3.1999 the Central Government has refused to give sanction of creation of the post of Advisor (Forest) which has been duly received by the State Government.

10. In their affidavit to the rejoinder filed by the applicant, respondent No.3 has reiterated the rule position. He has also clarified that the order of 14.6.1993 has no relevance to the present circumstances as in 1993, there was only one PCCF and he had to be the Principal Advisor to the Government and perform other duties as well. Later when two posts of PCCF came to be created, the Government had to prescribe duties separately in respect of PCCF and PCCF (WP and FS) and accordingly the order dated 26.11.1998 (Ann.A24) was issued. Later while allocating duties to Advisor (Forest) vide order dated 20.7.1999, the order dated 26.11.1998 was also modified. The PCCF, therefore, ceased to become the sole and Principal Advisor to the State Government.

11. An Additional reply has also been filed by respondent No.2, the State Government, to clarify the position regarding the averment made by the applicant that the sanction for ex-

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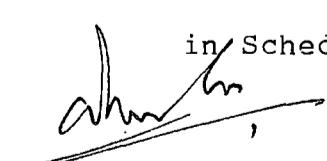
cadre post of Advisor (Forest) has been issued only on 29.2.1999 and that the Government of India refused to give sanction for creation of the post of Advisor (Forest) vide letter dated 21.7.1999. A copy of the order dated 30th July, 1999 has accordingly been annexed (Ann.R2/4) in which sanction for creation of the ex-cadre temporary post of Advisor (Forest) has been issued upto 29.2.2000 and the post has also been declared equivalent in status and responsibilities to the cadre post of PCCF. This order dated 30.7.1999 is required to be read in continuation of the earlier order dated 21.1.1999 and simply because the order of 30.7.1999 has no reference to the earlier order of 21.1.1999, it cannot be inferred that the order dated 30.7.1999 is a fresh order. As regards the alleged refusal of the Central Government to issue sanction for creation of the post of Advisor (Forest) vide their letter dated 21.7.1999, a copy of the letter written by the State Government dated 18.9.1999 (Ann.R2/5) has been annexed in which approval of the Central government has been sought for creation of the ex-cadre post of Advisor (Forest) in the grade of PCCF.

12. We have heard the learned counsel for the parties and have examined the material on record carefully.

13. In order to understand the legal position involved in this case, it will be useful to extract the concened provisions of the Indian Forest Service (Pay) Rules, 1968 and Indian Forest Service (Cadre) Rules, 1966.

Indian Forest Service (Pay) Rules, 1968

"9, Pay of members of the service appointed to posts not included in Schedule III.- (1) No member of the Service shall be appointed to a post other than a post specified in Schedule III, 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.

(2) The pay of a member of the Service on appointment to a post other than a post specified in Schedule III shall be the same as he would have been entitled to had he been appointed in the post to which the said post is declared equivalent.

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(7) At no time the number of members of the Service appointed to hold posts, other than cadre posts specified in Schedule III, referred to in sub-rule (1) and sub-rule (4), which carry pay scale of Rs. 7,300-7,600 or a fixed pay of Rs. 7,600 per mensem as the case may be, and which are reckoned against the State Deputation Reserve, shall, except with the prior approval of the Central Government, exceed the number of cadre posts carrying a pay scale of Rs. 7,300-7,600 or a fixed pay of Rs. 7,600 per mensem, as the case may be, in a State cadre, as the case may be, in a joint cadre."

Indian Forest Service (Cadre) Rules, 1966

"4. Strength of Cadres.- (1).....

(2) The Central Government shall, at the interval of every three years, re-examine the strength and composition of each such cadre in consultation with the State Government concerned and may make such alterations therein as it deems fit:

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may add for a period not exceeding one year, and with the approval of the Central Government for a further period not exceeding two years, to a State of Joint Cadre one or more posts carrying duties and responsibilities of alike nature to cadre posts."

14. During the arguments, it was emphasised by the learned counsel for the applicant that when the ex-cadre post of OSD (Forest) was created, declaration of its equivalence to the cadre post of PCCF was a sine qua non under rule 9 of the Pay Rules. Sub-rule 1 of rule 9 states that "no member of the service shall be appointed" and, therefore, the action of the State Government in appointing the applicant to the post of OSD without equivalence or with a retrospective equivalence was not in confirmity with the rules. He cited the orders/judgments in 1999 (3) SCALE 556, Government of Karnataka Vs. C.Dinker and Ors.; Navin Singh Vs. Union of India and Ors. reported in 1993 (7) SLR 65 (CAT-Bombay); 1993 (6) SLR 619 (CAT-Chandigarh) and the case of R.S.Mathur Vs. Union of India decided by CAT, Lucknow Bench in OA No.312 of 1992 in support of his contention. The learned counsel for respondents Nos. 2 and 3, on the other hand, vehemently opposed this and stated that with the issuance of the order dated 21.1.1999 by which an ex-cadre temporary post of Advisor (Forest) has been created and was declared equivalent in status and responsibilities to the cadre post of PCCF w.e.f. 23.9.1998, the requirement of the rules had been fully met with. It has also been contended that the State Government had earlier thought of creating the post of OSD but on reconsideration, the State Government decided to create the post of Advisor (Forest) by issuing a corrigendum to the order dated 23.9.1998 (Ann.R2/1) by which the post of Advisor (Forest) Rajasthan was substituted for the post of OSD

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and, therefore, the applicant is deemed to have been appointed to the post of Advisor (Forest) w.e.f. 25.9.1998. It has also been argued that the transfers and posting have to be sometime ordered urgently due to exigency of administrative requirements and it takes sometime to obtain necessary financial and administrative approval before the order of creation of an ex-cadre post and its equivalence can be issued. The learned counsel for respondent Nos. 2 and 3 cited AIR 1996 SC 951, R. Jeevaratnam Vs. State of Madras; 1979 (1) SLR 1, Chief Justice of Andhra Pradesh Vs. LVA Dixitulu; AIR 1976 SC 367, T.R.Sharma Vs. Prithvi Singh; 1974 (1) SLR 488 C.P.Damodaran Vs. State of Kerala; (1972) 1 SCC 784, R.P.Khanna Vs. S.A.Abbas and Ors. in support of their contentions.

15. The learned counsel for the applicant also argued that second proviso to rule 4 of the Cadre Rules, 1966 provide that the State Government concerned may add for a period not exceeding one year and with the approval of the Central Government with a further period not exceeding two years to a State cadre more post carrying duties and responsibilities of alike nature of the cadre post. The State Government had created the post of Advisor (Forest) from 25.9.1998 vide their order dated 21.1.1999. The State Government's competence to create this post, therefore, expired on 24.9.1999 notwithstanding the order dated 30th July, 1999 issued by the State Government for sanctioning creation of the said post up to 29.2.2000. Thus the approval of the Central Government is available neither for creation of the second ex-cadre post in the pay scale of PCCF as required under rule 9(7) of the Pay Rules, 1968 nor for continuation of the post beyond 24.9.1999 as required under second proviso to rule 4(2) of the Cadre

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Rules, 1966. The respondent Nos. 2 and 3, on the other hand, controverted this by arguing that the matter regarding creation of an ex-cadre post in the Rajasthan cadre of Indian Forest Service is a matter between the cadre controlling authority i.e. Ministry of Forest in the Government of India and the State Government and the entire issue is still under correspondence and it is not a matter for the applicant to agitate, specially in view of the fact that the applicant has all along, after his transfer, been enjoying the pay scale as well as the status equivalent to that of PCCF. In any case, the matter is still under correspondence with the cadre controlling authority and it is well within the power of cadre controlling authority to issue ex-post-facto approval for which the State Government has requested them vide their latest letter dated 18.9.1999. It was stated that in view of the matter being subjudice in the Tribunal, the Central Government thought it fit not to issue any orders in this regard. In any case, the applicant has no locus standi in the matter as he is not aggrieved person and powers of the Tribunal under Article 226 of the Constitution of India require the Tribunal to satisfy that a person approaching it must be aggrieved of violation of some right. The learned counsel for respondent No.3 cited AIR 1976 SC 578 J.M.Desai Vs. Roshan Kumar; 1976 (2) SLR 107, Gunanidhi Mohapatra Vs. A.C.Bhubneswar and 1973 (1) SLR (SC) 204 in support of his contention. As regards the contention of the applicant that declaration of equivalence between PCCF and Advisor (Forest) was not real, it has been contended on behalf of respondent No.2 & 3 that the equivalence is very much real and just because there has been some delay in giving the necessary infrastructural facilities to the newly created post and defining the duties and responsibilities of that post, it does not mean that the equivalence declared by the State Government

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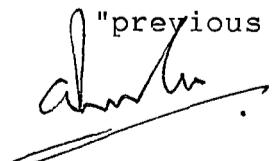
is faulty. In this connection, support was sought from the judgment of the Apex Court in AIR 1981 SCC 1990 wherein it was observed that the Courts should not go into the question whether equivalence was proper or not. It was also pointed out that second proviso to rule 4(2) of the Cadre Rules, 1966 must be read to mean that approval of the Central Government could be prior as also ex-post-facto. Even if there is no approval for certain period of time and the matter is under correspondence, it does not mean that the posting was illegal and the fact of the matter is that the Central Government has not disapproved either creation of the second ex-cadre post or continuation of the said post beyond one year.

16. The core issue in this case in our considered opinion is the selection of a person to be head of a Department, which in this case is the post of PCCF. The related administrative/legal issues are there, of course, and the most important of these is whether the creation of the ex-cadre post of Advisor (Forest) and declaration of its equivalence to the cadre post of PCCF after a gap of about four months was fatal and whether such retrospective action of the State Government was not at all permissible under the rules. We will also have to give our anxious thoughts to the issue of continuation of the said post beyond one year, without the Central Government having issued its approval under second proviso to Rule 4(2) of the Cadre Rules, 1966 till now. We will also touch upon the question whether there cannot be any equivalence between the post of PCCF and Advisor (Forest) as alleged by the applicant. The issue raised by the applicant about non-provision of the staff/facilities etc. to him is, in our considered view, not worth too much of a debate, because such things can happen when a new additional post is created and the explanations of the respondents Nos.

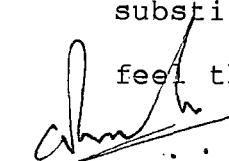
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2 and 3 as to how such problems were sorted out and how to some extent the delay was due to the applicant himself.

17. We have very carefully considered the pleadings and arguments as also the case law cited by the parties regarding the question of 'retrospective equivalence'. It has to be appreciated that the administration of a State is like a living organism. There are activities going on all the time. Situations arise all the time and these have to be tackled by the State Government keeping in view the nature of these situations; the overall interest of the State and the public; the personalities involved and so on. In choosing somebody to head a Department, it has also to be seen whether the person is not only efficient, a person of integrity but in an overall context, whether he can provide the requisite leadership to the entire structure of the Department and thereby contribute to the development of the State and its people. Therefore, selection of a persons to be head of Department is such an exercise that each has its own ingredients and it follows that there just cannot be a mathematical formula prescribed which will hold forth in all situations to come. It is precisely for this reason that the framers of the law have not prescribed any detailed procedure for the selection to the posts like PCCF and have only talked of "Appointment to the Selection Grade and to posts carrying pay above the time-scale of pay in the Indian Forest Service shall be made by selection on merit with due regard to seniority" as can be seen from the provisions of Rule 3(3) of the pay Rules, 1968. Although the applicant has mentioned that selection of the respondent No.3 has been for ulterior motives by the previous Government, he has not been able to substantiate it. In fact, he has used the "previous Government" to hint that it was a decision on narrow



political considerations. However, had it been so, the next Government, which happened to be the political executive of the party in opposition earlier, would have, as it is seen now a days with regard to such political appointments, changed the incumbent immediately but he is continuing even though the present Government is soon going to complete one year of its existence. We are aware of the fact that we are not required to go into all this but had to mention this to arrive at the conclusion that no ulterior motives, as alleged, can be attributed, *prima facie*, to the selection of respondent No.3 for the post of PCCF and it has to be held that the applicant was transferred from the post of PCCF and respondent No.3 appointed thereon was an act carried out by the State Government within its administrative domain and powers. The case of C.Dinker (*supra*) on which the learned counsel for the applicant had relied is, therefore, distinguishable and not applicable in this case. It also appears from the reply of respondent No.3 that there have been instances earlier also when a junior was promoted in similar manner and even the applicant himself was promoted as PCCF over his senior. This being the background, we feel that the case law cited before us, as far as it concerns the "retrospective equivalence", though helpful in its own way, is not directly applicable to the controversy in hand, primarily because the "organic" situation in each case was peculiar to the situation prevailing in that case. Having said this, we can proceed to examine the delay between transfer of the applicant on 23.9.1998 and creation/equivalence of the post of Advisor (Forest) on 21.1.1999 with its retrospective effect from 23.9.1998 alongwith the corrigendum dated 23.9.1998 substituting the designation OSD with Advisor (Forest). We feel that it is well within the powers of the State Government



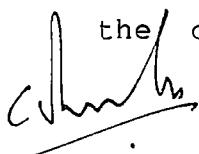
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to transfer an officer any time and we cannot intervene unless the transfer is violative of statutory rules or there are ground of mala-fide. The law is now well settled in this regard. In this case, as argued by the learned counsel for respondent No.2, the State Government, acting within its administrative powers, considered it desirable to transfer the applicant from the post of PCCF and we have no reason to question such transfer without their being patent illegality or perversity. It has further been stated that it took some time to process the case within the Government and obtain necessary financial concurrence and other approvals before the order of creation of the ex-cadre post of Advisor (Forest) could be issued and equivalence to PCCF declared. It has been submitted before us that getting through with these technical requirements was the only reason that caused the delay and there was absolutely no intention of causing any so called harassment etc. to the applicant and we have no reasons to disbelieve this. We also feel that since the applicant is enjoying the same pay scale as that of the post of PCCF he held before the transfer and the post of Advisor (Forest) has been declared to be equivalent in status to that of PCCF, no prejudice or injury has been caused to the applicant and the matter regarding correspondence between the State and the Central Government regarding obtaining the necessary approvals is an issue which is of no direct concern to the applicant. Strong emphasis was placed by the learned counsel for the applicant on the use of "shall" in rule 9(7) read with sub-
rule (1) of rule 9 of the Pay Rules. We have given our serious

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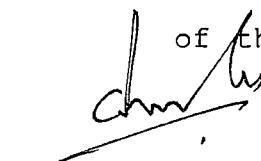
attention to this and have come to the conclusion that a complete reading of the rule indicates that the intention of the said rule is that a cadre officer cannot be posted to an ex-cadre post figuring in the Third Schedule to the rule in a routine manner and the equivalence shall have to be done. The idea behind the provision is that an officer who has been inducted into a cadre shall not, on the whims of the power that be, shunted out to any or every post. He has to be given a post which is declared equivalent in pay scale and status to that of a cadre post. This, however, does not mean that the equivalence has to be done on the same day an officer is transferred/posted out of a cadre post. It is quite possible in administrative exigencies that in some odd case, there could be a gap between the transfer and issuance of the formal order of creation of a new post and declaration of its equivalence. The use of word "shall" is to emphasise that there just cannot be a situation where a cadre officer is kept on an ex-cadre post indefinitely because that will destroy the very basis of the constitution of the All India Services. There has to be a declaration of equivalence either alongwith the creation of post or as early thereafter as possible. Of course, the delay has to be reasonable and the Tribunal can certainly go into the delay and explanation offered. In this particular case, we are of the opinion that the delay was not fatal and the State Government has been able to explain the delay of a little less than four months satisfactorily and by the orders dated 21.1.1999, 23.9.1998 and 18.9.1999 have



adequately protected the interests of the applicant and, therefore, we feel that there is no justification for us to interfere with the impugned orders dated 23.9.1998 and 21.1.1999.

18. As regards the peripheral question of whether the declaration of equivalence issued on 21.1.1999 was not real but only a facade, as alleged on behalf of the applicant, we are of the opinion that ~~possibly~~ the requirement under rules is to "make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule" and the State Government has complied with such requirement through their order dated 21.1.1999. We are not normally required to act as an appellate authority over such a decision of the State Government unless such administrative decision disturbs our conscience as a person of common intelligence and in this case, we do not get such a feeling. We also take note of the duties and functions assigned to the post of Advisor (Forest) by the State Government in their wisdom and it cannot be said that these are not relatable to the highest management functions in the Forest Department of the State.

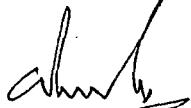
19. The Original Application, therefore, does not succeed and is accordingly dismissed. However, we direct respondent No.1 to take a decision on the question of creation of the ex-cadre post of Advisor (Forests), Rajasthan and its


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continuation beyond one year of its creation, without any further delay.

Parties to bear their own costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member