

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

C.P. No. 351/96

Sri P. Ray, I.P.S. & 2 OS. vs. Applicant(s)

Sri H. C. Sonowal & 3 others Respondent(s)

Mr. M. K. Choudhury  
& S. Sonowal

Advocates for the applicant(s)

Adv.

Advocates for the Respondent(s)

Office Notes

Date

Courts' Orders

This CP is filed by S. 9.96  
Mr. S. Sonowal, Advocate on  
the applicants praying  
for deliberali violation  
of the judgment &  
order d. 1/8-2-95  
passed in OA 52/93, 53/93  
59/93 & 86/94.

Learned counsel Mr. M. K. Choudhury for the contempt petitioner moves this Contempt Petition on the ground that the alleged contemners have violated the following orders and judgment of this Tribunal dated 1.2.95 and 8.2.95 passed in O.A.52/93 and O.A. 53/93.

"The State of Assam is further restrained from promoting or appointing any officer of the Assam State Forest Service to any IFS cadre including the post of Conservator of Forest so long as the IFS (Cadre) Rules, 1966, a IFS (Fixation of Cadre Strength) Regulations 1966, are in force."

Issue notice on the alleged contemners by registered post to show cause as to why a contempt Court proceeding should not be initiated against them for wilful non-compliance and violation of the aforesaid order of this Tribunal. Returnable within 1 month.

List for show cause and other orders on 9.10.96.

Received copy of order dated  
9.9.96

KMV Ray Ray  
10/9/96  
16.9.96

pg  
MR  
10/9

Notice issued to the  
recipients via D.No. 3061 Dt. 10.9.96

60  
Member

(2) C.P. 35796 (OA. 52, 53, 4/93  
96/96).

9-10-96

Mr. S. Sarma counsel for the petitioner  
Learned counsel Mr. D. K. Das appears  
behalf of alleged contemners No. 1,  
and 4 and submits that he may be  
owed six weeks time to submit show  
cause and reply to the notice on behalf  
of alleged contemners. Learned counsel  
S. Sarma appears for the petitioner

Adjournded for show cause and further order on 22-11-96.

4.10.96

Member

Notice duly served  
on respondent, 1, 2, 3, 4.

1m  
9110.

— Bon

~~Shared Cessure is not known~~

22-11-96

Learned counsel Mr.M.K.Choudhury for the Contempt petitioner. Mr.D.K.Das and Mr.A.K.Sharma counsel for the respondents. Respondent Nos. 1,2,3 & 4 have submitted the common written statement. Copy of the same has been served on Mr.M.K.Choudhury. Matter is ready for hearing. This C.P. to be placed before Division Bench when the next Division Bench is available. In the meantime the petitioners may submit rejoinder, if necessary, with copy to Mr.M.K.Choudhury. No. 1,2,3 & 4 may be allowed for inspection of the file. Prayer is granted. List for

~~Member~~

27-11-96

27-11-76  
Valcalatina ma. di Reissd. 1m  
var. 1, 2, 3 & 4. f. Ad. 26/11

30-4-97

clawed - in - opposition

Wählernr. 1, 2, 3 & 4.

Let this case be listed for hearing  
on 5-6-97.

61  
M. A. B. H. M.

Vice-Chairman

5-6-97

Mr. P.G. Baruah learned Advocate General prays for adjournment of this case. The Other side has no objection. Case is adjourned till 30-6-97.

5-6-97

6/6  
Member

  
Vice-Chairman

Affidavit in reply  
filed by the applicant <sup>1m</sup>  
at page 78 to 81 <sup>6/6</sup>

30-6-97

On the prayer of counsel for the parties case is adjourned till 3-7-97.

  
Member


  
Vice-Chairman

1m

5/12

3.7.97

Mr S. Sarma, learned counsel for the applicant, has some personal difficulties in arguing the case. Besides, he is not incharge of the case. The counsel who is in charge of the case is not present. Accordingly he prays for a short adjournment. Accordingly the case is adjourned till 4.8.97.

The case will be listed at the top of the list.

6/6  
Member

  
Vice-Chairman

15-7-97

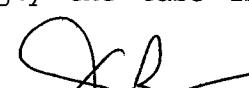
nkm

5/12

4.8.97

Mr. P.G. Baruah, learned Advocate General, Assam and Mr. D.K.Das are present today on behalf of the respondents. Mr. S.Sarma, learned counsel on behalf of the applicants is also present. Division Bench is not sitting today. Accordingly the case is adjourned till 16.9.97.

List it on 16.9.97


  
Vice-Chairman

Addl. Affidavit  
filed on behalf  
of the respondents  
(Contemnors) at  
page 82 to 111.

1. Affidavit in opposition,  
2. Affidavit in reply to Addl.  
Affidavit in my hand.

5/12

Affidavit in opposition,  
Affidavit in Reply has  
Add. Affidavit has been filed.

22/9

16.9.97 On the prayer of Mr P.G.Baruah, learned Advocate General, Assam the case is adjourned to 23.9.97. The other side has no objection.

  
Member

  
Vice-Chairman

pg  
22  
1997

23-9-97 Mr.P.K.Tiwari learned counsel submits that he has not been engaged in the case. Therefore, his name to be deleted from the Cause List.

List it on 25-9-97 for hearing.

  
Member

  
Vice-Chairman

Dr. Y.K. Phukan has  
filed a memo ab  
appearance on behalf of  
the State of Assam and  
Mrs. M. Das G.A. Assam.  
21/10

25-9-97 Adjourned to 6.11.97

By order

Affidavit in opposition,  
Add. Affidavit &  
Affidavit in Reply has  
been filed

  
nkm

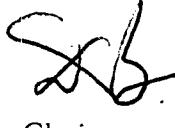
Affidavit in opposition,  
Add. Affidavit & Affidavit  
in Reply has been filed

  
nkm

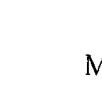
6.11.97 On the prayer of Mr M.K. Choudhury, learned counsel for the petitioner, the case is adjourned to 11.11.97 for hearing. Mr P.G. Baruah, learned Advocate General, Assam has no objection.

List the case on the top of the list of hearing on 11.11.97.

  
Member

  
Vice-Chairman

11.11.97 Heard the learned counsel for the parties. Hearing concluded. Judgment reserved.

  
Member

  
Vice-Chairman

18.12.97

Judgment pronounced today in open  
Court, kept in separate sheets.  
Contempt petition is closed.

29.12.97

Copy of the Judgment  
has been sent to the  
D/sec. for issuing the  
letter to the applicant  
and Regd. w.r.t. the  
Pet. with A.P.O.

Q. v/s D. No.

3847 to 3848

Dated 30-12-97.

60  
Member

  
Vice-Chairman

pg

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH :: GUWAHATI-5.

O.A. NO.  
T.A. NO.

Contempt Petition No.35 of 1996      DATE OF DECISION 18.12.1997  
(O.A.Nos.52, 53, 59 of 1993 & 96 of 1994)

Shri Prantosh Roy & two others

(PETITIONER(S))

Mr B.K. Sharma

ADVOCATE FOR THE  
PETITIONER (S)

VERSUS

Shri H.C. Sonowal and three others

RESPONDENT (S)

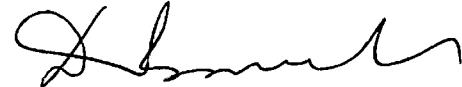
Mr P.G. Baruah, Advocate General, Assam

ADVOCATE FOR THE  
RESPONDENT (S)

THE HON'BLE MR JUSTICE D.N. BARUAH, VICE-CHAIRMAN  
THE HON'BLE MR G.L. SANGLYINE, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ?
2. To be referred to the Reporter or not ? **X**
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Contempt Petition No.35 of 1996  
(Arising out of O.A.Nos.52, 53, 59 of 1993 & 96/94)  
Date of decision: This the 18th day of December 1997

The Hon'ble Mr Justice D.N. Baruah, Vice-Chairman

The Hon'ble Mr G.L. Sanglyine, Administrative Member

1. Shri Prantosh Roy, IFS  
Asstt. Conservator of Forests,  
Sonitpur East Division,  
Biswanath Chariali.
2. Shri R.P. Singh, IFS  
Asstt. Conservator of Forests,  
Sonitpur West Division, Tezpur.
3. Shri K.S.P.V. Pawan Kumar, IFS,  
Asstt. Conservator of Forests,  
Manas Tiger Project,  
Barpeta Road. ....Petitioners

By Advocate Mr B.K. Sharma.

-versus-

1. Shri H.C. Sonowal,  
Commissioner & Secretary, Forest Department,  
Government of Assam, Dispur.
2. Shri D. Chakrabortty,  
Joint Secretary, Forest Department,  
Government of Assam, Dispur.
3. Shri A.B. Roy Choudhury,  
Deputy Secretary, Forest Department,  
Government of Assam, Dispur.
4. Shri R.N. Hazarika,  
Principal Chief Conservator of Forests,  
Assam, Guwahati-8. ....Respondents

By Advocate Mr P.G. Baruah, Advocate General, Assam.

O R D E R

BARUAH.J. (V.C.)

This petition has been filed by the petitioners invoking the jurisdiction of this Tribunal under Sections 17 and 27 of the Administrative Tribunals Act, 1985, read with Rule 24 of the Central Administrative Tribunal (Procedure) Rules, 1987, for

initiation of contempt proceeding against the respondents and execution of the order passed by this Tribunal.

2. The petitioners are direct recruits to the Indian Forest Service (IFS for short). The members of the IFS formed an association known as Indian Forest Service Association (Assam Unit). The said association, represented by its General Secretary, Shri K.N. Dev Goswami, approached this Tribunal by filing original application No.96/94. Three other original applications had been filed separately by Shri Narendra Nath Hazarika and others, Shri Bhabendra Nath Pathak and others and Shri M.K. Sinha, which were numbered as O.A.Nos. 52, 53 and 59 of 1993 respectively. All these applications were filed by the applicants seeking certain directions to the respondents of the said original applications. In due course the respondents, namely, the Union of India, filed written statement. The State of Assam also filed written statement in some of the original applications. In due course all the applications were heard and disposed of by this Tribunal by a common order dated 1.2.1995/8.2.19. In para 38 of the said order a common order was passed. We quote the said portion of the order.

"i) It is hereby declared that the provisions of Rule 3 of the Assam Forest Service Rules to the extent of the first two entries therein, namely, Conservator of Forests and Divisional Forest Officer (including Working Plan Officer, Forest Utilization Officer and one post of Silviculturist and Botanical Forest Officer) stood repealed by the provisions of IFS (Cadre) Rules, 1966, read with IFS (Fixation of Cadre Strength) Regulations, 1966, read with All India Services Act, 1951.

ii) Likewise, the provisions of Rule 11 of the Assam Forest Service Rules, 1942, to the extent of providing scale for Chief Conservator of Forests under Sub-rule 4 (lv) as applicable to the said post created under Assam Forest Service is hereby declared to have stood repealed by the provisions of IFS (Cadre) Rules, 1966, read with IFS(Fixation of Cadre Strength) Regulations, 1966, with the All India Services Act, 1951."

In respect of Original Application Nos. 52 and 53 of 1996 this Tribunal passed further order and direction.

In.....

In order 'No.iv' of the aforesaid original applications the State of Assam was restrained from promoting/appointing any officer of the Assam State Forest Service to any IFS Cadre including the post of Conservator of Forests. We quote the direction below:

"lv) The State of Assam is further restrained from promoting or appointing any officer of the Assam State Forest Service to any IFS cadre including the post of Conservator of Forests so long as the IFS (Cadre) Rules, 1966, and IFS (Fixation of Cadre Strength) Regulations, 1966 are in force."

This order and direction, according to the petitioners of this petition is relevant. It has been complained by the petitioners that the respondents, in spite of the direction given by this Tribunal in serial No.iv of the order in respect of Original Application Nos.52 and 53 of 1996 has been violated by appointing some officers not belonging to the IFS Cadre, and therefore, the respondents are liable under the provisions of Section 17 of the Administrative Tribunals Act, 1985. The present petitioners have also prayed for passing necessary order for implementation of the order passed by this Tribunal in the aforesaid original applications.

3. This petition was moved on 9.9.1996 and the Tribunal issued notice directing the alleged contemners to show cause why a contempt proceeding should not be initiated against them for wilful non-compliance and violation of the order passed by this Tribunal. The alleged contemners entered appearance and also filed affidavit-in-opposition, stating interalia, that the alleged contemners did neither violate nor disobeyed the order. They also contend that in the present facts and circumstances of the case the provisions of

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Section 17 of the Administrative Tribunals Act, 1985, is not attracted. They also state that the present facts and circumstances of the case do not warrant the invocation of the power under Section 27 of the Administrative Tribunals Act, 1985, as claimed.

4. We heard both sides. Mr B.K. Sharma, learned counsel for the petitioners, submitted that in spite of the order passed by this Tribunal in the aforesaid original applications the alleged contemners made appointment of officers of the Assam State Forest Service to IFS Cadre. This was in complete violation of the ivth direction of the order of this Tribunal, quoted above. In this connection, the learned counsel drew our attention to Annexures 2, 3, 4, 5, 6 and 7 orders, whereby the officers of non-IFS Cadre had been posted as Divisional Forest Officer (DFO for short). According to Mr Sharma the post of DFO was, undoubtedly, a cadre post.

Mr P.G. Baruah, learned Sr. Counsel, appearing on behalf of the alleged contemners, on the other hand, submitted that the alleged contemners did not violate any direction given by this Tribunal. He also submitted that they had no intention to disrespect the Tribunal as alleged. As there was urgency in the matter, orders had been passed for posting of the officers as mentioned in Annexures 2, 3, 4, 5, 6 and 7, just to carry out the job of DFO and others. The said Annexures clearly show that the officers were only posted in that capacity. They were neither appointed nor promoted. Mr P.G. Baruah further submitted that to appoint or to promote officers to the IFS Cadre certain procedures were to be followed and these were not done in this case. Therefore, by no means the Annexures 2 to 7 would

indicate.....

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indicate that the said officers were either promoted or appointed. This Tribunal in the aforesaid judgment only restrained the respondents from appointing or promoting the officers of State Forest Service to IFS Cadre. Besides, Mr Baruah submitted that posting is not appointment either by direct recruitment or by promotion. According to the learned counsel the alleged contemners had high regard for this Tribunal and they would not do anything which might lower the dignity of the Tribunal. Mr Baruah, while concluding his submission, stated that if any mistake is committed in interpreting the direction of this Tribunal and had done something which might have amounted to violation of the order, they may be pardoned.

5. On the submissions of the learned counsel appearing on behalf of the petitioners and the alleged contemners, it is now to be seen whether the facts and circumstances of this case would justify initiation of proceedings under the Contempt Act or whether it was necessary to give direction for execution of the said order. Section 17 of the Administrative Tribunals Act, 1985 (for short the Act) confers power on the Tribunal to exercise same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provision of the Contempt of Courts Act, 1971 (70 of 1971), shall have effect subject to certain modifications as referred to therein. So from Section 17 of the Act, it is very clear that this Tribunal can exercise same power, jurisdiction and authority in respect of contempt. It is well settled law that a violation of court's order, in order to constitute a contempt must be wilful. Wilfullness, in this context means that the

violation.....

violation or disobedience is not casual, accidental or unintentional. In order to attract the provisions of contempt of court the disobedience must be wilful or intentional. The disobedience to an order of the court or Tribunal, in order to be punishable as contempt must be wilful and not just casual, accidental and unintentional. But, if any action is taken by an alleged contemner on a wrong interpretation of the order passed by the court or the Tribunal it will not be a contempt. Wilfullness will have to be found on the facts and circumstances. However, once that is found the court must take serious notice of the contemner's conduct.

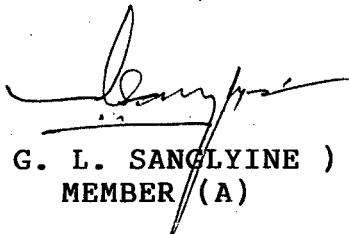
6. In S.C. Roy -vs- State of Orissa, reported in AIR (1960) SC 190, the Supreme Court held thus:

".....All that has been found against him is that he acted in a negligent manner and without proper care and attention. In our opinion, on the facts found by the High Court, the appellant could not possibly be found guilty of contempt of court and punished accordingly. As has been said by the Privy Council in Barton -vs- Field (1843) 4 Moo PCC 273, it is not sufficient in such cases for the purpose of visiting a Judicial Officer with penal consequence of proceeding in contempt, simply because he committed an error of judgment or the order passed by him is in excess of authority vested in him. The error must be a wilful error proceeding from improper or corrupt motive in order that he may be punished for contempt of court. On the facts found, the appellant can certainly be said to have acted without proper care and caution, but there is nothing on the record to suggest any wilful culpability on his part and it has been expressly held by the learned Judges of the High Court that he was not actuated by any corrupt or dishonest motives....."

7. In the instant case, the direction in Clause iv of the order in respect of Original Application Nos.52 and 53 of 1993, the Tribunal restrained the State of Assam from promoting and appointing any officer of the

Assam State Forest Service to IFS Cadre including the post of Conservator of Forests etc. as quoted above. Annexures 2 to 5 to the petition only show that those officers had been posted to function as DFO and others as it was necessary for running the administration efficiently. From the record we do not find that the alleged contemners had done anything which amounted to wilful disobedience of the order of this Tribunal. The alleged contemners have stated that those officers were posted to function as DFO and others and they had not been appointed or promoted. This is a view taken by the alleged contemners. Whether this view is justifiable or not is a different matter, but this cannot be said to be a wilful disobedience.

8. In view of the above, we find no merit in the petition for initiation of any contempt proceeding. Accordingly we close the contempt proceeding.

  
( G. L. SANGLYINE )  
MEMBER (A)

  
( D. N. BARUAH )  
VICE-CHAIRMAN

Nkm

17  
File by Sisom  
O/P  
BENCH  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL: : GUWAHATI BENCH

C.P. No. 35 of 1996

IN THE MATTER OF :

An application under Section 17 and 27 of the Administrative Tribunals Act (for initiating contempt proceeding against the respondents and execution of the order passed by the Hon'ble Tribunal) read with Rule 24 of the C.A.T. (Procedure) Rules, 1987 for passing appropriate order/direction to give effect to the order of the Hon'ble Tribunal and to prevent the abuse of its process and to secure the ends of justice.

- AND -

IN THE MATTER OF :

Wilful and deliberate violation of the Judgent and order dated 1/8.2.95 passed in O.A. 52/93, 53-93, 59-93 and 96/94.

- AND -

IN THE MATTER OF :

Posting of non-cadre officers to the cadre posts in violation of the orders passed in the aforesaid O.As.

- AND -

IN THE MATTER OF :

1. Shri Prantosh Roy, I.F.S.

Asstt. Conservator of Forests,  
Sonitpur East Division,  
Biswanath Chariali.

2. Shri R.P. Singh, I.F.S.

Asstt. Conservator of Forests,  
Sonitpur West Division, Tezpur.

3. Shri K.S.P.V. Pawan Kumar, I.F.S.

Asstt. Conservator of Forests,  
Manas Tiger Project,  
Barpeta Road

... Petitioners

1. Shri H.C. Sonowal,  
Commissioner & Secretary,  
Forest Department,  
Government of Assam,  
Dispur, Guwahati-6.

2. Shri D. Chakrawortty,  
Joint Secretary, Forest Department,  
Government of Assam,  
Dispur, Guwahati-6.

3. Shri A.B. Roy Choudhury,  
Deputy Secretary, Forest Department,  
Government of Assam,  
Dispur, Guwahati-6.

4. Shri R.N. Hazarika,  
Principal, Chief Conservator of Forest  
Assam, Rehabari, Guwahati-8

... Respondents

The humble petition on behalf of the abovenamed petitioners  
MOST RESPECTFULLY SHEWETH :

1. That the petitioners are the members of the Indian Forest Service Association (Assam Unit). The petitioners are direct recruits to I.F.S. and presently they are holding the post of Asstt. Conservator of Forests in the Assam - Meghalaya Cadre and they belong to the Assam ~~Wx~~ Wing of the Joint Cadre.
2. That the present petitioners and other members of the Association numbering around 70 had authorised the Indian Forest Service Association (Assam Unit) to approach this Hon'ble Tribunal by filing an application under Section 19 of the Administrative Tribunals Act, 1985 praying inter alia for a direction not to appoint non-cadre officers to the cadre posts, which are to be made only by I.F.S. officers. In the instant application, the grievances made by the petitioners, the cause of action for the instant case, and the reliefs sought for are all common to all the petitioners and hence the instant application has been filed jointly by the petitioners. They may be permitted to do so as provided for under Rule 4(5)(a) of the C.A.T. (Procedure) Rules, 1987.
3. That the petitioners state that they are all direct ~~to the~~ recruits to the Indian Forest Service and presently working as Asstt. Conservator of Forests (ACF) in the junior ~~xxxxxx~~ scale of I.F.S. Their next promotion is to the Senior scale as provided for under Rule 3 of the I.F.S. (Pay) Rules, 1968. They are still waiting their such promotion although

all of them are long overdue of such promotion. Such promotion is required to be granted on completion of four years of service.

4. That the aforesaid O.A. has since been disposed of in favour of the members of the Association granting the prayer made therein according to which the State of Assam has been restrained from promoting or appointing any officer of the Assam State Forest Service to any I.F.S. Cadre post. Referring to the provisions of Assam Forest Service Rules, the Hon'ble Tribunal has further held that the entries, the Rule 3 of the said rules viz. the Conservator of Forests, Divisional Forest Officers (including Working Plan Officer, Forest Utilisation Officer and one post of Sericultural and Botanical Forest Officer) stood repealed by provisions of the I.F.S. (Cadre) Rules, 1966 read with F.F.S. (Fixation of Cadre Strength) Regulation, 1966 read with All India Service Act, 1951.

A copy of the said Judgment dated 1/8.2.95 is annexed herewith as ANNEXURE-1.

5. That the petitioners state that as per the said Judgment and order, the non-cadre officer cannot be posted to cadre post meant for I.F.S. Officers only. However, as before passing of the judgment, the respondents/contemners are still appointing non-cadre officers i.e. the State Forest Service Officers to the I.F.S. (Cadre) Posts in violation of the aforesaid judgment and order. Mention may be made of the following officers belonging to the State

Forest Service who have been allowed to hold the cadre post in violation of the aforesaid judgment and order:

- ii) Shri T.P. Changkakati, D.F.O. Lakhimpur Division.
- ii) Shri M.N. Duara, D.F.O. Dhemdema Division,
- iii) Shri R.N. Sonowal, D.F.O. Digboi Division East
- iv) Shri S. Islam, D.F.O. Planning Officer, office of the P.C.C.E., Assam, Guwahati.
- v) Shri B.B. Nobis, D.F.O. Nagaon South Division, Hojai
- vi), Shri C.R. Bhowra, D.F.O. Planning Officer-II, Office of the P.C.C.F., Assam, Guwahati
- vii) Shri R.C. Bhattacharjee, D.F.O., Assam State Zoo, Guwahati
- viii) Shri Jitu Das, D.F.O. Kamrup East Division, Guwahati
- ix) Shri S. Ahmed, Kamrup West Division, Guwahati
- x) Shri D.K. Basumatary, D.F.O. Dibrugarh Division
- xi) Shri Sanjib Kr. Bora, D.F.O. Sonitpur West Division.

Copies of some of the notification appointing/allowing non-cadre officers to hold cadre post dated 29.4.95, 22.6.95, 20.1.96, 19.6.96, 24.6.96 26.6.96, 4.7.96 and 17.7.96 are annexed hereto as ANNEXURES 2, 3, 4, 5, 6, 7, 8 and 9 respectively.

6. That the petitioners state that by the aforesaid notification the State Forest Officers i.e. non-cadre officers have been allowed to hold cadre posts meant for I.F.S. Officers. The said notifications have been issued in clear violation of the aforesaid Judgment and order for which the respondents herein are liable for contempt of

of court proceeding. At the same time, appropriate order/direction are also required to be issued towards execution of the said judgment and order in terms of Section 27 of the Act and Rule 24 of the Rules.

7. That the petitioners state that the first three respondents are responsible for issuance of notifications appointing non-cadre officers to cadre post in violation of the aforesaid Judgment and order. The 4th respondent is also equally responsible inasmuch as the proposal for such posting is mooted by him to the State Government and the 1st respondent pursuant to such proposal passes order posting the non-cadre officers to the cadre posts as indicated above.

8. That the petitioners state that in terms of the aforesaid judgment and order, non-cadre officers cannot be posted to cadre posts to the deprivation of the cadre officers. In the instant case, all the three petitioners belonging to I.F.S. Association (Assam Unit) are due for their promotion to the Senior Scale for which they have represented before the respondents. However, they have not been promoted for want of vacancies, but on the other hand non-cadre officers have been allowed to continue in the cadre posts to the deprivation of the promotion of the petitioners.

9. That the petitioners state that they are beneficiaries of the aforesaid Judgment and order being the

members of the I.F.S. Association (Assam Unit) and any violation of the said judgment and order effects the present petitioners. Hence this application invoking the contempt and execution power of this Hon'ble Tribunal provided for under Administrative Tribunals Act and the C.A.T. (Procedure) Rules.

10. That the petitioners state that the violation of the aforesaid judgment by the respondents is a serious one and the Hon'ble Tribunal is requested to take appropriate action against the erring respondents under the Contempt of Court proceeding. At the same time appropriate direction/orders are required to be passed towards full implementation of the said judgment and to secure the ends of justice and also to give effect to the aforesaid judgment and order passed by this Hon'ble Tribunal.

11. That the instant application has been filed bonafide and for ends of justice.

In the premises aforesaid, it is most respectfully prayed that the Hon'ble Tribunal would be pleased to issue notice on the contemners to show cause as to why contempt of court proceeding shall not be drawn up against each and everyone of them and as to why appropriate directions/orders shall not be passed in terms of provisions of Section 27 of the Administrative Tribunal Act, 1985 read with Rule 24 of the

C.A.T. (Procedure) Rules, 1987 and upon hearing the parties on the cause or causes that may be shown, the Hon'ble Tribunal may be pleased to punish the contemners in accordance with law and to pass appropriate orders towards execution of the aforesaid Judgment and order and also to pass such further or other order/orders as Your Lordships may deem fit and proper.

And for this, the petitioners, as in duty bound, shall ever pray.

Affidavit.....

- AFFIDAVIT -

I, Shri K.S.P. V. Pavan Kumar, I.F.S. son of Shri K.V.N. Nagendra Sayee, aged about 27 years, at present working as Asstt. Conservator of Forests, Manas National Park, Barpeta Road, Dist.-Barpeta, Assam do hereby solemnly affirm and state as follows:-

1. That I am the petitioner No.3 in the instant case and also a member of the Indian Forest Service Association ( Assam Unit) and as such I am fully acquainted with the facts and circumstances of the case. I am also competent and authorised to swear this affidavit on behalf of all the petitioners.
2. That the statements made in this affidavit and in the accompanying petition in paragraphs are true to my knowledge; those made in paragraphs are matters of records which I verily believe to be true and the rest are my humble submissions.

And I sign this affidavit on this the 6<sup>th</sup> day of September, 1996.

Identified by me:

*Mizumon Dewan*  
6.9.96  
Advocate

*KSP Pavan Kumar*  
( K.S.P.V. PAVAN KUMAR )  
Deponent.

*HS 61950*  
MAGISTRATE  
S. C. S. C. S.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

Original Application No.52 of 1993  
 with

Original Application No.53 of 1993,

Original Application No.59 of 1993, and

Original Application No.96 of 1994.

Date of decision: This the 1st day of February 1995.  
8th day of February 1995.

The Hon'ble Justice Shri M.G. Chaudhary, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

O.A.No.52/93

1. Shri Narendra Nath Hazarika, IFS  
 Conservator of Forests,  
 Northern Assam Circle, Tezpur.

2. Shri Subhendu Kumar Sen, IFS  
 Director, Kaziranga National Park,  
 Bokaghat District.

3. Shri Lakeswar Dev Adhikari, IFS  
 Conservator of Forests (Headquarter),  
 Office of the Principal Chief Conservator of Forests,  
 Assam, Guwahati. ....Applicant

-versus-

1. Union of India, represented by  
 The Secretary,  
 Department of Environment and Forest,  
 New Delhi.

2. The State of Assam, represented by  
 The Secretary, Department of Forest,  
 Dispur.

3. The State of Meghalaya represented by  
 The Secretary, Department of Forest,  
 Shillong.

4. Shri M.M. Pathak  
 Conservator of Forests,  
 Central Assam Circle ,  
 Guwahati.

5. Shri M.K. Sinha, IFS  
 Conservator of Forests,  
 Western Assam Circle,  
 Kokrajhar. .... Responder

O.A.No.53/93

1. Shri Bhabendra Nath Pathak, IFS  
 Divisional Forest Officer,  
 Genetic Cell Division,  
 Guwahati.

*[Signature]*

2. Shri. Subimal Roy Chaudhari, IFS  
Silviculturist, Guwahati.
3. Shri Rajendra Prasad Agarwala, IFS  
Working Plans Officer, Lower Assam Circle,  
Guwahati.

... Applicants

-versus-

1. The Union of India, represented by  
the Secretary,  
Department of Environment and Forest,  
New Delhi.
2. The State of Assam, represented by  
the Secretary, Department of Forest  
Dispur.
3. The State of Meghalaya, represented by  
the Secretary, Department of Forest  
Shillong.
4. Shri M.M. Pathak,  
Conservator of Forests,  
Central Assam Circle, Guwahati.
5. Shri M.K. Sinha, IFS  
Conservator of Forests,  
West Assam Circle,  
Kokrajhar.
6. Shri Digambar Gohain Barua, IFS  
Divisional Forest Officer,  
Sibsagar Division, Jorhat.
7. Shri Paritosh Roy, IFS  
Deputy Conservator of Forests,  
Naflong.
8. Shri Vinod Kumar Vishnoi, IFS  
Divisional Forest Officer,  
Halugaon Division, Kokrajhar.
9. Shri Suresh Chand, IFS  
Conservator of Forests,  
Forest Research Institute,  
Dabalpur (M.P.) (on deputation).
10. Shri Tony Marak, IFS  
Divisional Forest Officer,  
Khasi Hills Division,  
Shillong.
11. Shri Sunil Kumar, IFS  
Planning Officer,  
Office of the Chief Conservator of Forests,  
Meghalaya, Shillong.

... Respondents

D.A.No.59/93

Shri M.K. Sinha, IFS  
Conservator of Forests,  
Western Assam Circle,  
Kokrajhar, Assam.

... Applicant

-versus-

1. The State of Assam, represented by  
the Commissioner and Secretary to the  
Government of Assam, Department of Forest,  
Dispur.
2. The State of Meghalaya, represented by  
the Secretary to the Government of Meghalaya,  
Department of Forest, Shillong

*Well*

3. The Union of India, represented by the Secretary to the Department of Environment and Forest, New Delhi.

4. Shri M.M. Pathak, Conservator of Forests, Central Assam Circle, Guwahati.

.... Respondents

O.A.No.96/94

Indian Forest Service Association (Assam Unit) represented by its General Secretary, Shri K.N. Dev Goswami, Principal, North East Forest College, Jalukbari, Guwahati.

.... Applicant

-versus-

1. Union of India, represented by the Secretary, Department of Environment and Forests, New Delhi.

2. The State of Assam, represented by the Secretary, Department of Forests, Dispur,

3. Shri M.M. Pathak, Conservator of Forests, Central Assam Circle, Guwahati.

4. The Chief Secretary to the Government of Assam, Dispur.

5. The State of Meghalaya, represented by the Secretary, Department of Forests, Government of Meghalaya, Shillong.

6. The Union Public Service Commission, represented by the Secretary, UPSC, New Delhi.

7. The Accountant General (A&E), Assam, Guwahati.

8. The Inspector General of Forests, Government of India, Department of Environment and Forest, New Delhi.

.... Respondents

Mr C.K. Sarma Baruah for the applicants in O.A.No.52/93 and O.A.No.53/93

Mr B.K. Sharma holding for Mr M.K. Choudhury for the applicants in O.A.No.59/93

Mr B.K. Sharma with Mr P.K. Tiwari for the applicants in O.A.No.96/94

Mr S. Ali, Sr. C.G.S.C. for respondent No.1 in O.A.No.52/93 and O.A.No.53/93, respondent No.3 in O.A.No.59/93 and respondent Nos. 1, 6, 7 and 8 in O.A.No.96/94

contd/-....

Dr Y.K. Phukan, Sr. Government Advocate for the State of Assam with Mrs M. Das, Government Advocate for the State of Assam, for respondent No.2 in O.A.No.52/93 and O.A.No.53/93 and respondent Nos. 2 and 4 in O.A.No.96/94

Mr A.S. Sarma with Mrs B. Dutta for respondent No.4 in O.A.No.52/93, O.A.No.53/93, O.A.No.59/93, and respondent No.3 in O.A.No.96/94

State of Meghalaya served in all the applications

Mr B.K. Sharma for respondent No.8 in O.A.No.53/93

Mr B.K. Sharma for M.K. Choudhury for respondent No.5 in O.A.No.52/93 and O.A.No.53/93.

Respondent Nos. 6, 7 and 9 to 11 in O.A.No.53/93 served.

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ORDER

CHAUDHARI.J. V.C.

As common questions of law arising out of similar facts are involved in all the above mentioned original applications these are being disposed of by this common judgment.

2. There are three applicants in O.A.No.52/93 who have stated that there is community of interest between them as all of them have got a common interest in the subject matter of the application and they are aggrieved by the impugned orders. There are three applicants also in O.A.No.53/93 and similar statement as above has been made by them. O.A.No.59/93 has been filed by single applicant, who happens to be respondent in O.A.No.52/93 and O.A.No.53/93. O.A.No.96/94 has been filed by the Indian Forest Service Association (Assam Unit) through its General Secretary and it is stated in the application that the Association which has around seventy members who are all Indian Forest Service officers, is highly aggrieved by the impugned action of the State of Assam and that

*[Signature]*

action adversely affects their rights and conditions of service and, therefore, all the members of the Association have approached the Tribunal in a class litigation through the instant application. The Association thus claims locus standi to seek redressal of the grievances of its members.

The first three applications relate to challenging the creation of the post of Conservator of Forests in the Assam Forest Service whereas the last application,

i.e. O.A.No.95/94, relates to creation of the post of Chief Conservator of Forests in the Assam State Forest Service as an ex-cadre post and appointment of a State Forest Service officer likely to be made to that post. The questions, however, that arise are substantially the same in respect of both these grievances.

3. All the three applicants in O.A.No.52/93 belonged to the Assam Forest Service since 31.3.1966. They were promoted to the cadre of Indian Forest Service on 2.12.1993 and all of them have been assigned 1977 as the year of allotment. They have been allocated to Joint Cadre of Assam - Meghalaya. All of them completed 13 years of service in the Indian Forest Service cadre in 1990 and claim to have become eligible for promotion to the post of Conservator of Forests.

Applicant Nos. 1 and 2 in O.A.No.53/93 also belong to Assam Forest Service since the year 1969. They were promoted to the cadre of Indian Forest Service on 2.12.1983 and have been assigned 1977 as the year of allotment. The applicant No.3 is a direct recruit to Indian Forest Service. He was appointed on probation on 6.3.1979 and was regularly appointed to the cadre of Indian Forest Service on 13.7.1981

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*[Signature]*

All the three applicants have been allocated to the Joint Cadre of Assam - Meghalaya. It is claimed that whereas applicant Nos. 1 and 2 have completed 13 years of service on 1.4.1990 and the applicant No.3 has also completed service of 13 years on 1.3.1992 they have become eligible to be considered for appointment to the post of Conservator of Forests.

The applicant in O.A.No.59/93 also belongs to Assam Forest Service from 1966. He was promoted to the cadre of Indian Forest Service in 1983 and his year of allotment is 1976. He claims to have completed 13 years' service and to have become eligible to be considered for being appointed to the post of Conservator of Forests and thereafter in due course to the post of Chief Conservator of Forests. He had filed O.A.No.58/93 earlier but as during the pendency of that application he was promoted as Conservator of Forests on 30.11.1992 the proceedings in that application were closed with liberty to challenge the action impugned separately. Hence he has filed the present application.

4. O.A.No.52/93 and O.A.No.53/93 were initially filed on 26.3.1993, but the applications have been amended on 7.11.1994. O.A.No.59/93 has been filed on 29.3.1993.

O.A.No.96/94 was filed on 19.5.1994 by the Association. As the issue involved in this application is virtually the same as involved in the other three applications we have heard all these applications together. Counsel have also addressed us additionally in O.A.No.96/94.

5. Shri M.N. Pathak is the seniormost officer in Assam Forest Service, but ever since 1976 he has missed the opportunity...

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opportunity...

opportunity of being selected for promotion to Indian Forest Service although every year his name had been considered. The State of Assam, however, has purported to create a post of Conservator of Forests and appoint him to that post. All the applicants in the respective applications have mainly challenged the validity of his appointment. He is respondent No.4 in the first three applications and respondent No.3 in the last application. (For the sake of convenience he shall be hereafter referred to as respondent No.4). The other private respondents in O.A.No.53/93 have been joined as proforma respondents. According to the applicants therein the said respondents are senior to them and are also interested in the challenge to the appointment of respondent No.4 and, therefore, they have been made formal parties. Similar is the position as regards respondent No.5 in O.A.No.52/93.

6. The Union of India who are respondents in all the applications have filed written statement in all the applications. The State of Assam have filed written statement in O.A.No.52/93, O.A.No.53/93 and O.A.No.59/93, but, surprisingly enough, they have not chosen to file any written statement in O.A.No.96/94. M.M. Pathak has filed written statement in the respective applications. Respondent No.8 in O.A.No.53/93 has also filed written statement in that application. The other respondents including the State of Meghalaya concerned in the respective applications have not filed any written statement or have contested the applications. The applicants in O.A.Nos. 52/93 and 53/93 have filed rejoinders. The Union of India and respondent No.8 in O.A.No.53/93 support the contentions of the applicants. The real contentions have been on behalf of the

State....

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State of Assam and M.M. Pathak.

Opposed by the State of Assam.

7. When the applications came up for hearing earlier

the learned counsel for the State of Assam raised a preliminary objection that having regard to the written

statements filed by the Union of India there arose a dispute within the meaning of Article 131 of the Constitution

between the Government of India on the one hand and the State of Assam on the other and, therefore, this Tribunal

had no jurisdiction to proceed with the matter until the

dispute was resolved by the Supreme Court. By our order

dated 16.12.1994 we have, rejected that objection and

have proceeded to hear the applications on merits. It may

be mentioned that against the interim orders passed in

O.A. Nos. 52/93 and 53/93 dated 26.3.1993 the Government of

Assam have filed Special Leave Petitions in the Supreme

Court, but it appears that they are not being pursued and

neither it is shown that leave has been granted or any

interim order has been passed by the Supreme Court. The

SLPs being against interim orders, with respect, that does not require us to postpone the final hearing of the applications.

8. Briefly stated, the case of the applicants is that

the post of Conservator of Forests is an Indian Forest

Service (IFS for short) Cadre post and can be filled up

only by an officer of the IFS cadre. The promotion to that

post has to be made from amongst the IFS officers who after

rendering 13 years of service in the cadre become eligible

for selection grade under Rule 3(3) of the IFS (Pay)

Rules, 1968. The post of Conservator carried super-time

scales. The strength of IFS officers of Joint Cadre Authority

(Assam - Meghalaya in the instant case) is fixed under

the....

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the IFS (Fixation of Cadre Strength) Regulations, 1966. The respective applicants having become eligible for being considered for promotion to the post of Conservator of Forests were looking forward for such promotion. However, by the impugned Notification No. FFE.21/92/11 dated 28.3.1992 issued under the signature of the Deputy Secretary to the Government of Assam, Forest Department, Dispur, the Government of Assam have promoted respondent No.4 (M.M. Pathak) to the rank of Conservator of Forests and posted him as Conservator of Forests, Central Assam Circle, Guwahati with effect from the date of taking over the charge and that the Government of Assam has thus encroached upon their right of promotion as members of IFS by infringing the rights of the Cadre officers and this act of the respondents is vitiated by gross illegality and is malefide. According to the applicants the respondent No.4 not being a member of the IFS is no way eligible to hold an IFS cadre post. His appointment has also been made without prior approval of the other part of Joint Cadre Authority, i.e. State of Meghalaya, which circumstance also vitiates it. This step has been taken in gross violation of the relevant rules and also without giving any opportunity of being heard to the applicants. It is also violative of Articles 14, 16 and 19 of the Constitution of India. The action is thus void ab initio and, therefore, if the aforesaid order dated 28.3.1992 is allowed to stand that will adversely affect the service career of the applicants and other IFS officers similarly situated and the damage caused will be irreparable which cannot be compensated in terms of money. They also contend that since effect has given to the order by allowing respondent No.4 to assume charge as the Conservator.....

Recd.

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Conservator of Forests, Central Assam Circle during the operation of the interim order of stay of promotion that was granted in the earlier O.A.No.58/93 filed by the applicant, M.K. Sinha, it is malafida and inoperative.

That is the substratum of the challenge. The applicants in the first three applications, therefore, pray for quashing and setting aside the order dated 28.3.1992, and seek a direction to the official respondent to revert the respondent No.4 to the original rank of Deputy Conservator of Forests. They further seek a direction to the respondent, i.e. Union of India and the States of Assam and Meghalaya not to promote the respondent No.4 to any higher post in the IFS cadre or to any post higher than the post of Conservator of Forests. The applicants in the first two applications also seek a direction to the States of Assam and Meghalaya to consider them for promotion to the post of Conservator of Forests and for declaration that they are senior to respondent No.4. They also seek a negative direction against Union of India and States of Assam and Meghalaya not to appoint any officer of the Assam Forest Service to any cadre post.

Additionally, the applicant in O.A.No.59/93 seeks a direction to the respondent authorities to give retrospective effect to the order of his promotion dated 30.11.1992 to the post of Conservator of Forests from the date on which respondent No.4 was promoted, i.e. 28.3.1992.

9. By order No.FRE.115/87/91 dated 5.5.1994 the Government of Assam had conveyed to the Accountant General (A&E), Assam the sanction of the Governor of Assam to the creation of an ex-cadre post of Chief Conservator of Forest to be manned by Assam Forest Service (AFS for short) office in the scale of pay of Rs.3950 - 6100 per month upto 28.2.19

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with effect from the date of entertainment. The Government of Assam have thus purported to create an ex-cadre post of Chief Conservator of Forests in the Assam Forest Service.

That is the subject matter of challenge in O.A.No.96/94 filed by the Association of IFS officers which is stated to be a recognised Association. The grounds of challenge are that in creating the said post the Government of Assam has overstepped its limits of jurisdiction in as much as the action having been taken by an executive order it is in direct transgression into the Union Legislative domain and the power of the Union Executive, and, therefore, it is illegal. It is contended that the Government of Assam has thereby sought to do indirectly what it could not do directly and the order has been passed in colourable exercise of power. It is also alleged that the order is the result of malafide exercise of power for achieving oblique and ulterior motive. It is contended that the action is in the nature of single person legislation as it has been issued for the purpose of benefitting only the respondent, M.M. Pathak, and thus it contravenes Article 14 of the Constitution. The order is also bad in law as it has been passed for the purpose of circumventing the interim order passed on 20.12.1993 in O.A.No.53/93. It is further contended that the action of the Government of Assam in issuing the said order is in violation of the provisions of the IFS (Cadre) Rules, 196 and it is without any authority of law and, therefore, has no legal force. The Association have alledged that the order has been passed by the Government of Ass. because of extraneous considerations in its eagerness to eventually accommodate respondent, M.M. Pathak, to the post of Chief Conservator of Forests in exercise of its executive power in the name of the Governor....

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Governor of the State and that the Association has a grave apprehension that if any serious obstacle arises in the promotion of M.M. Pathak to the newly created ex-cadre post of Chief Conservator of Forests, Government of Assam, may not hesitate to promote any other State Service official to that post for extraneous considerations and thereby virtually create a parallel Forest Service and, therefore, it has become necessary for the Association to challenge this action. The Association contends that the impugned action adversely affects the rights and conditions of service of the members of the Association. The applicants, therefore, seek that the order dated 5.5.1994 be quashed and set aside, that the respondents interalia be directed not to create any post in the rank of Conservator of Forests or above in the Assam State Forest Service, not to promote State Forest Service officer to the post of Chief Conservator of Forests or above and not to appoint non-cadre officers to the cadre post and further not to appoint State Forest Service officers to the ex-cadre posts which are to be manned only by IFS officers. They also seek a direction to the respondents to fill up all cadre posts/ex-cadre posts of IFS by the IFS cadre officers only. The case of the Association in substance, therefore, is that as the posts of Conservator of Forests as well as the post of Chief Conservator of Forests can only be filled in by IFS officers the impugned action of the respondents impinges upon the rights of the members of the IFS and, therefore, it is wholly unsustainable in law and is void.

10. The Union of India interalia contend (in their counter to all the applications) as follows:

The promotion of State Forest Service officer

to....



In U.A.No.96/94 in addition to reiterating the above contentions it is further contended that even the post of Chief Conservator of Forests is a cadre post to be filled as such it should be filled only by a cadre officer ~~under~~ under the Schedule to the IFS (Fixation of Cadre Strength) Regulations, 1966, and IFS (Cadre) Rules, 1966, and that the action of the Government of Assam in creating an existing ex-cadre post of Chief Conservator of Forests to be manned ~~alone~~ by an Assam Forest Service officer, which post figures among the senior posts mentioned in the Schedule to the IFS (Fixation of Cadre Strength) Regulations, 1966, is in gross ~~violation~~ ~~of~~ violation of these Regulations as well as Cadre Rules aforesaid and that the State Government cannot create such an ex-cadre post, but if the administrative exigencies so demand, it could create an additional post of Chief Conservator of Forests to be held by a cadre officer alone and the action of the State of Assam, therefore, in violating the rules is against the very spirit of the constitution of the Indian Forest Service as an All India Service. It is contended that the State Government was consulted before the constitution of the Indian Forest Service and it was made clear in the memorandum of the Government of India that each state would have a cadre of the Service consisting of all the posts of and above the District and Forest Division Level and the posts above them were to be cadre posts to be manned by IFS cadre officers only. Thus all the senior duty posts under the State Government have to be manned only by the Cadre officers and the Government of Assam had, therefore, acted in violation of the rules. It is contended that a non-cadre officer cannot be permitted to hold the post of Chief Conservator of Forests.

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11. It will thus be seen that the contentions urged by the Union of India support the case of the applicants to the extent the validity of the action of the Government of Assam in promoting respondent No. 4 to the post of Conservator of Forests and in creating an ex-cadre post of Chief Conservator of Forests to be manned by Assam Forest Service Officer is disputed.

12. The State of Assam have, however, strongly resisted the applications. They have filed written statements in the first three applications and the contentions raised therein have been adopted by their counsel in the last application. They maintain that they were fully competent to take the impugned action and that their action is perfectly legal and valid and is not open to challenge. It is of some significance that the impugned action in both sets of applications was taken by the Government of Assam. However, the written statements are purported to be filed on behalf of the State of Assam. Constitutionally, there is difference between the position of the State as an entity and the Government of the State. For these applications that distinction, however, is not very material since the Government of Assam is also representing the stand of the State of Assam. To summarise the contentions raised by the State of Assam (as also the Government of Assam) in these applications it may be noted as follows:

The applications are not maintainable as the applicants have approached the Tribunal without exhausting all the departmental remedies. They have not filed any appeals to the State Government. The Tribunal has no jurisdiction to entertain the applications since the officer promoted, namely, respondent No. 4 belongs to Assam State

Forest....

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Forest Service Cadre and not to any service under the Union of India. The post of Conservator of Forests is both, namely, an IFS cadre post and AFS cadre post. It is not a fact that the post of Conservator of Forests can only be filled up from amongst the officers of the IFS cadre. We find it somewhat difficult to appreciate this manner of denying the legal position as if it were a fact. Whatever they may be, a list of 17 IFS cadre posts has been given. 1 to 12th posts are described as Conservator of Forests, 13th post is described as Field Director, Tiger Project, 14th post is described as Director, Kaziranga National Park, 15th post is described as Principal, North East Forest Rangers' College, Jalukbari, 16th post is described as Conservator of Forests, Wildlife, Guwahati and 17th post is described as Conservator of Forests, Border, Guwahati. It is stated that out of these 17 posts, 14 posts of Conservator of Forests have been earmarked for the IFS officers as per the cadre schedule under the IFS (Fixation of Cadre Strength) Regulations, 1966. 2 posts out of the remaining three are earmarked for the AFS officers under Rule 3 of the AFS (Class-I) Rules, 1942 and the 18th post designated as of Forest Utilization Officer can be held by either IFS or AFS officer. It is contended that even after the enactment of Cadre Strength Regulations, 1966, an amendment to the Assam Forest Service (Class I) Rules, 1942, has been made on 25.6.1967 whereunder a Class I officer of Assam Forest Service can occupy the post of Chief Conservator of Forests. It is contended that it is not a fact that a constituent State cannot promote its officers without the prior approval of the Joint Cadre Authority. It is then stated that respondent No.4, M.N. Pathak, belongs to the Assam Forest Service Cadre and when

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his....

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promotion was deemed necessary to a post mentioned in the AFS (Class 1) Rules, 1942, the matter did not require to be routed through the Joint Land Revenue Authority. It is contended that 6 posts of Conservator of Forests are to be filled up by the IFS officers, but against those 6 posts no specific circles have been mentioned. There is also no specific provision made in the schedule prepared by the Government of India laying down that the post of Conservator of Forests, Central Assam Circle, is to be filled up only by an IFS officer. 2 posts of Conservator of Forests have been specified under the AFS Rules, 1942, and in the absence of any circles having been specified in the cadre schedule of the IFS these can be filled up by State Forest Service officers. It is stated that respondent No.4 is the seniormost AFS officer and the State Government deemed it fit to promote him to the post of Conservator of Forests, available under the Assam Forest Rules. It is further stated that he had held the post of Forest Utilization Officer, Assam, which is equivalent to the post of Deputy Conservator of Forests, which can be held both by IFS or AFS officers and that the cadre schedule of the Central Regulations does not specify that Central Assam Circle is an IFS cadre post. It is next contended that the impugned order dated 28.3.1992 appointing respondent No.4 as Conservator has been issued in the normal course of Government business and that in the best interest of public administration the State Government has the right and privilege to do so. The various allegations made by the applicants are described as baseless and are denied. It is contended that the allegation that the impugned order dated 28.3.1992 is illegal and arbitrary is baseless. The allegation of malafides is not denied in clear terms, but what is contended is that the allegation that

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In reply the Notification dated 28.3.1992 has been issued malefide and in colourable exercise of power is vague and baseless and the applicants are called upon to show how the application for promotion of respondent No.4 is malefide and is in the colourable exercise of power. It is, however, stated that before promoting respondent No.4 the Government of Assam has weighed all the pros and cons as the respondent No.4 was the seniormost officer in the State Cadre and eligible for the post of Conservator of Forests on completion of 17 years of service and having been in Class I service for 27 years the Government found him eligible and has promoted ~~him~~ <sup>the</sup> him. It is maintained that <sup>the</sup> order of his promotion thus is not arbitrary nor unique. All the allegations in that regard are denied. It is also contended that the applicants have no locus standi to challenge the appointment of respondent No.4. In that behalf it is contended that there is no question of having any demoralising effect on all the IFS officers aspiring for the post of Conservator of Forests nor it will seriously tell upon their service career and the Government as model employer will have to strike a balance between the IFS and AFS officers and if an AFS officer is not promoted to the post for which he is eligible, then it will have demoralising effect on all the AFS officers aspiring for the post of Conservator of Forests and seriously tell upon their service career. It is reiterated that there is no malefide and colourable exercise of power in passing the impugned order and it is submitted that the grounds mentioned in the applications are not valid grounds of law. Thus it is contended that the impugned order is not liable to be set aside.

In U.A.No.59/93 it is also sought to be contended

by....

by the said respondents that this Tribunal had acted beyond its jurisdiction to restrain the respondent No.4 from acting in any manner, but that even before the order was passed by the Tribunal on 30.3.1992 staying the

operation of the order dated 28.3.1992 the said respondent had taken over the charge as Conservator of Forests.

Advantage is sought to be drawn in this connection from the fact that the contempt petition was dropped. It is

additionally contended that even though the respondent No.4 had not been selected to the IFS cadre that did not take away his right to promotion to which he was entitled under the AFS Rules, 1942. It is maintained that the AFS Rules, 1942, had not ceased to have force of law as alleged by

the applicants. It is stated that it is not a fact that the two posts of Conservator of Forests provided under the AFS Rules, 1942, were made over to be included in the IFS cadre.

It is then contended (in para 16 of the written statement) as follows:

It is stated that the respondent No.4 has been functioning as Conservator of Forests and there is no question of granting any direction to the Respondent Authorities restraining the Respondent No.4 from discharging or acting as Conservator of Forests."

We are not happy about the manner in which this contention has been couched. We can understand a submission made to that effect, but we cannot appreciate the assertion that there is no question of granting any such direction as that is for us to decide and not for theponent of the written statement to advise.

It is, however, astonishing that the Government of Assam have not chosen to file any written statement in O.A.No.96/94 filed by the Association of IFS officers

challenging....

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challenge

challenging the action of the Government of Assam in

creating the ex-cedre post of Chief Conservator of Forests.

The allegations made and contentions raised by the

applicants in that application as against the State of

Assam, therefore, go uncontested and strictly speaking

may have to be deemed as admitted. However, since we are

examining the entire question in its totality this aspect

may be left as it is.

13. The respondent No.4 who is really the target of

the attack on behalf of the applicants, contends as follows:

It is beyond the jurisdiction of this Tribunal to

deal with or interfere with any matter that relates to the

Assam State Forest Service and since he belongs to that

service and has been promoted in that service this Tribunal

cannot interfere in the matter. If the applicants were

aggrieved by the Notification they should not have slept

over the matter for over a year but could have challenged

the notification in a legal forum which has the jurisdiction

to interfere with such promotion. However, the

applicants have filed the applications with the clear

objective to harass him so late. Next it is contended that

the applications are not maintainable as no appeal or

representation was filed before the State Government. The

said respondent states that he is as much aspirant for

legitimate promotion as the applicants are and if that

avenue was open to him under the AF Rules then there was

according to him nothing wrong in his having been promoted

and that cannot be objected to. However, though he states

that as he does not belong to IFS there is no scope for

promoting him to any post in the Indian Forest Service

(Assam - Meghalaya Joint Cadre) above the post of

Conservator of Forests but maintaining that the Assam Forest

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Services...

Service Rules, 1942, are very much in force and his appointment has been made on promotion legally in accordance with those rules. The respondent contends that even if the impugned order were to be set aside the applicants cannot hope to get the promotion as a consequence and, therefore, there does not arise any question of them suffering any irreparable loss as alleged. He maintains that he is the seniormost officer in the AFS service and the post of Forest Utilisation Officer which he was holding was upgraded to the rank of Conservator of Forests by Notification issued by the Government of Assam on 10.6.1992, and as a post of Conservator of Forests has been earmarked for the Assam Forest Service officer his promotion is in order and is legal. He points out that he had been making efforts to persuade the Government to give him his legitimate promotion by filing representations repeatedly and eventually the Government of Assam in the year 1991 having realised that he is entitled to such a promotion have promoted him and that cannot be disputed by the applicants. Other legal contentions about the earmarking of the posts under the cadre regulations etc. have been raised on the lines of the contentions of the Government of Assam taken in their written statement. However, reliance is sought to be placed on a letter dated 25.8.1976 addressed by the Secretary to the Government of India, Cabinet Secretariat, to the Chief Secretaries of the State Governments to contend that any post earmarked for the IFS can also be filled up by an AFS officer. It is contended that as he belongs to Assam Forest Service his promotion to the higher post is not required to be recommended by the Joint Cadre Authority. It is denied that there has been any illegal usurpation of office of the Conservator of Forests by him

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since according to him his promotion has been effected validly under the AFS Rules, 1942. It is denied that he had acted in breach of the interim order of this Tribunal in assuming charge. It is then submitted that if there is a move to promote him further to the post of Chief Conservator of Forests on the strength of the AFS (Class 1) Rules, 1942, then that question cannot be raised before this Tribunal as that matter would pertain to State Service. It is contended that the applicants having unjustifiably filed the various applications, he is compelled to spend his time and money and had to suffer unsurmountable mental agony and indescribable harassment. Nevertheless, it is contended that this Tribunal has acted beyond its jurisdiction in passing the interim orders. In the premises it is submitted that the applications deserve to be dismissed.

In the written statement in answer to D.A.No.96/94 the said respondent additionally contends that the Assam Forest Service (Class 1) Rules, 1942, is an existing law in conflict with the meaning of the relevant provisions of the Constitution of India and is saved by the provisions of Article 372 of the Constitution, and that at the time of creating the Indian Forest Service the law makers in their wisdom have advisedly used the expression "in consultation with the Governments of the States concerned" and the existence of State Forest Service was contemplated. It is contended that it is within the competence of the State Government to fix the cadre strength of the State Forest Service as the subject of Forests is enumerated in the 'Concurrent List' in the VIIth Schedule of the Constitution of India and there being no conflict between the State Forest Service and Indian Forest Service the applicants cannot claim any relief for quashing the impugned

Notification...

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Notification dated 5.5.1994 or for that matter the order promoting him as Conservator of Forests dated 28.3.1992. In para 13 of the written statement the said respondent contends that there is no reason either for any individual applicant or for the Association to apprehend that a member of the State Forest Service shall be appointed to the cadre post of IFS. It is contended that the creation of the post of Chief Conservator of Forests by order dated 5.5.1994 does not in any manner affect the rights of the IFS officers as it is not a post in the cadre of IFS and therefore, the application is liable to be dismissed.

14. The respondent No.8 in O.A.No.63/93, V.K. Vishnoi, who is an IFS officer contends that the promotion of the respondent No.4 is an encroachment upon the rights of the cadre officers in the IFS and it is illegal. His contentions are almost on the same lines as that of the applicants.

15. It is not necessary to set out the details of the rejoinders filed by the applicants as the matter is mainly to be decided on issues of law and the basic facts are not in dispute. In essence, it is the case of the applicants in all the applications which receives support from the stand taken by the Union of India and the respondent No.8, V.K. Vishnoi, that after the formation of the IFS all the posts of Conservator of Forests having been encadred it was not open to the Government of Assam to have purported to appoint the respondent No.4 on promotion to the post of Conservator of Forests and that amounts to almost bringing into existence a parallel service which is not permissible having regard to the various rules and regulations made by the Government of India regulating the All India Service, namely, the IFS. It is their submission that the provisions of....

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of the Assam Forest Service Rules, 1942, which had remained dormant for more than 20 years have been suddenly activated by the Government of Assam and that nothing but that exercise has been done only with a view to favour the respondent No.4 and in doing so they have acted illegal, illegally at every step. It is also their case that for enabling the self-same reasons the creation of the ex-cadre post of Chief Conservator of Forests which is also a cadre post is illegal and it is their apprehension that in all likelihood it has been so done by the Government of Assam with a view to promote respondent No.4 to that post and thereby set at naught the entire scheme of the All India Service. As against that it is the case of the State of Assam and the respondent No.4 that the Government of Assam have acted validly and legally in accordance with the Assam Forest Service Rules, 1942, and, therefore, there is no substance in the grievance made by the applicants.

It is further contended by the applicants which contention has been elaborated by their respective counsel, Mr L.K. Sarma Baruah (in the first two applications) and Mr B.K. Sharma (in the other two applications) that the Assam Forest Service (Class I) Rules, 1942, particularly Rule 3 and 11 thereto on the strength of which, the impugned steps have been taken by the Government of Assam being inconsistent with the provisions of IFS (Cadre) Rules are protanto void in view of the Article 313 and 372(1) of the Constitution and that therefore, the appointment of Respondent No.4 as Conservator of Forests made by the Government of Assam is illegal and

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without jurisdiction and is liable to be quashed on that ground.

15. Mr B.K. Sharma has further submitted that the said order impugned by the Association by which an ex-cadre to cadre post of Chief Conservator of Forests has been created by the Government of Assam is also liable to be quashed on the same ground.

16. Mr K.S. Sarma, the learned senior counsel for respondent No.4 and Dr Y.K. Phukan, learned senior counsel for the State of Assam, however, submit that there is no such inconsistency and the provisions contained in Rules 3 and 11 are operative with full force and what the Government of Assam has done is perfectly valid and it has exercised its powers with jurisdiction.

16. At the hearing, Mr K.S. Sarma, the learned senior counsel appearing for the respondent No.4 sought to raise certain objections in the nature of preliminary objections for which the learned counsel submits that the applications are liable to be dismissed in limine. Firstly, he contends that in none of the applications it is shown that any post out of the fourteen posts earmarked under the cadre rules for IFS officers is taken away by reason of appointment of respondent No.4, and, therefore, there does not exist any subsisting grievance of the applicants. Secondly, he submits that none of the applicants (in the first three applications) can be said to be aggrieved by the appointment of respondent No.4 as it is not shown that otherwise he is entitled to be promoted to that very post hence there being no cause of action....

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action disclosed the applications are not maintainable.

Thirdly, he submits that the applications cannot be treated as public interest litigation. Lastly, the learned counsel submits that it is well settled that academic questions would not be deliberated unless there arises an issue relevant to the parties for adjudication and since in this case even if respondent No.4's promotion is set aside as being (none of the applicants can claim to be entitled to step into his shoes automatically deciding the matter would only be in the nature of academic exercise and that is not permissible. The learned counsel refers to AIR 1977 SC 876 (D. Nagaraj -vs- State of Karnataka and others), and AIR 1974 SC 505 (Loknath Padhan -vs- Birendra Kumar Sahu).

Since at 17. In the light of the pleadings of the parties and the objections to the maintainability of the applications raised by the learned counsel for respondent No.4, following points arise for our consideration:

1. Whether this Tribunal has got no jurisdiction to finally decide the applications because a dispute arises inter se between the Union of India and State of Assam required only to be resolved by the Supreme Court under Article 131 of the Constitution of India?

2. Whether this Tribunal has got no jurisdiction to entertain and decide these applications on the ground that the subject matter of the applications relates to matters pertaining to the State service and, therefore, it is outside the purview of the jurisdiction of this Tribunal under Section 14 read with Section 19 of the Administrative Tribunals Act, 1985?



3. Whether the applicants are aggrieved persons competent to challenge the appointment of respondent as Conservator of Forests, Assam Pradesh bearing file Central Circle?

4. Whether the Assam Forest Service (Class I) Rules, 1942, is a law in force?

5. Whether there arises any repugnancy between the provisions of Indian Forest Service (Cadre) Rules, 1966, read with provisions of All India Services Act, 1951, and the provisions of Assam State Forest Service (Class I) Rules, 1942, or any provisions thereof?

6. Whether Rules 3 and 11 of Assam Forest Service (Class I) Rules, 1942, either wholly or in part stood impliedly repealed consequent upon the creation of the Indian Forest Service as an All India Service in 1966?

7. Whether it was within the competence of the Government of Assam to designate a post as Conservator of Forests in Assam State Service?

8. Whether the Government of Assam was competent to promote a State Forest Service officer to the post of Conservator of Forests?

9. Whether the Government of Assam had the competence to create the ex-cadre post of Chief Conservator of Forests in Assam Forest Service?

10. Whether it is within the competence of the Government of Assam to appoint an officer of the Assam State Forest Service to the post of Chief Conservator of Forests including the respondent No.4, M.M. Pathak?



11. Whether in the event of it being held that the Government of Assam had the competence to promote the respondent No.4 to the post of Conservator of Forests and to create the ex-cadre post of Chief Conservator of Forests concurrence of the other part of Joint Cadre Authority, namely, State of Meghalaya was essential and if so what is the effect of its absence?

12. Whether the impugned notification dated 28.3.1992 is liable to be quashed and set aside?

13. Whether the impugned order dated 5.5.1994 is liable to be quashed and set aside?

14. Whether the applicants in the respective applications are entitled to the reliefs sought for by them?

15. Whether applicant in O.A.No. 59/93 is entitled to be given retrospective benefit of his promotion as prayed?

16. What order?

For the reasons recorded below our findings on the above points are as follows:

**Point No.1 :** In view of our order dated 16.12.1994 the point is answered in the negative. Tribunal has got the jurisdiction.

**Point No.2 :** In the negative (This Tribunal has got the jurisdiction).

**Point No.3 :** In the affirmative.

**Point No.4 :** In the affirmative.

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in Point No.5 : In the affirmative. There arises repugnancy to the extent of Rules 3 and 11 of the AFS Rules, 1942.

in Point No.6 : In the affirmative, partly. Rule 3 and Rule 11 of the AFS Rules have stood impliedly repealed after 3.1.1977 to the extent indicated in the final order below.

in Point No.7 : In the negative.

in Point No.8 : In the negative.

in Point No.9 : In the negative.

in Point No.10: In the negative.

in Point No.11: Does not arise.

in Point No.12: In the affirmative.

in Point No.13: In the affirmative.

in Point No.14: In the affirmative as per final order.

in Point No.15: Left open to be pursued in accordance with the law before the competent authorities.

in Point No.16: Applications allowed as per final order.

#### REASONS

in Point No.1 : We have already decided the issue in the negative by order dated 16.12.1994, and have held that this Tribunal has got the jurisdiction to proceed with the applications.

in Point No.2 : It is true that on the face of it it may appear that the dispute relates to the step taken by the Government of Assam in respect of the State service and, therefore, that question may not fall within the ambit of the jurisdiction of this Tribunal. However, upon a careful

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scrutiny of the grievances made by the applicants and the reliefs sought by them, that does not appear to be the correct position in law. Section 14 of the Administrative Tribunals Act, 1985, prescribes the jurisdiction, the legal powers and authority of the Central Administrative Tribunal, which by virtue of clause (b) (i) extends to all service matters concerning a member of any All-India Service. Section 28 confers exclusive jurisdiction in all such matters upon the Central Administrative Tribunal, save and except the Supreme Court. Section 29 prescribes the procedure for approaching the Tribunal by an application. In O.A.Nos. 52/93 and 53/93 the material averments made by the applicants are as follows:

(i)

At the time when the respondent No.4 was promoted and appointed to the post of Conservator of Forests all the applicants and the proforma respondent No.5 were eligible for promotion to the said post.

(ii)

The promotion of respondent No.4 is without jurisdiction inasmuch as promotion and appointment can be made only by the Joint Cadre Authority and not by the State Government alone.

(iii)

That there was no selection held for the said post of Conservator of Forests so as to deliberately deprive the applicants and proforma respondent No.5 of their legitimate right to be considered for promotion on the date of issue of the Notification dated 28.3.1992.

(iv)

The continuation of respondent No.4 as Conservator of Forests has seriously jeopardized the applicants' service career in the IFS.

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(v) That there has been illegal usurpation of the office of the Conservator of Forests by respondent No.4. By that process he cannot claim any seniority over the applicants and proforma respondent No.5.

(vi) If the respondent No.4 is further promoted to the post of Chief Conservator of Forests, as the applicants apprehend, that would result in requiring the applicants to suffer immense hardship and irreparable loss in their service career.

These averments clearly disclose that the applicants are not aggrieved only by the promotion of respondent No.4 to the post of Conservator of Forests, but that is coupled with their grievance that their right for being legitimately considered to be promoted to that post, by reason of their being members of the IFS has been taken away. The applicants are, therefore, seeking redressal of their grievance relating to their service as members of All India Service. Where a right of a member of All India Service is alleged to have been encroached upon by the State Government or department of the State Government, nevertheless, it would be a matter falling within the ambit of service matter concerning an All India Service. Thus this Tribunal has got the jurisdiction to entertain and decide upon such grievance under Section 14 of the Administrative Tribunals Act, 1985.

In O.A.No.59/93 the applicant has additionally raised the question about he and other IFS officers similarly situated being prejudicially affected in getting promotion to the post of Conservator of Forests and above. He has also averred that there will arise a conflict in the inter se seniority and in matters of promotion above the post.....

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post of Conservator of Forests. He has further averred that as the seniormost IFS officer in the rank of Divisional Forest officer he became eligible for promotion to the post of Conservator of Forests as far back as in the year 1989. He submits that if the impugned order is allowed to stand it will have a demoralising effect upon him as he is legitimately aspiring for the post of Conservator of Forests and that will prejudicially affect his service career. That also goes to show that even according to this applicant he seeks a redressal of his grievance in respect of rights under the All India Service which is necessitated by reason of the impugned action of the Government of Assam. That, therefore, falls squarely within the ambit of the jurisdiction of this Tribunal under Section 14 clause (b) of the Administrative Tribunals Act, 1985.

The applicants, i.e. the Association, aver in O.A. No. 96/94 that all the members of the Association are aggrieved by the impugned action and that the impugned action of the respondents is without legal competence and is an attempt to bring into existence virtually a parallel Forest Service which amounts to transgression on the Union Legislative domain and is without jurisdiction and without authority of law. Thus the Association is seeking redressal of the grievance of its members in their capacity as members of the IFS and they seek relief against the alleged encroachment of their rights as members of the All India Service, namely, IFS. Such a question would squarely fall within the ambit of jurisdiction of Central Administrative Tribunal under Section 14 of the Administrative Tribunals Act, 1985. In this connection Section 15 of the Act may be usefully referred to. That confers the jurisdiction upon the State Administrative Tribunal in relation to all service matters...

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discreet matters pertaining to service in connection with the  
local affairs of the State. The deciding factor for determination  
of jurisdiction, therefore, would be to see whether there  
arises any intense dispute between the applicants on the  
one hand and the respondents on the other exclusively  
relating to a matter pertaining to State service in which  
in such a case the State Tribunal alone will have jurisdiction. But  
where one of the parties to the dispute makes a grievance  
relating to a matter pertaining to an All India Service  
then notwithstanding that the other party may be seeking  
to rely upon the provisions regulating State service it  
will be a matter within the ambit of jurisdiction of the  
Central Administrative Tribunal. In view of that position  
we hold that this Tribunal has got jurisdiction to entertain  
and decide all these applications. Consequently, the  
objection raised by the State of Assam and respondent No.4  
to the jurisdiction of this Tribunal is rejected. Therefore,  
point No.2 is answered in the negative.

Point No.3 : The above discussion on point No.2 leads  
us to hold that the applicants are aggrieved persons and  
are competent to challenge the impugned action of the  
Government of Assam and the appointment of respondent No.4.  
This point is, therefore, answered in the affirmative.

Point Nos. 4 to 15 : These points can be conveniently  
dealt with together. The Assam Forest Service (Class-1)  
Rules, 1942, (hereafter referred to as AFS Rules) were  
framed by the Governor of Assam in exercise of the powers  
conferred by Preamble, Section 241 (1) and (2) of the  
Government of India Act, 1935, for regulating the recruit-  
ment and the conditions of Service of the Assam Forest  
Service Class - I. The Rules came into force on 1.4.1942.

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and the rules were thus framed under statutory power. These non-constitutional rules though are Pre-constitution rules have not been repealed by the State legislature or the competent authority. Any note Article 313 of the Constitution of India which contains ~~any~~ transitional provisions is as under:

Administrative: "Until other provision is made in this behalf under this Constitution, all the laws in force immediately before the commencement of this Constitution and applicable to any public service or any post which continues to exist after the commencement of this Constitution, as an All-India Service or as service or post under the Union or a State shall continue in force so far as consistent with the provisions of this Constitution."

('Constitution of India' is hereafter referred to as the Constitution).

Now the subject of 'State Public Services' is a State subject enumerated at Entry 41 in List II in the VIIth Schedule to the Constitution read with Article 246 of the Constitution.

Now the AFS Rules relate to State Public Service. The subject 'Forests' was also included in State list until with effect from 3.1.1977 it has been placed in concurrent list at Entry 17A in List III in the VIIth Schedule by the

Constitution (Forty-second Amendment) Act, 1976. As a

combined effect of Entry 41 and (earlier) Entry 19 relating to 'Forests' in the State list, the Rules were applicable to the recruitment and conditions of service to the Assam

Forest Service Class I upto 3.1.1977 when the subject of Forests was placed in the concurrent list. That raises the

question of applicability of the rules either wholly or in part after 3.1.1977. The position prior to that is a grey area and need not be discussed as it is not material to decide the present applications.

The AFS Rules were framed by the Government as part of its executive function and were not a law passed by the legislature. However, the expression 'laws in force'

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occurring in Article 313 of the Constitution would include these rules as they were framed under statutory power derived from Section 241(2) of the Government of India Act, 1935. Article 372 of the Constitution provides that (subject to the other provisions of the Constitution) all the law in force in the territory of India immediately before the commencement of the Constitution shall continue in force therein until altered or repealed or amended by a competent Legislature or other competent authority.

Explanation I to clause 3 of the Article is in following terms:

"The expression 'law in force' in this article shall include a law passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that it or parts of it may not be then in operation either at all or in particular areas."

The AFS Rules are not shown to be covered by any order passed by the President in exercise of power under Article 372A of the Constitution. These Rules have not also been repealed by the State legislature or other competent authority so far. The AFS Rules therefore must be held to be the 'law' made by a competent authority before the commencement of the Constitution and continuing to be in force in the State of Assam as specified in the First Schedule read with Article 1(2) in Part I of the Constitution, since it has not been repealed.

The entire controversy in the instant applications revolves around the question as to whether any of the provisions of the Rules have been rendered inoperative with the formation of the Indian Forest Service. The applicants contend that Rules 3 and 11 of the AFS Rules are no longer 'law in force' and therefore cannot be acted upon as has been purported

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to be done by the Government of Assam.

Briefly stated, the scheme of the Rules is as follows:

Rule 1 gives effect to the Rules from 1st April 1942. Rule 2 defines (a) 'The Scheme' to mean Assam Forest Service, Class-I and (b) Member of Service to mean a Government servant appointed in a substantive capacity under the provisions of the said Rules to a post in the cadre of the Service, but it does not include a member of the Indian Forest Service or of existing Assam Forest Service (inverted commas supplied). Rule 3 provides for cadre (set out separately below). Rule 4 lays down the source of Recruitment to the Service and clause (c) provides:

(c) By promotion from the Provincial Forest Service or the Subordinate Forest Service of men of proved merit and efficiency who are considered fit to hold charge of an important Forest Division.

Rule 5 lays down Additional qualifications. Rule 6 deals with candidates for direct recruitment. Rule 7 deals with appointment on probation. Rule 8 deals with period of probation and Rule 9 with confirmation. Rule 10 provides that until confirmation the member of Service will continue to hold his appointment on probation. Rule 11 provides for 'Pay and Designation'. Rule 12 relates to initial pay of the members appointed to the Service. Rule 13 relates to 'Efficiency Bar'. Rule 14 provides for special pay. Rule 15 provides for matters relating to assignment position in order of merit to Assistant Conservator of Forests joining on probation and the last rule, i.e. Rule 16 provides that for leave, leave salary, allowances, pension and other conditions of service shall be regulated by the rules made by the Provincial Government from time to time (The word

'Provincial' ...

	(1)	(2)	(3)
	6	250	400
7 )	to )	not quoted	
25 )			
26	....		900

Seiante: (Notes 1, 2 and 3 omitted),

(2). The following posts when held by members of the Service shall carry pay as shown below:

Conservator of Forests .... 1250-50-1500.

(3). The revised scale of pay for the members of the Assam Forest Service (Class-I) as introduced from 1st October 1956 are as follows and members of the Service electing the revised scales or appointed on or after 1st October 1956 shall draw pay in these scales -

(i) ..... (AFS Class I Sr. Scale)

(ii) ..... (AFS Class I Jr. Scale)

(iii) Conservators of Forests:

Rs.1000-60-1300 (EB)-60-1500/-

(4) (Revised Pay Scale with effect from 1st April 1964)

(i) ..... (AFS Class I Sr. Scale)

(ii) ..... (AFS Class I Jr. Scale)

(iii) Conservator of Forests:

Rs.1200-60-1380 (EB) 60-1500

(iv) Chief Conservator of Forests:

Rs.1500-60-1680 (EB)-60-1800.

The Scale applicable to persons having such special qualifications and experiences as may be prescribed by the Government otherwise the scale admissible will be Rs.1300-60-1450 (EB)-60-1600."

Rule 11 noted above is as it stands after its amendment with effect from 1st October 1956 vide Notification No. FRO/ESTT/206/64/48 dated 26.5.1967. Apparently sub-rules 3 and 4 have been given retrospective effect from 1956 though

it was inserted in 1967.

On behalf of Dr Y.K. Phukan the learned Government counsel for the State of Assam and Mr A.S. Sarma the learned Senior

Counsel....

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<sup>At all</sup> 'Provincial' is retained in the Rules).

Since Rules 3 and 11 are impugned these may now be noted in detail. Rule 3 is as follows:

"Cadre

3. The cadre of the Service will consist of 24 posts as detailed below:-

Conservators ... 2

Divisional Forest Officers ... 14  
(including Working Plan  
Officer, Forest Utiliza-  
tion Officer and one post  
of Silviculturist and  
Botanical Forest Officer)

Indian list post ... 1

Attached Officers ... 4  
(Assistant Conservators  
of Forests)

Leave and training reserve 3

Total: 24

Provided that appointments to the Service shall be limited to the number of posts by which the sanctioned cadre exceeds the number of members of the Indian Forest Service, the Service and the existing Provincial Forest Service for the time being borne on the Assam Forest Establishment:

Provided further that -

(1) the Government may leave unfilled or hold in abeyance any post without thereby entitling any member of the service for compensation;

(2) the Government may increase the cadre by creating permanent or temporary posts from time to time as may be found necessary."

Rule 11 is extracted below omitting particulars that are not material to the question under consideration.

"11.(1)(a) The scale of pay of the Service will be as follows:

Year of, Junior Scale service, (Asstt. Conservator of Forests) Senior scale (Deputy Conservator of Forests)

-(I) - - - - - (2) - - - - - (3) - - -

1 200 ....

2 200 ....

3 225 ....

4 225 ....

5 250 ....

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On a resolution that it was necessary and expedient in the national interest that Parliament should by law create three new all-India services, which include the Indian Forest Service. By Section 3 of the All India Services Act, 1951 (No. LXI of 1951) made by the Parliament the Central Government has been empowered to make in consultation with the State Governments concerned and subject to approval of the Parliament, rules for the regulation of recruitment and the conditions of service of persons appointed to the all-India Services. The Indian Forest Service has been constituted as an all-India service under the Act by amendment to Section 3 of the Act under the All India Services (Amendment) Act, 1963 enacted on 6.9.1963 in pursuance of the Resolution of the Council of States of 7.12.1951.

The Central Government has in the exercise of the power conferred by the Act framed the following rules and regulations (amongst others) - in respect of the Indian Forest Service:

- IFS (Cadre) Rules 1966
- IFS (Fixation of Cadre Strength) Regulations, 1966
- IFS (Recruitment) Rules, 1966
- IFS (Appointment by Promotion) Regulations, 1966
- IFS (Pay) Rules, 1968, and
- IFS (Regulation of Seniority) Rules, 1968.

The Central Act thus covers the field of recruitment and conditions of service to the All India Forest Service though primarily under Article 309 the power of recruitment to the services of the State belongs to the State. In order to avoid the vice of encroachment by the Central Government upon that autonomy the consent of the Council of States which 'ex-hypothesis' represents the States and consultation with the State Governments concerned has been laid under Article 312.

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11. Counsel for the respondent No.4, heavily rely upon the above rules. They contend that as 2 posts of Conservator of Forests are provided in the cadre of AFS under Rule 3 and provision for scale for Chief Conservator of Forests having been made in sub-rule (4) of Rule 11 the respondent No.4 could be and is validly appointed to one of the posts of Conservator of Forests available under Rule 3 and an ex-cadre post of Chief Conservator of Forests can also be created and is created under sub-rule (4) of Rule 11 and consequently the action of the Government of Assam purported to be challenged in the applications is perfectly legal and valid and cannot be impugned.

In order to determine the correctness of the above contention it is necessary to take a note of the history leading to the formation of the Indian Forest Service and the relevant provisions governing it and its impact on the AFS Rules.

Part XIV of the Constitution deals with services under Union and the States. Article 312 (Chapter I) contains the provision for creation of All India Services. It lays down:

"312 (1). Notwithstanding anything contained in Chapter VI of Part VI or Part XI, if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services including an all-India judicial service common to the Union and the State and subject to the other provisions of this Chapter, regulate the recruitment and the conditions of service of persons appointed to any such service.

- (2) .....
- (3) .....

On December 7, 1951 the Council of States passed

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The Indian Forest Service is thus an All-India

Service. It is not a Central Service. The incident of

its being an All India Service is that the recruitment

to it and conditions of service under it are regulated

under the Act of Parliament, i.e. All India Services

Act, 1951 and Rules and Regulations framed thereunder.

It is pertinent to note that under Article 312 the

service is common to the Union and the States.

We are mainly concerned in these cases with the

IFS (Cadre) Rules, IFS (Fixation of Cadre Strength)

Regulations, IFS (Recruitment) Rules, IFS (Appointment by

Promotion) Regulations and IFS (Pay) Rules (hereafter

referred to as Cadre Rules, Cadre Strength Regulations,

Recruitment Rules, Promotion Regulations and Pay Rules

respectively for the sake of brevity). These Rules and

Regulations have acquired statutory force having been

made by the Central Government in exercise of the powers

conferred by All India Services Act after consultation

with the Governments of the States concerned.

The Cadre Rules, the Recruitment Rules and Pay

Rules have been made in exercise of the powers conferred by

Sub-section (1) of Section 3 of the All India Services Act.

The Cadre Strength Regulations have been made in pursuance

of sub-rule (1) of Rule 4 of the Cadre Rules and the

Promotion Regulations have been made in pursuance to sub-

rule (1) of Rule 8 of Recruitment Rules. The preamble to

each of these rules and regulations shows that these have

been made after consultation with the Government of the

States concerned.

Thus the Rules and Regulations made by the Central

Government for regulating the Indian Forest Service constitute

the....

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the compendium of Central law governing the said all-India service which is common to the Union and the States and since it has been made after consultation with the Government of the States concerned it is binding upon the State Governments.

The position that then emerges is that on the one hand there is the State law in the shape of Assam Forest

Service (Class I) Rules, 1942 which is a living law and on the other hand there is the Central law in the shape of

the above noted Rules and Regulations made by the Central Government. Thus the Assam Rules have to be read as part

and parcel of Government of India Act, 1935 and the various

IFS Rules and Regulations as part of All India Services

Act, 1951 with the difference that whereas the AFS Rules is

a creature of exercise of power by the State of Assam; the

IFS Rules is a creature of exercise of power under the law made by Parliament namely, All India Services Act, 1951.

These are instances of subordinate legislation. It has been

laid down by the Supreme Court in AIR 1961 SC 751 that

unstatutory rules made under a statute must be treated for all purposes of construction or obligation exactly as if they

were in the Act and to be judicially noticed for all purposes

of construction or obligation. The position has not however

to be confused as giving rise to two sets of competing rules, one under the Government of India Act, 1935 and another under

the All India Services Act, 1951. Here is squarely a question

of finding out whether the Rules made by the State of Assam

albeit in exercise of powers under a Central Act and Rules

made by the Government of India in exercise of powers under

a law made by Parliament can coexist. That has to be tested

by....

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- by reference to Article 372 read with 254 of the Constitution.
- ✓ Before, however, we proceed to do so it will be necessary to note the provisions which appear to cover the same field in the 2 sets of the Rules.

### Comparative Table

#### I. Constitution of Cadre

##### AFS (Class I) Rules 1942

- Rule 3  
Provides for cadre of 24 officers in the AFS (Class I) Service  
(No post of Chief Conservator specified)

#### II. Strength of Cadre

- Rule 3 provides for 2 posts of Conservators, a post of Forest Utilization Officer (in the category of Divisional Forest Officers). (Other posts not stated here)

IFS (Cadre) Rules 1966 read with IFS (Fixation of Cadre Strength) Regulations, 1966

- Rule 3  
Provides for constituting IFS Cadre for each State as 'State Cadre'

Under the Schedule read with Regulation 2 of the Regulations the posts borne on and the strength and composition of Cadre of the IFS in the State of Assam is:

Principal Chief Conservator	- 1
Principal Chief Conservator of Forests Wildlife	- 1
Principal Chief Conservator of Forests, Social Forestry	- 1
Conservator of Forests	- 6
Specified posts of Conservator of Forests (total)	- 6
Field Director, Tiger Project	- 1
Director, Kaziranga National Park	- 1
Forest Utilization Officer	- 1
(Other posts not stated here)	

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3. Yardenger III: Source of Recruitment:

Rule 4: prescribes the source of recruitment by direct recruitment and promotion from the Provincial Forest Service or the Subordinate Forest Service to AFS Class I service.

Rule 4 of Recruitment Rules prescribes the method of recruitment to IFS by (a) competitive examination and selection and also by (b) promotion of substantive members of the State Forest Service (Appointment by promotion). Regulations lay down the procedure for selection and promotion.

4. Pay and designation:

Rule 11(1)(a), (2), (3) and (4)

Conservator of Forests  
Rs.1250-50-1500, and after 1.10.1956,  
Rs.1000-60-1300(EB)-60-1500

Chief Conservator of Forests:  
Rs.1500-60-1680(EB)-60-1800  
to persons having special qualifications or experience otherwise

Rs.1300-60-1480(EB)-60-1600

Rule 3 of Pay Rules prescribes Time Scale of Junior Scale, Senior Scale Selection grade of Rs.4100-125-4850-150-5300 For Conservator of Forest Super time scale is prescribed thus:  
Level II (Conservator of Forests)  
Rs.4500-150-5700  
Level I (for Addl. Chief Conservator/Chief Conservator of Forests).  
Rs.5900-200-6700.

It will be noticed from the above respective provisions that

to except for difference in the scales in other respects the

provisions under the two sets of rules are mostly similar and

cover the same fields namely, formation of Cedars, its

protection, mode of recruitment and most importantly designation

of posts of Conservator of Forests and Chief Conservator of

Forests. Whether these posts can simultaneously exist and

whether their field of operation is coextensive or separate

in the same territorial limits is the crux of the problem.

*[Signature]*

It will bear repetition to state here that Respondent No. 4 who has been appointed to the post carrying the designation of Conservator of Forests, Central Assam Circle

has not been promoted to the IFS. The AFS Rules though providing for 2 posts of Conservators do not specify any circle or region or zone for which they would be exercising their power and duties. That was left to the will of the Government. However, they could function only within the

State of Assam. In comparison, the IFS Cadre Strength

Regulation apart from specifying certain posts leaves the posts of 6 Conservators to cover the entire territorial

area of the State of Assam excluding the areas under the specified posts and would exercise the powers as Conservators

within the limits earmarked for the posts where they may be allocated. The post of Conservator Central Assam is not

marked as a post either under Rule 3 of AFS Rules nor under IFS Cadre Strength Fixation Regulations. The Schedule to

those Regulations carries the heading "Assam". That implies

that one of the IFS officer appointed as Conservator of

Forests to one of the 6 posts earmarked in the Regulations

would exercise power and perform duties in the area purported

to be covered within Central Assam circle when appointed to

the post within the ambit of which falls the area now demarcated

by the State Government as 'Assam Central Circle'.

No material has been produced by the State of Assam

to explain as to when the Central Circle has been formed

and what are the territorial limits of that circle. The

order appointing the respondent No.4 as Conservator of that

Circle does not specify either his powers or duties or the

area over which he is supposed to function. The learned

counsel for the State of Assam as well as for Respondent No.4

have not been able to show to us any material to gather

as to what the said circle is.

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as to on what basis the State Government has divided the entire area of the State to which the 6 IFS officers would be posted to draw an inference that the area carved out as ~~left~~ <sup>left</sup> the Assam Central Circle was outside the limits of areas meant exclusively for the 6 IFS officers. That leads to a very anomalous and unusual situation. It will mean that in the same area two officers with same designation of Conservator of Forests one belonging to IFS and another to AFS would simultaneously function. And even that obviously cannot be permitted as it will lead to two parallel services covering the same field. It has also not been shown on behalf of the State of Assam that the State Conservator of Forests would perform such duties and will exercise only such powers as would not be exercisable by the IFS officer. They have not thus ruled out the possibility of overlapping of the duties and exercise of powers by the two officers from the two streams posted with the same designation. Indeed this situation can give rise to a direct conflict between the two. That would defeat the intention of the Parliament to have provided for constitution of IFS as an All India Service after consultation with the State Government.

There is, however, on record some material to show that entire area of the State was divided into 6 zones to be placed under 6 Conservators. The applicant in O.A.No.59/93 has relied upon a copy of extract from the report of Assam Pay Commission 1973, Annexure-U1. In para 37.2 thereof it is recited thus:

"The Chief Conservator of Forests belongs to the Indian Forest Service and exercises supervisory functions throughout the State. At the headquarters, he is assisted by two Planning Officers of the rank of Deputy Conservator of Forests. For administrative convenience, there are 5 forest circles, each under the charge of a Conservator, who also belongs to the Indian Forest Service. Each circle is

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again divided into Forest Divisions; and a Deputy Conservator of Forests in-charge of the Division. There are at present thirtyone Deputy Conservators including the Director of Forest School and the two Planning Officers."

(Emphasis supplied)

The said applicant has also annexed as Annexure-D2 a copy of the Notification issued by Government of Assam No.77 dated 12.2.1975 publishing the Resolution on the Report of the Pay Commission, 1973. The revised Pay Scales approved contain following entries:

Forest Department

Chief Conservator of Forests

- borne on IFS

Conservator of Forests

- borne on IFS

(Other entries not material  
hence not set out)

These two extracts make it abundantly clear that entire State of Assam was divided into five circles and each circle was to be in charge of an IFS officer as Conservator (excluding specified posts in the cadre strength schedule).

It is not the case of the Government of Assam that either Central Assam Circle is one of these divisions - in which case respondent No.4 could not be appointed in charge of that circle he not being member of IFS - nor that the divisions were reorganised and area covered by Assam Central Circle was carved out, out of the existing five divisions and was earmarked for an AFS officer. Nor it is their case that the five divisions mentioned in the Pay Commission's report did not include the area now demarcated as Central Assam Circle.

In their written statement the Government of Assam have simply tried to gloss over this aspect and no explanation is....

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is offered. They simply state in para 12 thus:

"The violation of the revision of Pay Rules of the State of Assam does not come into picture in as much as the revision of pay rules is not statutory."

The respondent No.4 has similarly stated in para 12 of his written statement that the revision of pay rules is not statutory and the suggestions are ~~recommendatory~~ and ~~not fulminant~~ as the Pay Commission did not fix the salary of a ~~salary~~ ~~any~~ ~~officer~~ ~~in~~ ~~any~~ ~~category~~.

Conservator of Forests borne in the Assam Cadre under the AFS Rules, 1942, the Government of Assam vide notification dated 27.10.1992 fixed the salary of Conservator of Forests held by an AFS officer borne in the Assam Cadre.

These contentions do not help the said two respondents to overcome the factual date recorded by the Commission in its report. We see no reason to disregard the same and that supports our view that there was no scope whatsoever for the Government of Assam to appoint an AFS officer under the guise of posting him to a named circle which was not outside the purview of IFS incumbents. The inevitable result is that the Government of Assam have created a parallel post to an IFS cadre post and have appointed respondent No.4 to that post which would not be permissible.

Another aspect of the matter is that by the impugned order dated 28.3.1992 the respondent No.4 was appointed on temporary basis but for unspecified duration to the rank of Conservator of Forests, Central Assam Circle. The order itself shows that the post was till then held by an IFS officer, R.N. Hazarika who was transferred to accommodate the respondent No.4. As so far discussed there was no scope...

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scope for an AFS officer to be appointed to the post of Conservator of Forests. If the appointment is to be treated as temporary appointment of an ex-cadre officer to the cadre post then the Government of Assam had to act in accordance with the provisions of Rule 9 of the Cadre Rules which they have not done. The Union of India have contended to this respect in their written statements as follows:

"It is clear from the above that a member of the State Forest Service, whose name is not included in the Select List or who is not next in order in that Select List cannot be appointed to a cadre post beyond a period of three months without the prior approval of the Central Government. For appointment of respondent (4) who belongs to the Assam Forest Service, no such approval was obtained by the State Government from the Central Government."

The State Government have not controverted this contention their stand being that the appointment of Respondent No. 4 is made under AFS Rules and Rule 9 of IFS Cadre Rules has no application.

We have dwelt with the above aspect in some detail because Dr. Y.K. Phukan, the learned Government Advocate for the State of Assam drew our attention to two Notifications issued by the Governor of Karnataka and sought to contend that a post of Conservator of Forests in the State Service can coexist with the posts earmarked for IFS officers. The Notification-I No. AHFF 9 FEG 85(PF) Bangalore, dated 29.6.1987 shows that the State Governor was pleased to

sanction establishment of State Service Cadre in respect of the Forest Department of the Karnataka General Service. The first part of the Schedule shows sanctioned posts of Principal Chief Conservator of Forests, Chief Conservator of Forests, Additional Chief Conservator and Conservator of Forests (besides other posts). Part 2, however, contains

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to the following description at serial No.1.

Encadred, of 1. Conservator of Forests - 1

However, what is significant is that it is shown under the heading 'temporary'. No post is shown as permanent. We cannot, therefore, assume that Rule 9 of the IFS Cadre Rules was not in contemplation. Moreover, by Notification No. AHFF 9 FEG(PF) also dated 29.6.1987 the Governor of Karnataka, was pleased in exercise of powers conferred by proviso to Article 309 of the Constitution to make 'The Karnataka Forest Department Services (Recruitment) Rules, 1987'. The schedule contains following entries:

**Schedule**

Category of Posts	Method of Recruitment	Minimum Qualification
Principal Chief Conservator of Forests	Encadred in IFS	
Chief Conservators	-do-	
Additional Chief Conservators	-do-	
<u>Conservator of Forests</u>	-do-	
Field Director Project Tiger	-do-	
Deputy Conservator of Forests	-do-	
<u>Conservator of Forests</u> (Non IFS)	By promotion from the cadre of Deputy (Non IFS) if no suitable person is available then by appointment of an officer from the cadre of IFS	For promotion Must have put in a service of not less than five years in the cadre of Deputy Conservator of Forests (Non IFS)

(underlines supplied)

It does undoubtedly appear from the above rules that Non IFS posts of Conservator have been sanctioned alongwith cadred posts. Only from that circumstance it is not, however, possible to gather as to on what basis that was done. We do not know whether there was consultation with the...

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the Central Government or whether its approval was obtained. In any event we do not know whether those rules would stand the test of validity or not on similar grounds as in the instant cases.

Next vital aspect of the matter is whether even assuming that AFS Rules is also a prevailing law and the 2 posts of Conservators were provided in Rule 3 in 1942 these were available to be filled in in the year 1992 or whether these had lapsed by surrender or operation of law to the IFS cadre. It must be remembered that recourse has been taken to these rules by the Government of Assam solely for accommodating the respondent No.4 and it is stated by the applicants that at least for the last 20 years no recourse was taken to these provisions. The State of Assam have not shown as to when before 1992 they had purported to appoint an AFS officer to the post of Conservator of Forests under the AFS Rules. As has already been noted that the most vital feature of the creation of the IFS as an all-India service <sup>is</sup> in consultation with the Governments of the States. That is provided in Section 3 of the All India Services Act, 1951. The IFS (Cadre) Rules, IFS (Fixation of Cadre Strength) Regulations, IFS Recruitment Rules, IFS (Appointment by Promotion) Regulations and the IFS Pay Rules, show that all these rules and regulations have been made after consultation with the Government of States concerned. What was the stand of the State of Assam during those consultations in respect of the 2 posts of Conservator of Forests provided under AFS Rules in 1942 is necessary to be seen. It may be mentioned that it is not the case of the State of Assam that they were not party to any of these consultations.

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With this background it would be appropriate at this stage to look to the manner in which the All India Forest Service has come to stay in the State of Assam. The available material produced shows that for the purpose of fixation of cadre strength under the IFS (Cadre) Rules there was no consultation with the State Government and on that basis the cadre strength was fixed as mentioned in the schedule. The Joint Secretary, Government of India, Ministry of Home Affairs, wrote a letter to the Chief Secretary to the Government of Assam to consult him regarding the IFS cadre of the State as required under Rule A(1) of draft IFS (Cadre) Rules circulated on 10.3.1965. The letter stated that on the basis of the number of posts to be encadred in the IFS as supplied by the State Government, a cadre schedule for the IFS cadre of the State was drawn up which was enclosed. An early concurrence was requested. Much earlier in 1962 a note giving outline of a scheme for creating All India Services including Forestry had been circulated to the State of Assam. In that scheme it was provided that each State will have a cadre of its own in the Service the strength of which will be determined in full accordance to its requirements, but on a broadly uniform basis and that the underlying assumption in doing so was that the All India Services were organised mainly to provide officers for superior duties in the general and Police administrations. As far as the Central posts requiring the services of Forest officers was concerned it was stated that as the number was small no central cadre will be necessary and the unusual central deputation quota in the State cadres will be adequate for the needs of the Central Government. Appendix to that scheme stated that all posts of the rank of Deputy Conservator of Forests, Divisional Forest Officer and above

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will be included in the Service, i.e. IFS. It was further postulated that the number of posts required by the Central Government will be distributed to the various State Cadres on the agreed basis.

That was followed by an important communication from the Government of Assam bearing U.O.No.FOR/ESTT/172/62/55 dated 20.9.1962 on the subject of creation of Indian Forest Service. The first para stated as follows:

" We have given careful consideration to the approach suggested by the Cabinet and fully agree that there should be scope for promotion opportunities for the Officers of the State Forest Service even after the coming into being of the Indian Forest Service. We have also examined the requirement of the Officers for the State Forest Service, and our suggestions are given below:

Those were the suggestions made by the Secretary to the Forest Department to the Chief Secretary. While proposing the posts to be encadred to the IFS and to be retained in the State Service it was suggested that senior posts under the State Government to be encadred in IFS would be 1 post of Chief Conservator of Forests, 3 posts of Conservator of Forests and 27 posts of Deputy Conservator of Forests (total 31) would be borne <sup>on</sup> of IFS. The posts suggested to be earmarked for the Assam Forest Service were three posts of Deputy Conservator of Forests described as senior posts under the State Government and thirty posts of EACF described as junior posts under the State Government. That means the posts of Deputy Conservator of Forests and downwards were to be retained in State Service and the posts above that including the posts of Conservator of Forests were to be borne on the IFS Cadre. On 30.11.1964 the Government of India issued a Memorandum on the Constitution of IFS to all the States. It states that the memorandum has been drawn

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Initiated and upon the basis of discussions that took place at the 20th Chief Secretaries' Conference held in March 1963. After considering the replies of various State Governments it was suggested in the interests of uniformity and to ensure that the Government of India draw upon as far as possible equally from the different State cadres for their various posts that all permanent posts and all temporary posts which have been in existence for more than three years or are likely to continue indefinitely may be compulsorily encadred within the different grades. It was proposed that in the initial composition of the cadre senior posts under the State Government, e.g., Chief Conservator of Forests/Conservator of Forests etc. shall be borne on the cadre.

20. By letter dated 25.9.1976 the Cabinet Secretariat to the Government of India informed all the State Governments that instructions were given for formulating the proposals for triennial review under Sub-rule 2 of Rule 4 of the IFS (Cadre) Rules, 1966. This has limited relevance in the present context to the extent that it contemplated that the State Government should sponsor their review proposals for amendment to the cadre schedule either by way of addition of new posts or by way of redesignation of posts besides increasing or decreasing the number of senior duty posts under the State Governments. That implies that the senior posts borne on the IFS Cadre could be increased or decreased depending on the circumstances pointed out by the State Government and does not leave it to the State Governments to themselves carry out such exercise by creating new posts independently or by increasing or decreasing them.

21. It appears that in the year 1981 a meeting of the Review Committee of the IFS Cadre was held at New Delhi at

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which the proposals made by the Governments of Assam and Meghalaya were considered and certain decisions were taken. It also appears that the proposal to encadre 2 posts of Conservator of Forests for Northern Assam Circle and Central Assam Circle in the scale of Rs.1800 - 2000 was accepted. It will be remembered that the appointment of respondent No.4 has been purported to be made as Conservator of Forests, Central Assam Circle. Now this information has been brought to the notice of the court by respondent No.8 by filing a Xerox-copy of the minutes of the meeting aforesaid, but that does not form part of any affidavit much less any written statement of the respondent No.8. Serious objection has been taken by Dr Y.K. Phukan for the State of Assam as well as Mr A. Sarma, learned counsel for the respondent No.4 to the production of this document without it being made part of the pleadings or without being supported by an affidavit. It was also contended by them that the respondent No.8 has not disclosed as to from what source he could get access to this document which related to the proceedings at the Cabinet Secretariat and as it was not expected to be circulated for general information. The objections so taken are formidable and makes it difficult for us to act on the basis of this document. However, it must be said that when a copy, <sup>was</sup> served upon the counsel for the State of Assam as far back as on 6.12.1994, the Government of Assam was expected either to confirm the existence of these minutes or otherwise. That was a matter within the exclusive knowledge of the State of Assam. It was open to the Government of Assam to state that this decision was not implemented or was subsequently changed but, since they have maintained complete silence in that respect....

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With regard to the question of whether or not the decision to accept the application for registration of the mark in question was correct, it becomes difficult to assume that such a decision was not taken. Even so, it would not be correct on our part to rely on the copy which is produced off-hand and <sup>we</sup> would have not pursued the circumstance further. However, in the rejoinder filed by the applicants in O.A.No.53/93 they have

REPLIED TO B.O.P. ON 10.1.1992  
The statement to the effect that it is  
nowhere mentioned that the post of  
Conservator of Forests, Central Assam  
Circle, Guwahati has been earmarked as  
IFS cadre post is grossly incorrect as  
would be apparent from the minutes of  
the meeting of the IFS Cadre Review  
Committee held on 21.12.1981, a copy  
of which is annexed herewith as  
Annexure-X."

The applicants, however, did not annex the copy and left

the statement unsupported by the same. Yet it is important

to note that this rejoinder was filed on 22.3.1994, whereas

respondent No.8 had produced the copy of the minutes on

6.12.1994. It would not, therefore, mean that the statement

in the rejoinder was based on the information supplied by

is based on the information supplied by the respondent No. 8. It is submitted that the information supplied by

the respondent No.8. The applicants thus had purported to make the statement independently on the basis of their

make their statement independently on the basis of their

stated that the contents of para 6, wherein the statement

occurs, are true to his knowledge, derived from the records  
of the U.S. Fish Commission.

It appears that the applicants and respondent No.8 being

officers in the Forest Department could possibly get access

to the said document. The Government of Assam have not yet

to file any sur-rejoinder either disputing the statement

made by the applicants as above or denying the fact about

existence or otherwise of the said minutes. Thus the copy

produced by respondent No.8 and the statement made by the

the two documents made by the applicants are consistent and in accordance with the

applicants are consistent and in the absence of any denial

of the same on the part of the Government of Assam we see

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no good reason to overlook the statement made by the applicants in the rejoinder. It must, however, be stated that we strongly disapprove the conduct of the applicants in not filing the copy of the Minutes thus leaving room for some doubt about the truth of their statement. Be that as it may, but the fact that even after 1931 till 1992 the Government of Assam had not treated the post of Conservator of Forests as pertaining to the State Forest Service in addition to IFS is consistent with the decisions as reflected in the minutes. We think that we can take due note of this circumstance although we may not rely on the minutes as such.

22. Thus having regard to the background material and the course of events in respect of formation of IFS and its implementation it does appear that everyone concerned had taken it as a settled position that the post of Conservator of Forests was an encadred post of IFS and there was no scope for appointing a State Officer who is not a member of the IFS to the post of Conservator of Forests, on permanent basis. That position is consistent with the mandate of Article 301312 of the Constitution of India, the provisions of the All India Services Act, 1951 and the Constitution of Indian Forest Service by appropriate rules and regulations made by the Government of India in exercise of powers under the provisions of All India Services Act, 1951. It is thus abundantly clear that the intention behind constituting All India Services such as IAS, IPS and IFS was that all superior posts should be borne on the All India Cadre. The Schedule to the IFS(Fixation of Cadre Strength) Regulations, when it provides that the senior posts under the State Government will be cadred posts, it clearly means that the posts of Conservator of Forests and Chief Conservator of Forests were intended only to be borne on the All India

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Cadre. That is also consistent with Article 312 of the Constitution. The result of taking any different view would lead to creating a chaotic situation in respect of Forest Service. In this connection it may not be out of place to refer to the opinion that was expressed by the Inspector General of Forests, Government of India, twice, firstly, in his letter dated 11.2.1994 addressed to the Chief Secretary, Government of Assam, after stating that as the

Cadre Controlling Authority he having received representations from IFS Officers borne on Assam Cadre against promoting the State Forest Service officer to the rank of Conservator of Forests he would request to look into the matter and get the orders dated 28.3.1992 (promoting respondent No.4) revoked. In support of that request he stated that Rule 9 of the IFS (Cadre) Rules, 1966 requires that cadre posts should not be filled in by the non-cadre officers and also as per the scheme of All India Services, the senior civil service posts in the forestry sector in the State Governments, are required to be filled in by the officers of the IFS. He expressed similar opinion in his letter dated 11.4.1994 again addressed to the Chief

Secretary to the Government of Assam, in which he additionally referred to Rule 8 of the Cadre Rules. He specifically stated that as per Rules 8 and 9 every cadre post shall be filled up by a cadre officer and a non-cadre officer who is in the proper order in the select list can hold a cadre post only if there is no suitable cadre officer available for filling the vacancy and also if the vacancy is not likely to last for more than 3 months. It is true that it is merely an opinion of an officer and Mr A.P. Sarma, learned counsel for the respondent No.4, is right in his submission that this being merely an opinion of an officer

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✓ it has no legal efficacy, We are referring to the same just to highlight that even the Cadre Controlling Authority of the level of Inspector General of Forests, Government of India, had taken the view that the posts of Conservator of Forests are necessarily to be filled up by cadre officers, which view is consistent with the position we have discussed.

23. A reference to the decision in the case of A.I. Aypu Calicut -vs- State of Kerala and others, AIR 1970 Kerala 54 may be made in this connection with advantage. The State Government of Kerala promoted and appointed the 4th respondent in that case as Conservator of Forests in the newly created post provisionally pending selection of a suitable officer by the DPC. The said 4th respondent was a Deputy Conservator of Forests. The question that was raised before the High Court was as to whether the State Government could create a post of Conservator of Forests ex-cadre. The stand of the State Government was that they have the power to appoint Conservator of Forests outside the cadre strength for IFS. The situation was that at the time of formation of IFS, there were five posts of Conservator of Forests in Kerala, and that number was reduced to four. Three of these posts were made cadre posts under the Indian Forest Service (Fixation of Cadre Strength) Regulations of 1966 leaving the fourth one alone with the incumbent thereof. The claim of the State Government was that the fourth place existing at the time of the formation of IFS and the present post created by them being ex-cadre posts the State Service personnel could be promoted to those posts. After a detailed examination of the question and the nature and background of the constitution of the All India Service of IFS, the contention of the State Government was

rejected....

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..... rejected. It was observed thus:

..... If the contention of the State is accepted, it is quite likely that there will be parallel services of the State cadre and the All-India cadre having the same functions. This does not appear to be the intention of the legislature, nor the intention of Art. 312 of the Constitution.

It was argued before the High Court on behalf of the State Government that all the posts of Conservator of

Forests were not intended to be included in the All-India Cadre. That also was rejected holding that on closer

scrutiny it will appear to have no force. It was also observed in connection with the steps taken by the State

Government that the State Government's attempt was to see

whether the Government can create a service parallel to

that of IFS. With the difference that that was a case of

creating an ex-cadre post the position as obtains in the

instant case is similar more particularly as regards the

creation of ex-cadre post of Chief Conservator of Forests.

The decision fully supports our view as expressed above.

24. The conclusion that inevitably has to be drawn

from the above discussed circumstances is that the

provision in Rule 3 of AFS Rules to the extent it provides

for creation of 2 posts of Conservators in the State Service

has become a dead letter though rest of the rules (save and

except part of Rule 11 with which we shall deal separately)

may survive. That provision comes in direct conflict with

the provisions regulating IFS Service. That brings in

Article 246 of the Constitution into play which deals with

the distribution of legislative powers between the Union and the

State legislatures. The article secures the predominance or

supremacy of the Union legislature in case of overlapping as

between Lists I, II and III in the VIIth Schedule. Article 25

deals....

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✓ deals with inconsistency between laws made by Parliament and laws made by the legislatures of the States. In <sup>ASR-1959 S.C. 749</sup> Prem Nath -vs- Jammu and Kashmir the Supreme Court has held thus:

" The essential condition for the application of Article 254(1) is that the existing law must be with respect to one of the matters in the Concurrent List, in other words, unless it is shown that the repugnancy is between the provisions of a subsequent law and those of an existing law in respect of the specified matters, the Article would be inapplicable."

With respect such is the position that arises here. The doctrine of 'pith and substance' also would not be attracted after the subject of forests was placed in the Concurrent List from 3.1.1977. It is also well settled that the repugnancy has to arise in the actual provisions of the two laws and not with regard to the subject matter of the two laws.

25, In the instant case although the State Public Service continues to fall under State list yet since there has to be nexus between State law regulating the State Service and the subject matter to which it relates, namely, 'forests' in this case which falls in the concurrent List it is obvious that the two laws providing for posts of Conservators cannot stand together any that leads to the repugnancy. Clearly the State law cannot be obeyed without disobeying the Union law on the subject. That attracts the doctrine of Implied Repeal.

That doctrine has been explained by the Supreme Court in Zaverbhai -vs- State of Bombay, (1954) S.C.A. 1295 in following words:

" It is true that on a question under Art. 254(1) whether an Act of Parliament prevails against a law of the State - no question of repeal arises; but the principle on which the rule of implied

repeal.....

*Sub*

repeal rests, namely, that if the subject-matter of the later legislation is identical with that of the earlier, so that they cannot both stand together, then the earlier is repealed by the later enactment, will be equally applicable to a question under Art. 254(2)....."

In our view of the provision of Rule 3 as regards posts of Conservator of Forests and also of Rule 11 in respect

of pay scale of Chief Conservator of Forests contained in the AFS Rules fall within the mischief of this doctrine and must be held to be impliedly repealed in any event after

3.1.1977 by reasons of various Rules framed in 1966 by the

Central Government in exercise of power under <sup>Section</sup> Art. 3 of the All India Services Act, 1951. The said provisions of

AFS Rules have stood totally eclipsed and though not repealed in terms by the Central Law must be held to be impliedly repealed.

26. A question may arise as to whether Article 254 can come into play at all as the AFS Rules are pre Constitution

subordinate legislation. In that connection we have already

said that Article 254 has to be applied alongwith Article

372 in the instant case. The definition of 'existing law'.

contained in Article 366 makes it clear that it means a law or rule passed or made before the commencement of the

Constitution by any Legislature, authority or person having

power to make such a law or rule etc. AFS Rules would fall

within this definition. Moreover the decision of the Supreme

Court in Zaverbhai's case (Supra) shows that repugnancy may arise even where the Central law is subsequent to the State

Law. The test to be applied is to find out whether the two

laws occupy the same field. That is what is the position

that obtains in the instant case. In our view having regard

to the various provisions of the Constitution, the intention

reflected....

list

reflected in the Resolution passed by the Council of States

leading to the formation of IFS as an All India Service

and the object behind it, namely, that without depriving

the States of their right to form their own civil services,

there shall be an all-India Service recruited on all-India

basis with common qualifications, with uniform scale of pay

and members of which alone could be appointed to these

strategic posts throughout the Union. The object behind the

provision for all-India Services is to impart a greater

cohesion to the federal system and a greater efficiency to

the administration in both the Union and the States

(As explained by Dr Ambedkar in the Constituent Assembly).

27. We may now as well deal with Rule 11 of AFS Rules

in this context as the action of the Governor of Assam in

creating the ex-cadre post of Chief Conservator of Forests

is also impugned. As already stated the applicants have

produced the letter No.FRE-115/87/91 dated 5.5.1994

(Annexure-III in O.A.No.96/94) whereby sanction of the

Governor of Assam is conveyed by the Joint Secretary to the

Government of Assam Forest Department to the Accountant

General (A & E), Assam, to the creation of an ex-cadre post

of Chief Conservator of Forests to be manned by AFS Officer

in the scale of Rs.3950-6100 per month upto 28.2.1995 with

effect from the date of entartainment. The State of Assam

have, however, not chose to produce the sanction order

passed by the Governor. Hence it is not possible to know as

to under what provision the power to create the ex-cadre

post has been exercised. Reliance is sought to be placed by

the State of Assam on the entry contained in Rule 11(4)

which merely specifies the scale of Rs.1500-60-1680(E8)-60-1800

for the post of Conservator of Forests. However, the rules

do.....

do not confer any plenary power to create such a post. Rule 5  
 does not include this post as a state Cadre post. The power,  
 therefore, to create the post cannot be located in the  
 Rules.

28. A feeble attempt was made by Mr A. S. Sharma, the  
 learned counsel, appearing for Respondent No.4 and Dr. Phukan,  
 Government Counsel for the State of Assam, to contend that  
 the Governor must be deemed to have acted under Article 309  
 of the Constitution read with Entry 41 in List II in the  
 VIth Schedule. This argument though plausible cannot be  
 accepted as it is not shown that the power was exercised  
 acting under these provisions. Moreover, in the absence of  
 the order of the Governor itself not being produced it  
 cannot be deemed to have been passed in exercise of power  
 by virtue of these provisions. From mere conveyance of  
 sanction by Joint Secretary of Government to the Accountant  
 General such exercise of power cannot be deemed to have been  
 exercised.

29. It is also contended on behalf of the State of  
 Assam and Respondent No.4 that even earlier also such post  
 was created and that shows that such power was exercisable  
 by the State Government. The respondent No.4 has produced  
 as Annexure-III to his written statement (in D.A.No.96/94) a  
 copy of the Notification No.FRE.106/91/1 dated 24.7.1991  
 containing the order passed by the Governor. That order  
 reads:

"The Governor of Assam is pleased to create  
 an ex-cadre post of Chief Conservator of  
 Forests (Admn) in the office of the  
 Principal Chief Conservator of Forests. The  
 post of Officer on Special Duty in the  
 Forest Department will be kept in abeyance  
 from the date of Shri K.K. Barua handing  
 over charges."

There is a marked difference in the nature of that order  
 and....

will

and the impugned order. That order also does not refer to the source of power under which that was done. However, that was an order creating the post whereas the impugned order does not itself create the post. The order dated 31.3.1992, Annexure-IV, shows that ex-cadre post of Chief Conservator of Forests was also created by order dated 31.3.1992 and one K.K. Baruah, IFS, was temporarily appointed to officiate. The remark below mentions that the works earlier allotted to Chief Conservator of Forests (Admn) will now be discharged by the Principal Chief Conservator of Forests (Admn), Assam. That shows that the post was supposed to be held by an IFS officer and was under the Principal Chief Conservator and both were designated as 'Admn' branch posts. The IFS Cadre Strength Regulation has earmarked the posts of Principal Chief Conservator of Forests as IFS Cadre posts. Thus whereas the previous order could operate consistently with the said regulations and Rule 9 of Cadre Rules the impugned order cannot be so held. The creation of the ex-cadre post of Chief Conservator of Forests is thus without any force of law and is in direct conflict with the central provision and cannot be sustained.

30. The question to which we must address next is as to what extent the provisions of the AFS Rules can be held impliedly repealed and whether the Rules can be split up for that purpose. In that connection the doctrine of severability will come into play. Under that doctrine it is the duty of the courts to save as much as possible of a statute which is impugned as repugnant in this case to the central law. The language of Article 254 is significant in this context. Clause(1) of Article 254 provides:

"If any provision of a law made by the Legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provisions of an existing law with respect to one of the matters enumerated in the Concurrent

List, then, subject to the provisions of clause(2), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void."

Thus we hold that Rule 3 of the ASF (Class I) Rules 1942

to the extent of 1st entry therein reading as "Conservators -2" relating to cadre of the Service stood impliedly repealed by the IFS (Cadre) Rules, 1966 read with IFS (Fixation of Cadre Strength) Regulations, 1966 and is inoperative.

Likewise we hold that Rule 11 of the said rules to the extent of prescribing the revised scale for Chief Conservator of Forests vide Sub-rule 4(iv) as member of Assam Forest Service is impliedly repealed by the IFS (Cadre) Rules read with IFS (Fixation of Cadre Strength) Regulations, 1966, read with All India Services Act, 1951, and is inoperative. The provision thus cannot be acted upon as a source of power for the State Government to create an ex-cadre post of Chief Conservator of Forests in Assam State Service or to appoint any Assam Forest Service officer to that post. To hold otherwise would be to give rise to an anomalous and unfair situation. A State service officer without being selected for promotion to IFS can be pushed into a post

meant for an officer who qualifies to be an IFS officer and has acquired sufficient experience for the prescribed

duration by creating a parallel post. That will defeat the very object of creation of the All-India Service thought

to be necessary to bring into existence by the Council of States in its wisdom.

31. Another ground of attack against the impugned action of the State Government is alleged malafides on its

part....

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part. This allegation, however, stems from the contention of the applicants that the State Government has acted arbitrarily and deliberately in flouting the rules regulating the All-India Service with the avowed object of favouring the respondent No.4 with promotion to a post equivalent to a post earmarked for an IFS officer despite the fact that he has failed to get selected to IFS ever since 1975. Hence a person who is otherwise unfit to be appointed to the post of Conservator of Forests is sought to be given that status and that designation and is also likely to be given promotion to a still higher post which will be higher to the rank of Conservator of Forests under the IFS and this conduct of the State Government displays open hostility to Central rules and enactments thereon and its attempt is to create parallel posts in the Forest Service which thus is malafide.

The State of Assam have not made any secret of the fact that they wanted to promote the respondent No.4 being the seniormost officer in the State Forest Service and as it was felt that such officers should not feel frustrated if they are stagnated. One may not find fault with this approach and merely for that reason malafides may not necessarily be imputed to the Government. More so if they have acted within the parameters of law. They have contended that the notification dated 28.3.1992 has been issued in the normal course of Government business and in the best interest of public administration. They explain that there are 17 posts of Conservator of Forests in Assam. They have listed them and the post of Conservator of Central Assam Circle is enumerated at serial No.4. It is not disputed on behalf of the State of Assam before us that to the 14 posts mentioned....

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mentioned in IFS Cadre Strength Regulations for State of Assam an AFS officer can be appointed yet and even though Central Assam Circle is included in the earmarked number of posts, namely, 14, it is their contention that although 6 posts of Conservators are to be filled up by the IFS officers but against these 6 posts no specific circle has been mentioned to say that as there is no specific provision that the post of Conservator of Forests, Central Assam Circle is to be filled up by an IFS officer and, therefore, respondent No.4 from AFS could be appointed to that post. They contend that out of 17 posts of Conservator of Forests 14 have been earmarked for the IFS and 2 posts out of remaining 3 are earmarked for Assam Forest Service officers under Rule 3 of the AFS (Class I) Rules, 1942. This line of approach appears to us to be fallacious and unwarranted for the various reasons already discussed.

33. The respondent No.4 contends in this respect *inter alia* as follows:

It is within the competence of the State Government to create/maintain any cadre post and to appoint a suitable person thereto from amongst officers of State Service. He is the seniormost Assam Forest Service (Class I) officer and at the relevant time he was holding the post of Forest Utilization Officer which was equivalent to the post of Deputy Conservator of Forests which could be held by officers from both the services. Even though he was not selected to the IFS yet he is entitled to all the promotion under AFS Rules. He contends that the IFS (Fixation of Cadre Strength) Regulation nowhere mentions that posts of Conservators are to be filled in by IFS Officers only. Hence his promotion is perfectly valid. He has also set out the list of 17 posts of Conservators mentioned by the State of Assam. He has shown one more post as 18th of Forest Utilization Officer in that category. He has given the breakup as 14 posts earmarked

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for IFS, 3 posts specified for AFS and 1 to be filled by either IFS or AFS officer. He admits that the post of

Forest Utilization Officer is now manned by an IFS officer only. Thus according to respondent No. 4 the action of the State Government neither can be described as malafides or lacking bonafides.

The above contentions cannot be accepted for the

various reasons already considered exhaustively. Moreover,

the argument that the post of Forest Utilization Officer was open to be filled in by AFS officer also is not tenable

as it is a cadre post enumerated in schedule to the IFS

(Fixation of Cadre Strength) Regulation, 1966, and is not

provided independently but is included amongst Divisional

Forest Officers under Rule 3 of AFS Rules, 1942.

34. The ingenuity behind the argument of the State Government, namely, the post of Forest Utilization Officer

is equivalent to the post of Deputy Conservator of Forests and the posts of Deputy Conservator are held by both IFS

and AFS, to draw support to their action of promoting respondent No. 4 from the post of Forest Utilization Officer

to Conservator of Forests must be admitted. However, it does

not stand scrutiny. Firstly, the post of Forest Utilization Officer is a cadre post. Entry in Rule 3 of AFS Rules

being inconsistent with the IFS Cadre Regulations that can no

longer be availed of. Secondly, the posts of Deputy Conservator

are also IFS cadre posts under the Regulation and lastly

Rule 3 of AFS Rules does not mention any post of Deputy

Conservator in the State Cadre. By adopting this process and

logic the State Government thus could not make an inroad into the IFS cadre posts.

/16

35. Thus the action of the State Government cannot be sustained in law. That by itself, however, would not be sufficient to impute malafides and had the steps taken were taken in a straight forward manner in the bona fide belief that that was open to do in law even prompted by the intention to remove injustices which in the view of the Government was being suffered by the respondent No.4 this allegation would not have been required to be pursued further. However, a definite design to go out of the way to favour the respondent No.4 with the promotion which otherwise he could not get is discernable in the machinations adopted by the Government. That stands demonstrated from the following circumstances:

1. Knowing full well that Respondent No.4 could not get himself selected to IFS and could not get the post of Conservator of Forests, the Rules of 1942 which had not been invoked since 1966 to appoint State Officers as Conservator of Forests have been invoked.
2. It is conveniently overlooked that the post of Conservator of Forests which can be filled by an IFS officer can be filled only by an officer who has first become eligible to get Selection Grade on entering 14th year of service calculated from the year of appointment and carries Supertime Scale. Respondent No.4 has been given the bounty of dispensing with that requirement.
3. The post of Forest Utilization Officer was purported to be upgraded to the rank of Conservator of Forests in the AFS on usual scale of pay plus allowances

bill

and was to be

as admissible as per rules vide sanction of the Governor to the Accountant General conveyed by Memo No. FRE.55/92/1 dated 10.6.1992 by Joint Secretary to the Government of Assam, Forest Department. The post of Forest Utilization Officer in DFO's level was kept in abeyance. This was done subsequent to promotion given to respondent No.4 on 23.3.1992. In other words the post of Forest Utilization Officer which he was holding was not of the rank of Conservator of Forest when he was promoted to that post.

Point 3.4. The scale for the post of Conservator of Forests borne on AFs was allowed vide Memo No.164/69/PT/208 dated 27.10.1992 as Rs.3825-5900. That shows that even the scale was not prescribed when respondent No.4 was promoted as Conservator. It is material to note that under IFS (Pay) Rules the Selection Grade is Rs.4100-125-4850-150-5300 and the Supertime Scale of Conservator of Forests is Rs.4500-150-5700.

The scale prescribed thus is overlapping the Central Scale though some semblance of difference is maintained.

These steps taken go to show that these were advisedly taken to accommodate the respondent No.4 and there is every reason to believe that the intention is to promote him further as Chief Conservator of Forests. Even so as stated earlier if it could be done in accordance with the law no fault could be found but since we have held that this action was not permissible in law the mechanism adopted does not appear to be wholly innocent and not motivated to favour the respondent No.4. Since, however, we are satisfied

that....

list

that the impugned action of the Government of Assam cannot be upheld as valid in law this aspect need not be pursued further.

36. Thus we hold that Rule 3 of the Assam Forest

Service (Class I) Rules, 1942, to the extent of entries reading as, "Conservators ....2" and Divisional Forest Officers (including Working Plan Officer, Forest Utilization Officer and one post of Silviculturist and Botanical Forest Officer) ....14" as also Rule 11(4) clause (iii) reading as Conservator of Forests: Rs.1200-60-1380(EB)-60-1500/-, and clause (iv) reading as Chief Conservator of Forests: Rs.1500-60-1680(EB)-60-1800 are repugnant to Rules 3 and 4

of the IFS (cadre) Rules, 1966 and Regulation 2 read with IFS (Fixation of Cadre Strength) Regulations, 1956 read with Sections 2A and 3 of the All India Services Act, 1951 and stand impliedly repealed by the said Central provisions as from 3.1.1977. Consequently, we hold that the State of Assam was not competent to designate the post of Conservator of Forests in Assam State Forest Service or to promote any officer of the Assam State Service including the respondent No.4 to that post nor it is within the competence of the

Government of Assam to create an ex-cadre post of Chief

Conservator of Forests in Assam Forest Service or to appoint

any State Forest Service officer to that post. We further,

hold that the impugned Notification dated 28.3.1992 appointing

the respondent No.4 to the post of Conservator of Forests

as well as impugned order dated 5.5.1994 purporting to create

the post of chief conservator of Forests issued by the

Government of Assam are liable to be set aside. The applicants

are hereby entitled to be granted relief to that extent in each

application.

4/2

application...

application.

37. As far as relief sought by the applicant in O.A.No.59/93 for making his promotion retrospective in respect of the post of Conservator of Forests with effect from 28.3.1992 is concerned, it cannot be granted in the said application and it is left open to him to approach the appropriate authorities for that relief in accordance with the law and rules if so advised. We also hold that since the impugned orders relate to the State of Assam the consent of the Joint Cadre Authority, namely, State of Assam and Meghalaya was not necessary and no order is required to be passed against the State of Meghalaya. Point Nos. 4 to 15 are answered accordingly.

38. In answer to point No.16, following order is passed:

(1) Common order in all the applications:

i) It is hereby declared that the provisions of Rule 3 of the Assam Forest Service Rules to the extent of the first two entries therein, namely, Conservator of Forests and Divisional Forest Officer (including Working Plan Officer, Forest Utilization Officer and one post of Silviculturist and Botanical Forest Officer) stand repealed by the provisions of IFS (Cadre) Rules, 1966, read with IFS (Fixation of Cadre Strength) Regulations, 1966, read with All India Services Act, 1951.

ii) Likewise, the provisions of Rule 11 of the Assam Forest Service Rules, 1942, to the extent of providing scale

(ii) for Chief Conservator of Forests under sub-rule 4(iv) as applicable to the said post created under Assam Forest Service is hereby declared to have stood repealed by the provisions of IFS (Cadre) Rules, 1966, read with

IFS.....

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IFS (Fixation of Cadre Strength) Regulations, 1966, read with the All India Services Act, 1951.

(2) Order on O.A.No.52/93 and O.A.No.53/93:

(i) The order dated 28.3.1992 (Annexure-1) is hereby quashed and the appointment of respondent No.4 to the above rank of Conservator of Forests is set aside.

(ii) The State of Assam is hereby restrained from appointing the respondent No.4 to any IFS cadre post.

(iii) The State of Assam is hereby restrained from appointing or promoting any officer of the Assam State Forest Service to the post of Conservator of Forests purportedly created under Assam State Forest Service so long as the IFS (Cadre) Rules, 1966 and IFS (Fixation of Cadre Strength) Regulations, 1966, are in force.

(iv) The State of Assam is further restrained from promoting or appointing any officer of the Assam State Forest Service to any IFS cadre including the post of Conservator of Forests so long as the IFS (Cadre) Rules, 1966, and IFS (Fixation of Cadre Strength) Regulations, 1966, are in force.

(v) No order as regards seniority of the applicants vis-a-vis respondent No.4 which is left open to be regulated in accordance with appropriate rules as may be applicable.

(vi) No order on prayer No.4 as it is not necessary.

(2) Order on O.A.No.59/93:

(i) The same order as in terms of clauses (i) & (ii) of order on O.A.No.52/93 and O.A.No.53/93. No separate order on prayers No.2 and 3 in view of order on O.A.No.52/93 and O.A.No.53/93 as above.

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ii) It is left open to the applicant to pursue the matter if necessary with the competent authorities as regards his seniority in the post of Conservator of Forests from 30.11.1992 as prayed in accordance with the rules as applicable and in the light of findings recorded in this judgment.

(3) Order on O.A. No. 96/94:

i) The impugned order dated 5.5.1994 passed by the Government of Assam creating the ex-squadra post of Chief Conservator of Forests is quashed and set aside.

ii) The State of Assam is restrained from appointing any State Forest Service Officer to the post of Chief Conservator of Forests including respondent No.4.

39. All the applications are allowed in terms of the aforesaid order passed in each of the applications.

Sd/- VICE CHAIRMAN

Sd/- MEMBER (ADMN)

nkm

Certified to be true (काहि)  
प्रकाशित प्रतिलिपि

15/9/2012 A.C.

COURT OFFICER

संसदीय अधिकारी

Central Administrative Tribunal

केन्द्रीय संसदीयक अधिकारी

Guwahati Bench, Guwahati-8

गुवाहाटी न्यायालय, गुवाहाटी-8

GOVERNMENT OF ASSAM  
FOREST DEPARTMENT ::::: DISPUR

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 29th April '95.

✓ NC.FRE.2/91/Pt.II/102 : Shri D. K. Basumatary, Divisional Forest Officer, Guwahati Social Forestry Division, is in the interest of public service transferred and posted as Divisional Forest Officer, Kamrup West Division, with effect from the date he took over charges vice Shri H.K. Saikia, D.F.O. has been placed under suspension.

✓ NC.FRE.2/91/Pt.II/102-A : Shri Surajit Dutta, Divisional Forest Officer (Publicity) Office of the Principal Chief Conservator of Forests, Assam is in the interest of public service transferred and posted as Divisional Forest Officer, Guwahati S.F. Division, Guwahati with effect from the date he takes over charges vice Shri D.K. Basumatary, Divisional Forest Officer, transferred.

✓ NO.FRE.2/91/Pt.II/102-B : Shri D. Mathur, IFS, Planning Officer, attached to the Principal Chief Conservator of Forests, Social Forestry, Assam is, in the interest of public service transferred and posted as Divisional Forest Officer, Lakhimpur S.F. Division, North Lakhimpur with effect from the date he takes over charges vice Shri T.P. Changkakati, Divisional Forest Officer, transferred.

✓ NO.FRE.2/91/Pt.II/102-C : On relief, Shri T.P. Changkakati, Divisional Forest Officer, Lakhimpur S.F. Division, North Lakhimpur is in the interest of public service transferred and posted as Divisional Forest Officer, Lakhimpur Division, North Lakhimpur with effect from the date he takes over charge vice Shri M. N. Duara, Divisional Forest Officer transferred.

✓ No.FRE.2/91/Pt.II/102-D : On relief, Shri M. N. Duara, D.F.O., Lakhimpur Division, North Lakhimpur is in the interest of public service transferred and posted as Divisional Forest Officer, Doom Dooma Division, Doom Dooma, with effect from the date he takes over charges vice Shri R. N. Sonowal, Divisional Forest Officer transferred.

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NO.FRE.2/91/Pt.II/102-E : On relief, Shri R. N. Sonowal, D.F.O., Doom Dooma Division, Doom Dooma, is in the interest of public service transferred and posted as Divisional Forest Officer, Digboi Division, Digboi, with effect from the date he took over charges vice Shri R.D.S. Tanwar, IFS, has been placed under suspension.

NO.FRE.2/91/Pt.II/102-F : On withdrawal of his services from the Bureau of Investigation and Economic Officers, Assam, Shri Jitu Das, Deputy Conservator of Forests, is in the interest of public service transferred and posted as Divisional Forest Officer, Darrang Division, Mankaldoi, with effect from the date he takes over charges vice Shri P.N. Bordoloi, D.F.O. relieved of the dual charge.

NO.FRE.2/91/Pt.II/102-G : Shri Y. Suryanarayana, IFS, who has been posted as Planning Officer(II) Office of the Principal Chief Conservator of Forests, Assam, Guwahati is now in the interest of public service transferred and posted as Divisional Forest Officer, Sibsagar S.F. Division, Sibsagar, with effect from the date he takes over charges vice Shri B.B.Nobis, D.F.O. transferred.

NO.FRE.2/91/Pt.II/102-H : Shri C. K. Das, Divisional Forest Officer (Motivation and Extension) Office of the Principal Chief Conservator of Forests, Assam, is in the interest of public service transferred and posted as Divisional Forest Officer, Nagaon Wild Life Division, Nagaon with effect from the date he takes over charges vice Shri S. Islam, D.F.O. transferred.

NO.FRE.2/91/Pt.II/102-I : On relief, Shri S. Islam, Divisional Forest Officer, Nagaon Wildlife Division, Nagaon is in the interest of public service transferred and posted as Planning Officer (II) Office of the Principal Chief Conservator of Forests, Assam, Guwahati with effect from the date he assumes charges vice Shri Y. Suryanarayana IFS, whose transfer has been modified.

NO.FRE.2/91/Pt.II/102-J : Shri Bikash Brahma, IFS, Divisional Forest Officer, Northern Afforestation Division, Diphu, is in the interest of public service transferred and posted as Divisional Forest Officer(Motivation & Extension)Office of the Principal Chief Conservator of Forests, Assam with effect from the date he assumes charges vice Shri C.K.Das, D.F.O. transferred.

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Unb-29/4 1. *[Signature]*

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NO.FRE.2/91/Pt.II/102-K : Shri B. B. Nobis, Divisional Forest Officer, Sibsagar (SF) Division, Sibsagar is in the interest of public service transferred and posted as Divisional Forest Officer, Nagaon South Division, Hojai, with effect from the date he takes over charges vice Shri S.K. Srivastava, IFS, relieved of the dual charge.

NO.FRE.2/91/Pt.II/102-L : Shri H.K. Sarma, Divisional Forest Officer, F.R.S. Division, Hills, Haflong is in the interest of public service transferred and posted as Divisional Forest Officer, Northern Afforestation Division, Diphu with effect from the date he takes over charges vice Shri B. Brahma, IFS, Divisional Forest Officer transferred.

Sd/-A.B. Roy Choudhury,  
Deputy Secretary to the Govt. of Assam,  
Forest Department, Dispur,

Memo No.FRE.2/91/Pt.II/102-M Dated Dispur, the 29th April '95. Copy forwarded for information and necessary action to :-

1. The Accountant General (A&E), Assam, Shillong/Rhangaghar, Ghy-5.
2. The Principal Chief Conservator of Forests, Assam, Guwahati-8.
3. The Principal Chief Conservator of Forests (SF), Assam, Ghy-24.
4. The Chief Conservator of Forests (WL), Assam, Guwahati-24.
5. The Chief Conservator of Forests (R.E.&W.P) Assam, Ghy-24.
6. The Conservator of Forests -
7. The Principal, North East Forest Rangers' College, Jalukbari, Guwahati-14.
8. The Divisional Forest Officer-
9. Officers concerned -
10. The Officer-On-Special Duty to the Chief Minister, Assam for favour of information of Chief Minister.
11. P.S. to the Minister of State, Social Forestry & W.L. for favour of information of Minister.
12. The Deputy Director, Assam Govt. Press, Ramunimaidan, Guwahati-21 for favour of publication of the above notification.
13. The Director (B.I.F.O), Assam, Guwahati. He is requested kindly to release Shri Jitu Das, D.F.O. immediately. Substitute is being placed separately.
14. Personal File.

By order etc.,

*Arunachal Roy*  
Deputy Secretary to the Govt. of Assam,  
Forest Department, Dispur

Date : 29/4

*Arunachal Roy*

GOVERNMENT OF ASSAM  
FOREST DEPARTMENT ::::: DISPUR.

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 22nd June/95.

FRE. 57/95/2 : The services of Shri B.B.Dhar, I.F.S. (RR-1981) Assam, Meghalaya Joint Cadre, now working as Working Plan Officer (in the rank of D.C.F.) Lower Assam Circle, Guwahati are placed at the disposal of Forest & Environment Department Govt. of Meghalaya, Shillong and he is released with effect from the date he hands over charges.

✓ Shri R.C. Bhattacharjee, Enforcement Officer (W.L.) Office of the Chief Conservator of Forests (W.L.) Assam is allowed to hold the charge of Working Plan Officer, Lower Assam Circle temporarily and until further order.

Sd/- H. Sonowal,  
Commissioner & Secy. to the Govt. of Assam,  
Forest Department, Dispur.

Memo No. FRE. 57/95/2-A, Dated Dispur, the 22nd June/95.

Copy forwarded to :-

- 1) The Accountant General (A&E), Assam, Shillong.
- 2) The Deputy Secretary to the Govt. of India, Ministry of Environment & Forests, Paryavaran Bhawan, C.G.B. Complex, Lodi Road, New Delhi- 110003.
- 3) The Principal Secretary to the Govt. of Meghalaya, Forest and Environment Department, Shillong. He is requested kindly to arrange posting order of Shri B.B.Dhar, IFS, so that he can be released for joining in his new assignment under the Govt. of Meghalaya. This has a reference with the discussion had by Principal Chief Conservator of Forests, Meghalaya with the Principal Chief Conservator of Forests, Assam.
- 4) The Principal Chief Conservator of Forests, Assam, Rehbari, Guwahati-8.
- 5) The Principal Chief Conservator of Forests (Social Forestry), Assam, Zoo Narengi Road, Guwahati- 24.
- 6) The Principal Chief Conservator of Forests, Meghalaya, Shillong.
- 7) The Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati- 24.
- 8) The Conservator of Forests,
- 9) The Divisional Forest Officer,
- 10) Shri B.B.Dhar, IFS, Working Plan Officer, Lower Assam Circle, Guwahati for information and necessary action.
- 11) Shri R.C.Bhattacharjee, Enforcement Officer, (W.L.) Office of the Chief Conservator of Forests (W.L.) Assam, R.G. Baruah Road, Guwahati-24.
- 12) The Deputy Director, Assam Govt. Press, Bamunimaidan, Guwahati-21 for favour of publication of the Notification in the next issue of the Assam Gazette.
- 13) The Officer-On-Special-Duty to the Chief Minister, Assam, Dispur for favour of information of Chief Minister.
- 14) The P.S. to the Minister of State, Social Forestry and Wildlife, Assam, Dispur favour of information of Minister.
- 15) Personal File of the Officer.

By order etc.,

Addl. Secretary to the Govt. of Assam,  
Forest Deptt., Dispur.

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ANNEXURE 4  
96

GOVERNMENT OF ASSAM  
FOREST DEPARTMENT ::::::: DISPUR.

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 20th January/96.

NO.FRE. 23/91/225 : Shri R.D.S. Tanwar, I.F.S., Deputy Conservator of Forests is in the interest of public service transferred and posted as Divisional Forest Officer, Eastern Assam Wildlife Division, Bokakhat, with effect from the date he takes over charge vice Shri C.R. Bhabora D.F.O. transferred.

This modifies this Department Notification

No.FRE. 23/91/208 dtd. 26.9.95.

NO.FRE. 23/91/225-A : On relief, Shri C.R. Bhabora, Divisional Forest Officer, Eastern Assam Wildlife Division, Bokakhat is in the interest of public service transferred and posted as Planning Officer-II in the office of the Principal Chief Conservator of Forests, Assam with effect from the date he assumes charges against the existing vacancy.

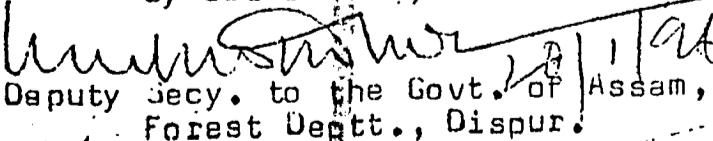
Sd/- A.B. Roy Choudhury,  
Deputy Secy. to the Govt. of Assam,  
Forest Deptt., Dispur.

Memo No.FRE. 23/91/225-B, Dated Dispur, the 20th January/96.

Copy forwarded to :-

- 1) The Accountant General (A&E), Assam, Shillong/Bhangagarh, Guwahati-5
- 2) The Principal Chief Conservator of Forests, Assam, Rehbari, Guwahati-8.
- 3) The Principal Chief Conservator of Forests, Social Forestry, Assam, Zoo Narengi Road, Guwahati- 24.
- 4) The Chief Conservator of Forests (Territorial), Assam, Rajgarh Road, Guwahati-3.
- 5) The Chief Conservator of Forests, Wildlife, Assam, R. G. Baruah Road, Guwahati- 24.
- 6) The Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati- 24.
- 7) The Director, Kaziranga National Park, Bokakhat.
- 8) Shri R.D.S. Tanwar, I.F.S., Deputy Conservator of Forests, C/O Principal Chief Conservator of Forests, Assam, Rehbari, Guwahati-8.
- 9) Shri C.R. Bhabora, Divisional Forest Officer, Eastern Assam Wildlife Division, Bokakhat.
- 10) The Officer-On-Special-Duty to the Chief Minister, Assam, Dispur, Guwahati-6 for favour of information of Chief Minister.
- 11) The P.S. to the Minister of State (Ind.), Social Forestry and Wildlife, Assam, Dispur, Guwahati-6 for favour of information of Minister.
- 12) The Deputy Director, Assam Govt. Press, Bamunimaidan, Guwahati-21 for favour of publication of the above Notification in the Assam Gazette.
- 13) Personal File of the officer.

By order etc.,

  
A.B. Roy Choudhury  
Deputy Secy. to the Govt. of Assam,  
Forest Deptt., Dispur.

File No. 6/1

GOVERNMENT OF ASSAM  
FOREST DEPARTMENT ::::::: DISPUR.

ORDERS BY THE GOVERNOR

By Extraordinary Order No. 1179 NOTIFICATION

Meach 1996, 1996 Dated Dispur, the 19th June/96.

NO.FRE. 51/96/11 : Shri D. Gohain Barua, I.F.S.,

Conservator of Forests, Genetics, Guwahati is  
in the interest of public service, transferred  
and posted as Conservator of Forests (H.Q.) vice  
Shri L.D. Adhikari, I.F.S. already transferred.

NO.FRE. 51/96/11-A : Shri B. S. Bonal, I.F.S., Divisional  
Forest Officer, Assam State Zoo, Guwahati, is promoted  
to the rank of Conservator of Forests and posted as  
Director, Kaziranga National Park, Bokakhat vice  
Shri S.K. Sen, I.F.S. transferred.

NO.FRE. 51/96/11-B : Shri S. K. Sen, I.F.S., Director,  
Kaziranga National Park, Bokakhat is in the  
interest of public service, transferred and posted  
as Conservator of Forests, Border in the office  
of the Principal Chief Conservator of Forests,  
Assam.

NO.FRE. 51/96/11-C : Shri R.C. Bhattacharjee, D.C.F.,  
(Enforcement Officer) attached to the office of  
the Chief Conservator of Forests (Wildlife), Assam  
is, in the interest of public service transferred  
and posted as Divisional Forest Officer, Assam  
State Zoo, Guwahati vice Shri B.S. Bonal, I.F.S.  
promoted.

Sd/- H. Sonowal,

Commissioner & Secy. to the Govt. of Assam,  
Forest Department, Dispur.

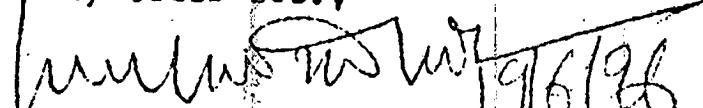
Contd...2/-

*Final*  
*Copy*

Memo No. FRE 51/96/11-D, Dated Dispur, the 19th June/96.  
Copy forwarded to :-

- 1) The Accountant General (A&E) Assam, Shillong/Guwahati-5.
- 2) The Principal Chief Conservator of Forests, Assam, Rehabari, Guwahati-8. He is requested all concerned officers to join in their respective new place of posting urgently.
- 3) The Principal Chief Conservator of Forests (Social Forestry), Assam, Zoo Narangi Road, Guwahati-24.
- 4) The Chief Conservator of Forests (Territorial), Assam, Rajgarh Road, Guwahati-3.
- 5) The Chief Conservator of Forests (Wildlife) Assam, R. G. Baruah Road, Guwahati-24.
- 6) Shri D. Gohain Baruah, I.F.S., Conservator of Forests, Genetics, Guwahati-24. He is requested to handover charges accordingly.
- 7) Shri B.S. Bonal, I.F.S., Divisional Forest Officer, Assam State Zoo, Guwahati-5. He is requested to handover charges to Shri R.C. Bhattacharjee and proceed to his new place of posting urgently.
- 8) Shri S.K. Sen, I.F.S., Director, Kaziranga National Park, Bokakhat.
- 9) Shri R.C. Bhattacharjee, D.C.F. (Enforcement Officer) attached to the office of the Chief Conservator of Forests (Wildlife) Assam, R.G. Baruah Road, Guwahati-24.
- 10) Shri L.D. Adhikari, I.F.S., Conservator of Forests, Central Assam Circle, Panbazar, Guwahati-1.
- 11) All Conservator of Forests concerned . . . . .
- 12) All Divisional Forest Officers concerned. . . . .
- 13) The P.S. to the Minister, Forest, Assam, Dispur, Guwahati-6.
- 14) The Director, Assam Govt. Press, Bhamunimaidan, Guwahati-21 for favour of publication of the above Notification in the next issue of the Assam Gazette.
- 15) Personal File of the officers.

By order etc.,

  
Deputy Secy. to the Govt. of Assam,  
Forest Deptt., Dispur.

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GOVERNMENT OF ASSAM  
FOREST DEPARTMENT ::::: DISPUR.

ANNEXURE-6

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 24th June/96.

NO.FRE. 2/91/Pt.II/118 : Shri A.S. Laskar, Divisional Forest Officer, Publicity, Principal Chief Conservator of Forests (Social Forestry)'s Office is, in the interest of public service, transferred and posted as Divisional Forest Officer, Darrang Forest Division, Mangaldoi vice Shri Jitu Das transferred.

NO.FRE. 2/91/Pt.II/118-A : Shri Jitu Das, Divisional Forest Officer, Darrang Forest Division, Mangaldoi is, in the interest of public service, transferred and posted as Divisional Forest Officer, Kamrup East Division, Guwahati vice Shri D. Haraprasad, D.F.O. transferred.

NO.FRE. 2/91/Pt.II/118-B : Shri D. Haraprasad, I.F.S., Divisional Forest Officer, Kamrup East Division, Guwahati is, in the interest of public service, transferred and posted as Divisional Forest Officer, Lakhimpur Division vice Shri T.P. Changkakati, D.F.O. transferred.

NO.FRE. 2/91/Pt.II/118-C : Shri T.P. Changkakati, Divisional Forest Officer, Lakhimpur Division is, in the interest of public service transferred and posted as Divisional Forest Officer attached to Conservator of Forests (Social Forestry) Bongaigaon Circle against an existing vacancy.

NO.FRE. 2/91/Pt.II/118-D : Shri S. Ahmed, Divisional Forest Officer, Logging Division, Guwahati is, in the interest of public service, transferred and posted as Divisional Forest Officer, Digboi Forest Division vice Shri R.N. Sonowal, D.F.O. transferred.

NO.FRE. 2/91/Pt.II/118-E : Shri R.N. Sonowal, Divisional Forest Officer, Digboi Forest Division is, in the interest of public service transferred and posted as Divisional Forest Officer, Publicity, Principal Chief Conservator of Forests (Social Forestry) vice Shri A.S. Laskar, D.F.O. transferred.

Contd... 2/-

NO.FRE. 2/91/Pt.II/118-F : Shri D.K. Basumatary, Divisional Forest Officer, Kamrup West Division is, in the interest of public service, transferred and posted as Divisional Forest Officer, Logging Division, Guwahati vice Shri S. Ahmed, D.F.O. transferred.

Shri D.K. Basumatary, Divisional Forest Officer, Kamrup West Division will handover charges to the senior-most A.C.F. of the Division and proceed to his new place of posting immediately.

Sd/- D. Chakravortty,  
Joint Secy. to the Govt. of Assam,  
Forest Deptt., Dispur.

Memo No.FRE. 2/91/Pt.II/118-G, Dated Dispur, the 24th June/96.

Copy forwarded to :-

- 1) The Accountant General (A&E), Assam, Shillong, Umangagarh, Guwahati-5.
- 2) The Principal Chief Conservator of Forests, Assam, Ruhabari, Guwahati-8. He is requested to direct all concerned officers to join in their respective new place of posting urgently. Sri Haraprasad, I.F.S., D.F.O., Kamrup East Division, Guwahati shall handover charges to the seniormost A.C.F. and proceed to his new place of posting immediately.
- 3) The Principal Chief Conservator of Forests (Social Forestry), Assam, Zoo Narengi Road, Guwahati-24.
- 4) The Chief Conservator of Forests (Wildlife) Assam, R.G. Baruah Road, Guwahati-24.
- 5) The Chief Conservator of Forests (Territorial) Assam, Rajgarh Road, Guwahati-3.
- 6) The Conservator of Forests concerned
- 7) Shri A.S. Laskar, Divisional Forest Officer, Publicity, O/B the Principal Chief Conservator of Forests (Social Forestry), Assam, Zoo Narengi Road, Guwahati-24.
- 8) Shri D.K. Basumatary, Divisional Forest Officer, Kamrup West Division, Guwahati for information and necessary action.
- 9) Shri Jitu Das, Divisional Forest Officer, Darrang Division, Mangaldoi for information and necessary action.
- 10) Shri R.N. Sonowal, Divisional Forest Officer, Digboi Division, Digboi for information and necessary action.
- 11) Shri S. Ahmed, Divisional Forest Officer, Logging Division, Guwahati for information and necessary action.
- 12) Shri D. Haraprasad, I.F.S., Divisional Forest Officer, Kamrup East Division, Guwahati for information and necessary action.
- 13) Shri T.P. Changkakati, Divisional Forest Officer, Lakhimpur Division, North Lakhimpur for information and necessary action.
- 14) The P.S. to the Minister of Forests, Assam, Dispur for perusal.
- 15) The Deputy Director, Assam Govt. Press, Bannimaidan, Guwahati-21 for favour of publication of the above Notification in the next issue of the Assam Gazette.
- 16) Personal File.

By order etc.

Joint Secy. to the Govt. of Assam,  
Forest Deptt., Dispur.

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GOVERNMENT OF ASSAM  
FOREST DEPARTMENT ::::::: DISPUR.

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 26th June/96.

NO.FRE. 2/91/Pt.II/119 : In partial modification of Govt. Notification No.FRE. 2/91/Pt.II/118 dt. 24.6.96 Shri A.S. Laskar, D.F.O., Publicity, Principal Chief Conservator of Forests (Social Forestry)'s Office is, in the interest of public service, transferred and posted as D.F.O., Karimganj Division vice Shri Abhijit Rabha, D.F.O. Karimganj transferred

NO.FRE. 2/91/Pt.II/119-A : Shri Abhijit Rabha, I.F.S., D.F.O., Karimganj Division is, in the interest of public service, transferred and posted as D.F.O., Darrang Division, Mangaldoi vice Shri Jitu Das, D.F.O. Mangaldoi transferred vide Govt. Notification No.FRE. 2/91/Pt.II/110-A dt. 24.6.96.

✓ Shri Jitu Das, D.F.O., Mangaldoi will hand-over charges to the Sr. Asstt. Conservator of Forests, Mangaldoi and move first to join as D.F.O., Kamrup East Division, Guwahati immediately.

Sd/- D. Chakravortty,

Joint Secy. to the Govt. of Assam,  
Forest Deptt., Dispur.

Memo No.FRE. 2/91/Pt.II/119-A, Dated Dispur, the 26th June/96.

Copy forwarded to :-

- 1) The Accountant General (A&E), Assam, Shillong, Bhangagarh, Guwahati-5.
- 2) The Principal Chief Conservator of Forests, Assam, Rehabari, Guwahati-8. He is requested to direct all concerned officers to join in their respective new place of posting urgently. Sri Haraprasad, I.F.S., D.F.O., Kamrup East Division, Guwahati shall handover charges to the seniormost A.C.F. and proceed to his new place of posting immediately.
- 3) The Principal Chief Conservator of Forests (Social Forestry), Assam, Zoo Narengi Road, Guwahati-24.
- 4) The Chief Conservator of Forests (Wildlife), Assam, R.G. Baruah Road, Guwahati-24.
- 5) The Chief Conservator of Forests (Territorial), Assam, Rajgarh Road, Guwahati-3.
- 6) The Conservator of Forests concerned.
- 7) Shri A.S. Laskar, Divisional Forest Officer, Publicity, Office of the Principal Chief Conservator of Forests (Social Forestry), Assam, Zoo Narengi Road, Guwahati-24.
- 8) The P.S. to the Minister of Forests, Assam, Dispur for perusal.
- 9) The Deputy Director, Assam Govt. Press, Bamunimaidan, Guwahati-21 for favour of publication of the above Notification in the next issue of the Assam Gazette.
- 10) Personal File.

By Order etc.,

Joint Secy. to the Govt. of Assam,  
Forest Deptt., Dispur.

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Attn: [Signature]

GOVERNMENT OF ASSAM  
FOREST DEPARTMENT :::: DISPUR

ANNEXURE-8

ORDERS BY THE GOVERNOR

NOTIFICATION -

Dated Dispur, the 4th July, 1996

No.FRE-135/90/231 : Subject to reversion without notice and without assigning any reason thereof, the following Assistant Conservators of Forest have been promoted under rule 4(c) of the Assam Forest Service Class (I) Rules, 1942 to officiate as Deputy Conservators of Forest in the scale of pay of Rs.2975-4750/- P.M. plus other allowances as admissible and posted at the places shown against each with effect from the date of assuming charges -

<u>Name of officers with their present places of posting</u>	<u>Places of posting on promotion to the rank of D.C.F.</u>
1. Shri Glasuddin Borbhuyan, ACF, attached to DFO, Cachar Division, Silchar	Instructor, attached to the Principal, N.E.F.R. College, Jalukbari
2. Shri Mahesh Ch. Kalita, ACF, attached to the DFO, Mangaldoi Wildlife Division.	D.F.O., Naibari (SF) Division vice Shri P.K.Gayan, DFO, transferred.
3. Shri Jorges Ahmed, ACF, attached to DFO, Jorhat Division	D.C.F. (Enforcement Officer), attached to C.C.F. (Wildlife), vice Shri R.C.Bhattacharjee transferred.
4. Shri S.K.Seal Sarma, ACF, attached to D.F.O., N.C. Hills Division	D.F.O., Social Forestry Division, Sibsager vice Shri Y.Suryanarayan, IFS, transferred.
5. Shri Jatindra Sarma, ACF, attached to PCCF	D.F.O., Logging Division, Guwahati vice Shri S.Ahmed, D.F.O., transferred.
6. Shri Sukumar Momin, ACF, attached to the D.F.O., N.K. Division, Rangia	D.F.O., FRS Division Hills, Haflong vice Shri J.S.Bey, DCF, relieved of the dual charge.
7. Shri Kunja Hazarika, ACF, attached to the C.F., Central Assam Circle, Guwahati	D.F.O., Darrang Division, Mangaldoi vice Shri Jitu Das, D.F.O., transferred.
8. Shri Iswar Narzam, ACF, attached to C.F., Western Assam Circle, Kokrajhar	Dy. Director, Manas Tiger Project.

The inter-state seniority of the officers will be determined lateron.

Contd...2.

*St. L. Bhattacharjee*

*Amrit*

No.FRE-135/90/231-A :: Shri P.K.Gayan, D.F.O., Nalbari (SF) Division is, in the interest of public service transferred and posted as D.F.O., Publicity in the office of the Principal Chief Conservator of Forests (SF), Assam, Guwahati.

No.FRE-135/90/231-B :: The Government Notification No. FRE-2/91/Pt.II/119-A dtd. 26.6.96 relating to transfer of Shri Abhijit Rabha, IFS, DFO, Karimganj is hereby stayed.

No.FRE-135/90/231-C :: In partial modification of Government Notification No.FRE-2/91/Pt.II/119 dtd. 26.6.96, Shri A.S.Laskar, D.F.O., Publicity attached to Principal Chief Conservator of Forests (SF), Assam is, in the interest of public service transferred and posted as D.C.F., attached to the Conservator of Forests, Southern Assam Circle, Silchar.

No.FRE-135/90/231-D :: Shri C.R.Bhobra, D.F.O., P.O.-II in the office of Principal Chief Conservator of Forests is, in the interest of public service transferred and posted as D.F.O., Mangaldoi Wildlife Division vice Shri P.N.Bordoloi, D.F.O., transferred.

No.FRE-135/90/231-E :: Shri P.N.Bordoloi, DFO, Mangaldoi Wildlife Division is, in the interest of public service transferred and posted as D.F.O., attached to the office of the C.C.F (T).

No.FRE-135/90/231-F :: Shri Suren Borgohain, D.F.O., Dibrugarh Division is, in the interest of public service transferred and posted as P.O.-II in the office of the Principal Chief Conservator of Forests vice Shri C.R.Bhobra, DFO, transferred.

No.FRE-135/90/231-G :: The Government Notification No. FRE-2/91/Pt.II/118-E dtd. 24.6.96 relating to transfer of Shri R.N.Sonowal, DFO, Digboi Division is hereby stayed.

No.FRE-135/90/231-H :: In partial modification of Govt. Notification No.FRE-2/91/Pt.II/118-D dtd. 24.6.96 Shri S.Nimed, D.F.O., Logging Division, Guwahati is, in the interest of public service transferred and posted as D.F.O., Kamrup West Division.

No.FRE-135/90/231-I :: In partial modification of the Govt. Notification No.FRE-2/91/Pt.II/118-F dtd. 24.6.96, Shri D.K. Basumatary, DFO, Kamrup West Division is, in the interest of public service transferred and posted as D.F.O., Dibrugarh Division vice Shri Suren Borgohain, D.F.O., transferred.

Shri D.K. Basumatary, DFO, Kamrup West Division will move first.

Contd...3.

No. FRE-135/90/231-J :: In the interest of public service, Shri H.K. Talukdar, DFO, Sibsagar Division, Nazira is transferred and posted as DFO, FRS Division, Jorhat vice Shri M.K. Yadav, IFS, relieved of the dual charge.

No. FRE-135/90/231-K :: Shri Y. Suryanarayan, IFS, DFO, Sibsagar SF Division is, in the interest of public service, transferred and posted as D.F.O., Sibsagar Division, Nazira vice Shri H.K. Talukdar transferred.

Sd/- H. Sonowal  
Commissioner & Secretary to the Govt. of Assam  
Forest Department, Dispur.

Memo No. FRE-135/90/231-L Dated Dispur, the 4th July, 1996

Copy forwarded for information and necessary action to :-

1. The Accountant General (A&E) Assam, Bhungagarh, Guwahati-5
2. The Principal Chief Conservator of Forests, Assam, Rehbari, Ghy-8
3. The Principal Chief Conservator of Forests (S), Assam, Ghy-24
4. The Chief Conservator of Forests (Territorial), Assam, Ghy-3
5. The Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati-24
6. The Chief Conservator of Forests, Wildlife, Assam, Guwahati-24
7. The Conservator of Forests
8. The Divisional Forest Officers,

He is directed to release the Assistant Conservator of Forests to enable them to join in the promotional posts.

9. The Private Secretary to Chief Minister, Assam for favour of information of Chief Minister.
10. The Private Secretary to Minister, Forest, Assam for favour of information of Minister, Forest.
11. The Director, Assam Govt. Press, Bamunimaidan, Guwahati-21 for favour of publication of the above notification in the Assam Gazette.
12. Officers concerned.
13. Personal file of the officers.

By order etc.

( D. Chakravortty )  
Joint Secretary to the Govt. of Assam  
Forest Department

File No. 870/96

GOVERNMENT OF ASSAM  
FOREST DEPARTMENT ::::::: DISPUR.

ORDERS BY THE GOVERNOR

NOTIFICATION

Dated Dispur, the 17th July/96.

NO.FRE. 3/90/Pt.II/153 : Shri N.K. Sarma, Silviculturist, Guwahati is, in the interest of public service, transferred and posted as D.F.O., Monitoring Cell, Principal Chief Conservator of Forest(SF)Office, Guwahati.

NO.FRE. 3/90/Pt.II/153-A : Shri T.K. Das, D.F.O., Sonitpur West Division, Tezpur is, in the interest of public service, transferred and posted as Silviculturist, Guwahati vice Shri N.K. Sarma transferred.

NO.FRE. 3/90/Pt.II/153-B : On his service withdrawn from Bureau of Investigation for Economic Offences, Assam, Guwahati, Shri Sanjib Kr. Bora, D.F.O., Bureau of Investigation for Economic Offences is, in the interest of public service, transferred and posted as D.F.O., Sonitpur West Division, vice Shri T.K. Das transferred.

Sd/- H. Sonowal,  
Commissioner & Secy. to the Govt. of Assam,  
Forest Department, Dispur.

Memo No.FRE. 3/90/Pt.II/153-C, Dated Dispur, the 17th July/96.

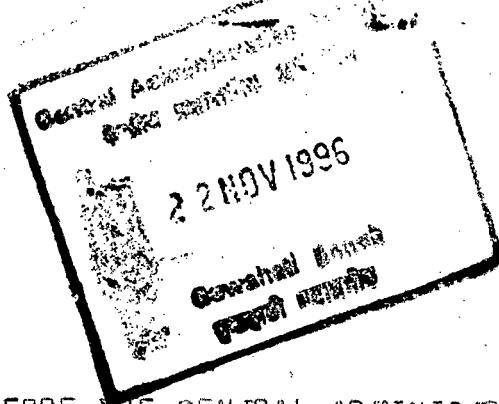
Copy to :-

1. The Accountant General (A&E), Assam, Shillong/Bhangaghat, Guwahati-5.
2. The Principal Chief Conservator of Forests, Assam, Rehbari, Guwahati-8.
3. The Principal Chief Conservator of Forests (Social Forestry), Assam, Zoo Nerengi Road, Guwahati-24.
4. The Chief Conservator of Forests (Territorial), Assam, Rajgarh Road, Guwahati-3.
5. All Conservator of Forests concerned. . .
6. Shri N.K. Sarma, Silviculturist.
7. Shri T.K. Das, Divisional Forest Officer, Sonitpur West Division, Tezpur.
8. Shri S.K. Bora, Divisional Forest Officer, Bureau of Investigation & Economic Offences, Assam, Guwahati.
9. The Deputy Secretary to the Govt. of Assam, Home Department, Dispur, Guwahati-6.
10. The P.S. to the Minister of Forests, Assam, Dispur, Guwahati-6, for information.
11. The Director, Assam Govt. Press, Bamunimaidan, Guwahati-21 for favour of publication of the above Notification in the next issue of the Assam Gazette.
12. Personal File.

By order, etc.

Joint Secy. to the Govt. of Assam,  
Forest Deptt., Dispur.

....



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

~~Nov. 22/1996~~

IN  
C.P. No. 35/96

IN THE MATTER OF :-

An affidavit-in-opposition filed  
by the Contemner No. 1 to 4.

-And-

IN THE MATTER OF :-

Contempt No. 35/96

Sri Prantosh Roy IFS and 2 others

-Versus-

Sri H.C.Sonowal & 3 others.

( AFFIDAVIT-IN-OPPOSITION )

I, Shri H.Sonowal, son of ~~Sri~~ Late Durgeswar Sonowal  
district- Kamrup aged about 46 years & ~~Rank~~ ~~xxxxxx~~  
Commissioner & Secretary, Department of Forest, Govt. of  
Assam and am authorised and competent to swear this affidavit  
on behalf of Contemner No. 1, 2, 3 and 4.

2. That a copy of the Contempt petition alongwith  
the order dated 9/9/96 passed in Contempt No. 35/96 was

File by Contempt  
1 to 4 through D.P.D.  
(Acharya 22/11)

received in my office on 11/9/96, I have gone through the said Contempt Petition and understood the contents thereof.

3. That save and except what has been specifically admitted in the affidavit, the deponent denies the correctness of the rest of the statements made in the ~~rest of~~ ~~the~~ ~~skxxanak~~ Contempt petition and the petitioner are put to strictest proof of the statement which have not been specifically admitted in this affidavit.

4. That with regard to the statements made in paragraph 1 of the Contempt Petition the deponent states that the petitioners who are I.F.S. officers have filed the Contempt Petition in their individual capacity and not as Members of the Indian Forest Service Association (Assam Unit), as they were not authorised by the Indian Forest Services Association or any Member of the Association, to file any Contempt Petition on behalf of the Association as intimated by the General Secretary of the I.F.S. Association, Assam Unit ~~as~~

A copy of the letter dated 26/9/96 from the General Secretary I.F.S. Association to the Joint Secretary to the Government of Assam, Forest Department is annexed herewith as Annexure:- 1.

5. That with regards to the statements made in paragraph 2 of the deponents has nothing to comment as the deponent has no access to there records ~~and~~ except the one received with the notice of contempt.

6. That with regards to the statements made in paragraph 3 of the Contempt Petition the deponents states that as per proviso to Rule 3(1) of the Indian Forest Service (Pay) Rules, 1968, a member of the service may be appointed to the senior scale of his completing 2(four) years of service subject to the provisions of sub-rule (2) of Rule 6A of the Indian Forest Service (Recruitment) Rules, 1966. As per Rule 6A (3), the State Government may withhold the appointment of an officer to a post in the senior time scale of pay, (i) till he is confirmed in the service or (ii) till he passes the prescribed departmental examination or examinations. The petitioners have not yet passed the prescribed departmental examination and they have not yet been confirmed.

7. That with regards to the statements made in paragraphs 4 of the Contempt petition the deponents states that the Central Administrative Tribunal, by its order dated 1.2.95 / 8.2.95 in O.A.No.52/93 and O.A. No. 53/93, declared the first two Entries of the Rule 3 of Assam Forest Services Rules, 1942 viz. Conservators (2 Nos.), Divisional Forest Officers (14 Nos.) as stood repealed by the provisions of I.F.S.(Cadre) Rules; 1966 read with I.F.S.(Fixation of Cadre Strength) Regulations, 1966 read with All India Services Act, 1951 and restrained the State Government from promoting any officers of Assam Forest Service to any of the above posts of Conservators(2 Nos.) and Divisional Forest Officers (14 Nos.) specified in the

above two Entries declared to have stood repealed by the Central Administrative Tribunal and it does not effect the promotion of Assam Forest Service Officers to the cadre of I.F.S. under Rule 8 of IFS (Recruitment) Rules, 1966. The State Govt. has not, as yet, declared any post of Divisional Forest Officers as cadre post.

8. That with regards to the statements made in paragraph 5 of the Contempt Petition the deponents states that the State Govt. has not, as yet declared any post of Divisional Forest Officer as cadre post of I.F.S. and therefore posting of State Forest Service Officers as Divisional Forest Officers in the cadre post of I.F.S. does not arise.

The applicants have alleged in their Contempt Petition that the State Government is posting S.F.S. Officers in the cadre post of I.F.S. Even though the State Government has not as yet, declared any post of D.F.O. as the cadre post of I.F.S., the experience shows that some of the I.F.S. officers when posted in the wild-life or even as the Planning Officer has not joined those posts. As for example, Shri Chandra Mohan, IFS was posted as Dy. Director, Project Tiger in Manas Tiger Project and also he was posted as Planning Officer (Copies of Govt. notification enclosed). He did not join those posts. Shri Chandra Mohan, IFS, in his O.A. No. 3/96 filed before the Hon'ble Central Administrative Tribunal alleged, inter alia that the post of the Dy. Field Director, Project Tiger, Barpeta Road is a non-cadre post, whereas as per the I.F.S. cadre schedule

-5-

notified by the Govt. of India 2(two) posts by Dy. Conservators of Forest are to be filled by the I.F.S. officers. When the State Govt. has not, as yet, identified any of the posts of the Dy. Conservators of Forest as I.F.S. cadre post, the above named I.F.S. officer (Shri Chandra Mohan, IFS) has no reason to say that the Dy Project Director, Manas Tiger Project is a non-cadre post.

The above example will show that some I.F.S. Officers are not interested to serve in the areas where they are required to serve as per the cadre schedule.

As per the cadre schedule, 2(two) I.F.S. officers are required to be posted as Dy. Conservators of Forest, Wildlife. In Kaziranga National Park there is already one I.F.S. officer as Dy Conservators of Forests. Shri Chandra Mohan, IFS was posted in another important Wildlife area i.e. Manas Tiger Project as Dy Director but he refuse to go there and filed O.A. before the Central Administrative Tribunal.

As per the I.F.S. cadre schedule, the State Govt. is required to identify and declare 33 (thirty three) posts of Dy Conservators of Forest as I.F.S. cadre post but at present the State is having only 26 (twenty six) IFS officers of the rank of Dy Conservators of Forest. Therefore in certain posts some S.F.S. officers had to be posted.

As regards posting of Shri R.C.Bhattacharjee, an officer of the State Forest Service, as the D.F.O. Assam State Zoo, it may be mentioned that Shri R.C.

Bhattacharjee is a very experienced officer in Wildlife who has served in various Wildlife areas for quite a long period of time. He worked as A.C.F., Wildlife in Western Assam Wildlife Division, Tezpur, D.F.O., Western Assam Wildlife Division, Tezpur, D.F.O., Mangaldoi Wildlife Division, D.F.O. Tinsukia Wildlife Division, Tinsukia. However, the State Govt. will post an I.F.S. Officer in the State Zoo as and when a suitable I.F.S. officer having sufficiently experienced in Wildlife is available.

Copies of some posting order and notification relating to I.F.S. cadre schedule are annexed as Annexure-II and III respectively.

9. That with regards to the statements made in paragraph 6 of the contempt petition. The deponents reiterates and reaffirm the statements made in para 8 of this petition.

10. That with regards to the statements made in paragraph 7 of the contempt petition the deponents reiterate and reaffirm the statements made in para 8 of this petition.

11. That with regards to the statements made in paragraph 8 of the contempt petition the deponent reiterates and reaffirm the statements made in paragraph 6 of this petition.

12. That with regards to statements made in paragraph 9 of the contempt petition the deponents as stated in paragraph 3 of this petition as stated against para 1, the I.F.S. Association (Assam Unit) has not authorised the petitioners to file this petition on behalf of the Association. Therefore this petition is not maintainable in so far as they claim the benefit of the judgement and order of the Hon'ble Central Administrative Tribunal as Members of the I.F.S. Association (Assam Unit.)

In view of the above, the Contempt petition may be dropped as the Govt. has not violated the order of the Central Administrative Tribunal.

13. That with regard to the statements made in paragraph 10 of the Contempt Petition the deponents categorically denies that they have deliberately/wilfully violated the orders of this Hon'ble Tribunal dated 1/2/95 and 8/2/95 in O.A. No. 52, 53, 59/93 and 96/94 and committed contempt of this court. It is most respectfully stated that there is no wilful violation of any order passed by the Hon'ble Tribunal. To the best of the deponents knowledge he has not disobeyed any orders passed by this Hon'ble Tribunal as alleged in the contempt petition and therefore the same is liable to be rejected.

14. That in the facts and circumstances of the case, the deponents states that they have not violated or disobeyed the order dated 1/2/95 and 8/2/95. In case, however, the Hon'ble Court takes a contrary view, the deponents hereby

offer an unconditional apology for an unintentional lapse on their part.

15. That the deponent respectfully submits that the Hon'ble Court may be pleased to drop the present proceeding against the deponents.

16. That the statements made in this affidavit and those made in paragraph  are true to my knowledge and those made in paragraph  17015 are matters of records and the rest are my humble submission before this Hon'ble Court.

Identified by

D.K.Dw

Advocate's ~~Chall~~

Harish Sonowal

Deponent

Solemnly affirmed before  
me on ... 19.7. .... day  
of July .... 1997.

Subrata Kumar  
Deputy Registrar  
Central Administrative Tribunal.  
Guwahati Bench.

9  
Annexure I  
100  
INDIAN FOREST SERVICE ASSOCIATION,  
ASSAM UNIT.

NO.IFS-ASSM/96,

Dated 26.09.96.

To

The Joint Secretary to the Govt. of Assam,  
Forest Department,  
Dispur.

Sub :- Contempt petition.

Ref :- Your letter No.FRE. 138/96/102, Dt.23.09.96.

Sir,

With reference to your letter referred to above, I would like to inform you that there is no dispute regarding the membership of Sri P. Roy, & other officers of I.F.S. in the Junior Scale, in the Indian Forest Service Association, Assam Unit.

As regards filing of the contempt petition referred to above, I would like to say that no resolution was adopted by the Association authorising Sri P. Roy or any member of the Association to file any contempt petition on behalf of the Association.

This is for favour of your information.

Yours faithfully,

( S. Roy Choudhuri )  
General Secretary,  
I.F.S. Association,  
Assam Unit C/O  
Principal, North East  
Forest Rangers' College,

FOREST

GOVERNMENT OF ASSAM

DEPARTMENT :::: DISPUR

Annexure J.J

109

ORDERS BY THE GOVERNOR  
- NOTIFICATION -

Dated Dispur, the 2nd November '95.

NO.FRE.23/91/220 : In modification of this Department

Notification No.FRE.23/91/205-A dated 5.9.95,

Shri Chandra Mohan, IFS, Divisional Forest Officer,

Karimganj Division, Karimganj is in the interest of public service transferred and posted as Planning Officer(II) Office of the Principal Chief Conservator of Forests, Assam with effect from the date he takes over charges vice Shri Pradip Kr.Hazarika, Planning Officer(II) transferred.

NO.FRE.23/91/220-A : On relief, Shri Pradip Kr.Hazarika, Planning Officer(II) Office of the Principal Chief

Conservator of Forests, Assam, Guwahati is in the interest of public Service transferred and posted as Divisional Forest Officer, Southern Afforestation Division, Haflong with effect from the date he assumes charges vice Shri P.P.Das expired.

Sd/- H. Sonowal,

Commissioner & Secy. to the Govt. of Assam,  
Forest Department, Dispur

Memo No.FRE.23/91/220-A, Dated Dispur, the 2nd November, 1995.  
Copy forwarded for information and necessary action :-

1. The Accountant General(A&E) Assam, Shillong.
2. The Principal Chief Conservator of Forests, Assam, Rehabari, Guwahati-8.
3. The Principal Chief Conservator of Forests(SF) Assam, Ghy-24.
4. The Chief Conservator of Forests(Territorial) Assam, Rajgarh Road, Guwahati-3.
5. The Chief Conservator of Forests, Research, Education and Working Plan, Assam, Guwahati-24.
6. The Chief Conservator of Forests(WL) Assam, Guwahati-24.
7. The Conservator of Forests, Southern Assam Circle, Silchar/Hills Circle, Haflong.
8. Shri Chandra Mohan, IFS, Divisional Forest Officer, Karimganj Division, Karimganj for handing over the charge of Karimganj Division to Shri Abhijit Rabha, IFS forthwith.
9. Shri Pradip Kr.Hazarika, Planning Officer(II) Office of the Principal Chief Conservator of Forests, Assam, Guwahati-8.
10. Shri Abhijit Rabha, IFS, Divisional Forest Officer, Camp Karimganj Division, Karimganj for necessary action.
11. The Officer-On-Special Duty to the Chief Minister, Assam for favour of information of Chief Minister.
12. The P.S. to the Minister of State, Social Forestry and Wild Life for favour of information of Minister.
13. The Deputy Director, Assam Govt.Press, Bamunimaidan, Ghy-21 for favour of publication of the above notification in the next issue of the Assam Gazette.
14. Personal file of the officers. By order etc.

Commissioner & Secy. to the Govt. of Assam,  
Forest Department, Dispur

GOVERNMENT OF ASSAM  
FOREST DEPARTMENT : : : : : DISPUR

ORDERS BY THE GOVERNOR

- NOTIFICATION -

Dated Dispur, the 5th Sept/95.

NO.FRE.23/91/205 : In the interest of public service, Shri Abhijit Rabha, IFS, Deputy Director, Project Tiger, Barpeta Road, is transferred and posted as Divisional Forest Officer, Karimganj Division, Karimganj, with effect from the date he takes over charges, vice Shri Chandra Mohan, IFS, transferred.

NO.FRE.23/91/205-A: On relief, Shri Chandra Mohan, IFS, Divisional Forest Officer, Karimganj Division, Karimganj is in the interest of public service, transferred and posted as Deputy Director, Project Tiger, Barpeta Road, with effect from the date he assumes charges, vice Shri Abhijit Rabha, IFS, transferred.

Sd/- H. Sonowal,  
Commissioner & Secy. to the Govt. of Assam,  
Forest Department, Dispur

Memo No. FRE.23/91/205-B: Dated Dispur, the 5th Sept/95.

Copy for information and necessary action to :-

1. The Accountant General (A&E), Assam, Shillong.
2. The Principal Chief Conservator of Forests, Assam, Rehabari, Guwahati-8.
3. The Chief Conservator of Forests (Territorial) Assam, Rehabari, Guwahati-8.
4. The Chief Conservator of Forests (WL) Assam, R.G. Baruah Road, Guwahati-24.
5. The Field Director, Project Tiger, Barpeta Road. He is directed to release Shri Abhijit Rabha, IFS, Deputy Director, Project Tiger immediately so as to enable him to join in his new assignment.
6. The Conservator of Forests, Southern Assam Circle, Silchar.
7. Shri Abhijit Rabha, IFS, Deputy Director, Project Tiger, Barpeta Road. He is directed to get release from his present posting and to join in his new assignment immediately.
8. Shri Chandra Mohan, IFS, Divisional Forest Officer, Karimganj Division, Karimganj for necessary action.
9. The Officer -On-Special Duty to the Chief Minister, Assam for favour of information of Chief Minister.
10. P.S. to the Minister of State, Wildlife and Social Forestry, Assam for favour of information of Minister.
11. The Deputy Director, Assam Govt. Press, Bamunimaidan, Guwahati-21 for favour of publication of the above notification in the next issue of the Assam Gazette.
12. Personal file of the officers.

By order etc.,

H. Sonowal  
Commissioner & Secy. to the Govt. of Assam,  
Forest Department, Dispur

(Signature)

No. 16016/2/95-AIS(II)-A DT.

Government of India  
Ministry of Personnel, P.G. & Pensions  
(Department of Personnel & Training)

New Delhi, the 9.11.95

NOTIFICATION

G.S.R. No..... In exercise of the powers conferred by sub-section (1) of Section 3 of the All India Services Act, 1951 (61 of 1951) read with sub-rule (2) of Rule 4 of the Indian Forest Service (Cadre) Rules, 1966, the Central Government, in consultation with the Governments of Assam & Meghalaya, hereby makes the following regulations further to amend the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966, namely:-

1. (1) These regulations may be called Indian Forest Service (Fixation of Cadre Strength) Seventh Amendment Regulations, 1995.  
(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Schedule to the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966, for the heading "Assam-Meghalaya" and the entries occurring thereunder, the following shall be substituted namely ;-

"ASSAM-MEGHALAYA"

1. Senior Posts under the State Govt.	12/06/95
<u>Posts under the Government of Assam</u>	4-12-95
Principal Chief Conservator of Forests	1
Chief Conservator of Forests (Protection)	1
Chief Conservator of Forests (Wildlife) & Chief Wildlife Warden	1
Chief Conservator of Forests (Social Forestry)	1
Chief Conservator of Forests (Research, Training & Working Plans)	1
Conservator of Forests (Territorial)	6
Conservator of Forests (Development)	1
Conservator of Forests (Economic Circle)	1
Conservator of Forests (Headquarters)	1
Conservator of Forests (Social Forestry)	3
Conservator of Forests (Wildlife)	1
Conservator of Forests (Border)	1

Field Director - Project Tiger, Manas	
Director, Kaziranga National Park	
Principal, NEF Rangers College, Jalukbari	22
Deputy Conservator of Forests (Territorial)	2
Deputy Conservator of Forests (Wildlife)	1
Deputy Conservator of Forests (Assam State Zoo)	3
Working Plan Officer	1
Forest Utilisation Officer	3
Planning Officer	1
Silviculturist	55
<hr/>	
<u>Posts under the Government of Meghalaya</u>	
Principal Chief Conservator of Forests	1
Chief Conservator of Forests (Social Forestry & Environment)	1
Conservator of Forests (Territorial & Development)	1
Conservator of Forests (Wildlife)	1
Conservator of Forests (Social Forestry)	1
Conservator of Forests (Research & Training)	1
Deputy Conservator of Forests (Territorial) (Khasi Hills, Jaintia Hills, Garo Hills)	3
Deputy Conservator of Forests (Training)	1
Working Plan Officer	1
Planning Officer	1
Silviculturist	1
<hr/>	
Director, Balphakram National Park	1
Deputy Conservator of Forests (Wildlife) (East & West Khasi Hills Wildlife Division)	1
Deputy Conservator of Forests (Utilisation)	1
Deputy Conservator of Forests (Social Forestry)	1
<hr/>	
Total	72

16 (24)

71

12

2.	Central Deputation Reserve @ 20% of Item 1 above	14
3.	Posts to be filled by promotion in accordance with Rule 8 of the Indian Forest Service (Recruitment) Rules, 1966, @ 33 1/3% of Items 1 and 2 above	28
4.	Posts to be filled by direct recruitment (1+2+3)	58
5.	Deputation Reserve @ 25% of Item 1 above	18
6.	Leave, Training Reserve & Junior Posts @ 20% of Item 1 above	14
	Direct Recruitment Posts	90
	Promotion posts	28
	Total Authorised Strength	118



(Madhumita D. Mitra)

Desk Officer

Note 1: Prior to the issue of this notification the total authorised strength of the Assam-Meghalaya Cadre was 104.

Note 2: The Principal Regulations were notified vide Notification No. 6/1/66 - AIS(IV), dated 31.10.1966 as GSR No.1072 in the Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966, has been amended vide Notification given below:-

S.No.	G.S.R. No.	Date of Publication
1.	1673	31.10.1966
2.	17	7.01.1967
3.	653	6.05.1967
4.	654	6.05.1967
5.	689	13.05.1967
6.	1083	8.06.1968
7.	1887	9.08.1969
8.	80	17.10.1970
9.	485	21.03.1970
10.	545	4.04.1970
11.	1802	24.10.1970
12.	135	24.01.1971
13.	136	24.01.1970
14.	665	8.05.1971
15.	45(E)	20.01.1972
16.	47(E)	20.01.1972
17.	48(E)	20.01.1972
18.	478(E)	4.12.1972
19.	192(E)	2.04.1973
20.	321(E)	27.06.1973
21.	391(E)	10.08.1973
22.	142	9.02.1974
23.	28(E)	2.02.1974
24.	273(E)	17.06.1974
25.	300(E)	5.07.1974

26.	812	3.08.1974
27.	2227	16.08.1975
28.	71	17.01.1976
29.	407(E)	16.06.1976
30.	1064(E)	24.07.1976
31.	444(E)	6.07.1976
32.	750(E)	3.08.1976
33.	93(E)	26.02.1977
34.	631(E)	5.10.1977
35.	13(E)	6.01.1978
36.	360(E)	13.07.1978
37.	436(E)	29.08.1978
38.	486(E)	25.08.1980
39.	562(E)	30.09.1980
40.	626(E)	3.11.1980
41.	631(E)	4.11.1980
42.	20(E)	16.01.1981
43.	31(E)	23.01.1981
44.	84(E)	27.02.1981
45.	456	9.05.1981
46.	360(E)	23.05.1981
47.	376(E)	2.06.1981
48.	386(E)	9.06.1981
49.	602(E)	16.11.1981
50.	804(E)	17.11.1981
51.	653(E)	10.12.1981
52.	657(E)	11.12.1981
53.	294(E)	1.04.1981
54.	354(E)	26.04.1982
55.	356(E)	27.04.1982
56.	478(E)	31.05.1982
57.	530(E)	30.08.1982
58.	24(E)	12.01.1983
59.	128(E)	28.02.1985
60.	308(E)	26.03.1985
61.	327(E)	29.03.1985
62.	489(E)	12.06.1986
63.	266	12.04.1986
64.	654	20.08.1986
65.	763	20.09.1986
66.	798	27.09.1986
67.	796	27.09.1986
68.	835	4.10.1986
69.	837	4.10.1986
70.	880	18.10.1986
71.	164	14.03.1987
72.	407	30.06.1987
73.	619	15.08.1987
74.	802	31.10.1987
75.	826	7.11.1987
76.	835	14.11.1987
77.	836	14.11.1987
78.	402(E)	6.04.1988
79.	540(E)	4.05.1988
80.	404	21.05.1988
81.	834(E)	3.08.1988
82.	352(E)	10.03.1989
83.	832	11.11.1989
84.	916	16.12.1989
85.	933	30.12.1989
86.	590	22.09.1990
87.	603	29.09.1990

88.	728	8.12.1990
89.	730	8.12.1990
90.	125(E)	5.03.1991
91.	246	13.04.1991
92.	473	24.08.1991
93.	527	14.09.1991
94.	565	5.10.1991
95.	584	19.10.1991
96.	538(E)	6.08.1993
97.	685(E)	4.11.1993
98.	687(E)	4.11.1993
99.	514	22.10.1994
100.	513	22.10.1994
101.	321(E)	31.03.1995
102.	213	29.04.1995
103.	278	10.06.1995
104.	264	3.06.1995

  
(Madhumita D. Mitra)  
Desk Officer

To

The Manager,  
Government of India Press,  
Mayapuri, Ring Road, New Delhi.

72(A)

(228)

I.F.

No. 16016/8/94-AIS(II)A

New Delhi, the

9. 11. 95

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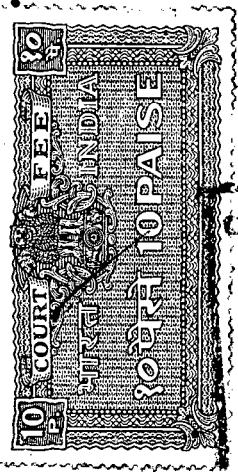
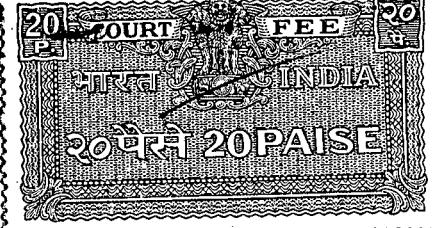
1. The Chief Secretary, Governments of Assam & Meghalaya, Dispur/Shillong (5 copies each).
2. All State Governments & Union Territories.
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4. The Chief Secretaries of all remaining State Governments.
5. The Comptroller and Auditor General of India, New Delhi (with 3 spare copies)
6. The Secretary, Union Public Service Commission, New Delhi. (with 5 spare copies)
7. All the Accountants General.
8. Director, Forests Research Institute and College, Dehradun (with 2 spare copies)
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10. The Rajya Sabha Secretariat (Committee Branch), New Delhi.
11. The Ministry of Environment & Forests (IFS.II Section), New Delhi (with 20 spare copies)
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13. Ministry of Home Affairs (UTS Section), New Delhi.



(Madhumita D. Mitra)  
Desk Officer

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH

Central Administrative Tribunal  
Guwahati Bench  
9/16  
5 JUN 1997

C.P. No. 35 of 1996

Shri Prantosh Roy & Ors.

- Versus -

Shri H.C. Sonowal & Ors.

Affidavit-in-reply against the affidavit-in-opposition filed by the respondents (contemners) No. 1 to 4.

I, Shri K.S.P.V. Pavan Kumar, son of Shri K.V.N. Nagendra Sayee, aged about 27 years, at present working as Asstt. Conservator of Forests, Manas National Park, Barpeta Road, District Barpeta, do hereby solemnly affirm and state as follows:

1. That I am the petitioner No. 3 in the above-mentioned contempt petition and as such, I am fully acquainted with the facts and circumstances of the case. I am also competent and authorised to swear this affidavit on behalf of all the petitioners.
2. That I have gone through the affidavit-in-opposition, fix hereinafter alluded to as 'the affidavit' purportedly filed on behalf of the respondent Nos. 1 to 4 and have understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow, other statements made in the affidavit are

Recd. 6/7  
Q/H  
5/6/97  
Date

file in court  
5/6/97

Filed by:  
M. K. Choudhury  
Advocate

5/6/97

categorically denied. Further the statements which are not borne on records are also denied, and the said respondents are put to the strictest proof thereof.

3. That I beg to state that the affidavit ~~filed~~ purportedly filed on behalf of the respondents is not maintainable in the eye of law.

4. That with regard to the statements made in paragraphs 1, 2 and 3 of the affidavit, I do not admit anything contrary to the relevant records.

5. That with regard to the statements made in paragraph 4 of the affidavit, I beg to state that it has never been contended that the petitioners have filed the contempt petition on behalf of the IFS Officers Association. The petitioners being members of the Association have got every right to bring to the notice of the Hon'ble Tribunal that its orders are being violated by the respondents. It will not be out of context to mention here that the IFS Officers' Association has also made their grievance as has been raised in the instant contempt petition and to that effect the Association had submitted representation under No. IFS ASSN/96/5-8 dated 30.8.96.

Copies of two representations dated 30.8.96 and 6.9.96 are annexed hereto as ANNEXURES 1 & 2

6. That with regard to the statements made in paragraph 5 of the affidavit, I do not admit anything

contrary to the relevant records and reiterate and reaffirm the statements made in paragraph 2 of the contempt petition.

7. That with regard to the statements made in paragraph 6 of the affidavit, while reiterating and reaffirming the statements made in paragraph 3 of the contempt petition, I do not admit anything contrary to the relevant ~~xxxxxx~~ rules. There is already a number of judgments in respect of promotion to the Senior Scale and I crave leave of the Hon'ble Tribunal to refer to and rely upon those judgments at the time of hearing of the instant contempt petition.

8. That with regard to the statements made in paragraph 7 of the affidavit, I beg to state that the statements made are itself contemptuous. The statements made by the respondents go to show as to how they are not faithful to the orders passed by this Hon'ble Tribunal. It is ridiculous on the part of the respondents to state that the State Government has not as yet declared any post ~~as~~ of Divisional Forest Officer as cadre post. In this connection, I crave leave of the Hon'ble Tribunal to refer to ~~xxxxxxxx~~ the relevant provisions of the rules and other relevant documents at the time of hearing of the instant contempt petition.

9. That with regard to the statements made in paragraph 8 of the affidavit, while denying the contention

made therein, I reiterate and reaffirm the statements made in paragraph 5 of the O.A. I beg to state that the declaration of cadre post is necessary ~~for appointment~~ ~~in cadre~~ in order to IFS cadre rules. The contemnor No. 1 by saying that the cadre posts have not been declared by the Government, has tried to mislead the Hon'ble Tribunal. On the other hand, by saying so, he attempts a serious lapse of his duties on his part. He also took umbrage under those lapses to perpetrate cadre management and violation of cadre rules and so also the judgment and order of this Hon'ble Tribunal in O.A. No. 52/93, 53/93, 59/93 and 96/94. There being a clear order from this Hon'ble Tribunal in the aforesaid cases not to post any Forest Service Officer to the cadre post of IFS, such statement made by the respondents more particularly by the respondent No. 1 ~~will~~ go to show that no regard has been shown to the said Judgment and order. Rather the same has been violated wilfully and deliberately. The stand now taken has further aggravated the contempt of this Hon'ble Tribunal committed by the respondents, more particularly the respondent No. 1.

By their own admission of the paragraph 7 of the affidavit, it goes to prove that 14 numbers of posts of D.F.O. have been encadred with the rule of first two entries of Rule 3 of Assam Forest Service Rules, 1942 as has been held by the Hon'ble Tribunal in the aforesaid case. Whenever a new post of DFO is created, it is done so in the scale of pay of IFS or SFS and such IFS posts

are encadred in due course in the tri-ennial meeting of the Joint Cadre Authority.

Reference made by the respondents of Shri Chandra Mohan Sharma, applicant in O.A.No. 3/96 has got no relevance in the instant case. The said case is subjudiced before this Hon'ble Tribunal and the contemners ought to refrained from making any comments, about the said case. The contemners demand that there are only two 26 IFS officers of the rank of DCF against a total of 3 number of DCF as per IFS Cadre Rules and not to post SFS officers against the post meant for the IFS officers due to shortage of cadre officers. Here arises another question that the officers are occupying the cadre post on the contrary of the rules. Position is that out of 22 cadre posts of territorial divisions only 7 cadre officers are posted till date. The malafide and vindictive attitude of the contemners, more particularly the contemner No. 1 is also evident from the fact that many cadre officers have been working against non-cadre post for more than 3 years which is in a total violation of existing cadre rules. The statements made by the respondents clearly show that inherent contradiction and prejudice on the part of the contemners more particularly the contemner No.1. The contemner No.1 has been creating an uncalled for and a voidable shortage of IFS Officers by not promoting the officers of 1991-92 batch to Senior Scale who have already completed more than the statutory period of four years in junior scale.

That the contemner No. 1 has no regard for cadre rules is also evident from the fact that he has not obtained the required direction from the competent authority including UPSC for posting of non-cadre officer to a cadre post for a period of exceeding six months which is the mandatory requirement as per Sub-Rule 4 of Rule 9 of the IFS cadre rules, 1966. He has also violated the Sub-rule 2 of Rule 9 of IFS Cadre Rules by not intimating such position to Central Government while posting a non-cadre officer to cadre post for a period exceeding five months.

The contemner No. 1 while giving his justification for the posting of non-cadre officer to a cadre post i.e. D.F.O., Assam State Zoo has overlooked the letter and spirit of the cadre rules. Such justification on his part leaves no manner of doubt that he has wilfully and deliberately violated the aforesaid judgment and order of the Hon'ble Tribunal. There are senior IFS Officers in the rank of D.C.F. For example Shri A.K. Singh, Shri D. Hara Prasad, Shri A. Rabha etc. who are holders of Post Graduate Diploma in Wild Life Management conferred by Wild Life Institute of India, Dehradun. Moreover the State Government has spent huge Government exchequer for their wild life training. Of the above three officers, Shri D. Hara Prasad served as D.F.O. in two Wild Life Divisions (Western Assam Wild Life Division and Kokrajhar Wild Life Division). Shri A. Rabha worked as Deputy Director in Manas Tiger Project. All these

facts will prove that the respondents have wilfully suppressed this fact and have tried to justify their lapse in observing cadre rules and the aforesaid judgment and order of this Hon'ble Tribunal. The relevant records regarding posting of Shri R.C.Bhattacharjee, a non-cadre officer as D.F.O. Assam State Zoo speaks how the posting has been manipulated by the contemners with ulterior motives. In this connection, the relevant file may be called for for perusal of this Hon'ble Tribunal. It may not be out of place to mention here that recently, there has been hue and cry in the public as well as in the media regarding the death of 49 rare animals within a span of six months tenure of Shri R.C. Bhattacharjee attracting criticism and suggestion for the ~~present~~ posting of suitable officers in the place of Shri R.C. Bhattacharjee.

10. That with regard to the statements made in paragraphs 9, 10 and 11 of the affidavit, while denying the contentions made therein, I reiterate and reaffirm the statements made in paragraphs 6, 7 and 8 of the contempt petition.

11. That with regard to the statements made in paragraph 12 of the affidavit, while denying the contentions made therein, I reiterate and reaffirm the statements made hereinabove.

12. That with regard to the statements made in paragraphs 13 and 14 of the affidavit, while denying

contentions made therein, I reiterate and reaffirm the statements made in paragraph 10 of the contempt petition. It is respectfully submitted that the contemners have wilfully and deliberately violated the aforesaid judgment and order of this Hon'ble Tribunal. In view of the clear violation of the aforesaid judgment and order and the stand taken by the contemners in their affidavit, the Hon'ble Tribunal may take a serious view of the matter and the same may be dealt with in accordance with law.

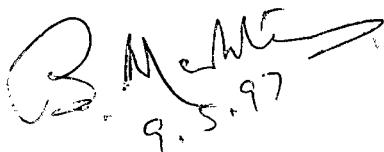
13. That with regard to the statements made in paragraphs 15 and 16 of the affidavit, I beg to submit that no case has been made out by the respondents to drop the contempt proceeding initiated against them. Rather they have aggravated the contempt by making the statement in the affidavit as pointed ~~now~~ out above.

14. That in view of the facts and circumstances stated above, the contemners are liable for appropriate action as provided for under the rules for wilful and deliberate violation of the aforesaid judgment and order of this Hon'ble Tribunal.

15. That the statements made in this affidavit in reply in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 are true to my knowledge ; those made in paragraphs   
 - are matters of records which I verily believe to be true and the rest are my humble submissions before this Hon'ble Tribunal.

And I sign this affidavit on this the  
day of March 1997 at Guwahati.

Identified by me :

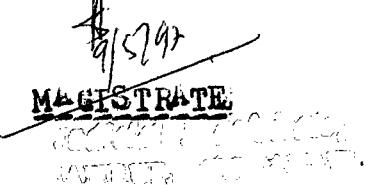
  
B. Mehta  
9.5.97

  
K. D. Dangar

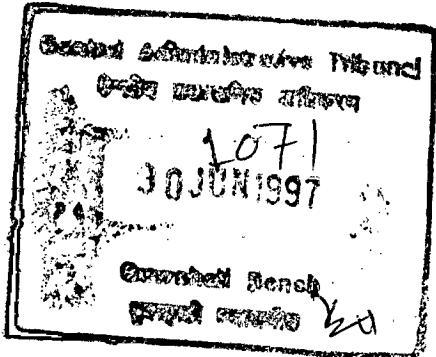
DEPONENT

Advocate

Solemnly affirmed and declared by  
by the deponent who is identified by  
Shri B. Mehta, Advocate, Guwahati  
on this day of 9 th May 1997 at  
Guwahati .

  
A/5297  
MAGISTRATE  
Guwahati  
Assam  
India

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : GAUHATI BENCH.



CP NO. 35 OF 1996

SHRI PRANTOSH ROY AND ORS.

VRS.

SHRI H. SONOWAL & OTHERS.

IN THE MATTER OF:-

Additional Affidavit on behalf of the Respondents (Contemners) in counter to the affidavit-in-reply filed by the petitioners.

I, Sri H. Sonowal, son of Late Durgeswar Sonowal, aged about 46 years, presently Commissioner and Secretary to the Govt. of Assam, Forest Department, Dispur, do hereby solemnly affirm and state as follows:-

1. That I am arrayed as Contemner No. 1 in the above mentioned Contempt petition and as such, I am fully conversant with the facts and circumstances of the case. I am competent to swear this additional affidavit on behalf of all the Contemners and therefore, swear this affidavit on my own behalf and others.

2. That I have received a copy of affidavit filed-in-reply to the counter - affidavit filed on

Contd... 2.

behalf of Contemners No. 1 to 4. That I have gone through the same and understood the contents thereof. Save and except the statements made in the affidavit in reply - to the counter-affidavit filed on behalf of the Contemners No. 1 to 4, are denied.

3. That it is most humbly stated that the present Contempt Petition No. 35/96 filed by the petitioners do not lie against the deponent and 3 (three) Ors. The deponent most humbly begs to point-out the Hon'ble Central Administrative Tribunal that the present applicants were not the applicants in O.A. No. 52/93 ; O.A. No. 53/93 ; O.A. No. 59/93 and O.A. No. 96/94. O.A. No. 96/94 was filed by the IFS Association (Assam Unit) represented by its General Secretary.

4. That the contentions of the applicants involved in O.A. No. 52/93, O.A. No. 53/93, O.A. No. 59/93 were common to them and not the subject matter of this present contempt petition.

In O. A. No. 96/94 filed by the IFS Association (Assam Unit), the issue before challenge was relating to the "Creating of the post of Chief Conservator of Forests "in the Assam State Forest Service as an ex-cadre post and appointment of a State Forest service officer likely to be made to the posts".

3.

The deponent Craves leave of the Hon'ble Tribunal to rely on paragraph 2 of the Judgement/decision dated 1.2.95/8.2.95 in the aforementioned on final Application.

5. That with regards to the paragraphs 5 and 6 of the affidavit-in-reply, the deponent re-iterates with statement made in paragraph 4 of the affidavit filed in-counter.

The petitioners have now tried to take a different stand by stating before this Hon'ble Tribunal that they have filed this contempt petition not on behalf of the IFS Association (Assam Unit) but as members of the said Association. The deponent Craves leave of this Hon'ble Tribunal to examine the correctness of such flexible stance of the petitioners in the light of the communication made to the Govt. by the General Secretary of the said association vide letter No. IFS-ASSM/96 dtd. 26.9.96, annexed to the Counter-affidavit as Annexure - I.

The deponent further states that the petitioners are Junior Time Scale Officers presently working as Assistant Conservator of Forests at different places and they are no way connected with the matters in the O.A. No. 52/93, O.A. No. 53/93, O.A. No. 59/93 and O.A. No. 96/94.

Contd...4.

It is a fact that the IFS Association (Assam Unit) have filed a representation dtd. 30.8.96 through the General Secretary on the basis of resolution adopted by the Executive Committee of the said Association on 26.8.96.

It is stated that the grievances of the Association ventilated in the said representation have been duly considered by the Government as far as practicable and possible following due process of law. Persons borne in IFS Cadre, found suitable, have accordingly been promoted to the rank of Chief Conservator of Forests, Conservator of Forests etc. against the available vacant post in the Cadre.

The deponent further also states that the petitioners had filed an application before this Hon'ble CAT registered and numbered as O.A.No. 141 of 1996 seeking/ praying for directing the Respondent Govt. and others to promote the applicants (present petitioner). This Hon'ble Tribunal have disposed of the matter by Judgement dated 2.4.97 directing the Respondent Govt. and others to promote these petitioners from the due date of promotion with all consequential benefits giving liberty to the Respondent State Govt. to revert the applicants if they fail to clear the prescribed departmental examination within a period of one year, a

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mandatory Provision of Rule 6 A(3) of the IFS (recruitment) Rules, 1966.

The said copy of order of the Hon'ble CAT passed in the aforesaid O.A.No. 141 of 1996 filed by the present petitioners were received by the department on 6.6.97.

It is further to be stated by the deponent that the grievances as mentioned in the paragraph 2 of the representation of the said Association filed before the Govt. dated 30.8.96, relates to the promotion of Junior Time Scale Officers to the next higher grade of Senior Time Scale which prima-facie referred to the cases of the petitioners. These petitioners could not be promoted to the Senior Time Scale as they had failed to clear the prescribed departmental examination as required under provision to the Rule 6A(3) of the IFS (recruitment) Rules' 1966. Besides, their services are not confirmed as yet, as required under the said Rule, a condition precedent for promotion to the Senior Time Scale.

The above facts will go to show that the petitioners have filed this contempt petition no. 35/96 misleading the Hon'ble Tribunal and with a view to bypass the Statutory requirement of passing the Department-

6.

tal examination as per Rule 6A(3) of the IFS (Recruitment) Rules, 1966 with a view to obtain illegal gain and on this count the said Contempt application is baseless and vexatious and warrants immediate dismissal by the Hon'ble Tribunal with adequate costs against the petitioners.

A copy of the Judgement dtd. 2.4.97 passed in O.A. No. 141 of 1996 filed by the petitioners is annexed hereto and marked as ANNEXURE : A.

6. That with regards to statement made in paragraph 7 of the affidavit in reply to the counter-affidavit the deponent reiterates with the statements made in paragraph 3 of the affidavit filed in counter. The deponent further begs to state that the State Govt. have promoted officers in the past pursuant to orders of this Hon'ble Tribunal. In the earlier order(s) of this Hon'ble Tribunal in O.A. No. 198/90 dtd. 19.7.91, the Govt. was given liberty to revert the applicants if they failed to clear the prescribed departmental examination within a period of 1(one) year.

It has come to the notice of the State Govt. that some of the applicants despite such order(s) of Hon'ble Tribunal including some other officers who have

Contd... 7.

been promoted to Senior time Scale are yet to clear all the subjects as prescribed by the Govt. which is mandatory as per Rule 6A(3) of the aforesaid rule, 1966.

To keep the highest level of efficient administration of the State, it has been decided by the State Govt. to take action in the matter of reversion of the officers who have ~~not~~, as yet, failed to clear the pre-scribed departmental examination. Such action, as contemplated by the Govt. is in total regards to the direction of the Hon'ble CAT in its earlier Judgement/Order(s).

7. That with regards to paragraph 8 of the affidavit in reply, the deponent re-iterate and re-affirm the statement made under paragraph 7 of the counter-affidavit.

The deponent has the highest regard to the Judiciary and all orders passed by this Hon'ble Tribunal have been duly complied with and at no point of time there has been any wilful violations of the order of the Hon'ble Tribunal. The allegations of the petitioners are ill - founded and with malafide intentions in as much as the orders passed by this Hon'ble Tribunal in O.A.No. 52/93, O.A.No. 53/93, O.A. No. 59/93 and O.A. No. 96/94 dtd. 01.2.95/8.2.95 have duly been complied with as No

8.

State Forests Service Officers have have been promoted <sup>65</sup> the rank of Conservator of Forests since then nor any post created either for the post of Chief Conservator of Forests (CCF), Conservator of Forests for the State Forest service Officers. Infact all the posts right from the level of Conservator of Forests to the Principal Chief Conservator of Forests are held by the IFS Officers.

9. That with regards to the statement made in paragraphs 9, 10, 11, 12, 13 and 14 of the deponent re-affirm and re-iterates the statement made in paragraphs 8, 9, 10, 11 and 12 of the affidavit filed-in-counter.

It is a fact that the State Govt. has not as yet declared any post of DCF level as Cadre post except those which are specifically notified by the Govt. of India, like (1) Working Plans Officer, (2) Divisional Forest Officer, Wildlife (3) Planning Officer (4) Silviculturist etc. It has come to the notice of the State Govt. that whenever State Forests Service Officers are posted as Working Plans Officer, Planning Officer, Silviculturist etc., the petitioners have no complain as such for posting of IFS Officers in such Cadre post. As it prima-facie appears, the contentions of the petitioners are regarding the 22 post of DCF (Territori-

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by Assam Wing as per the cadre schedule notified by the Govt. of India in 1995, annexed to the petition as Annexure-I.

I. It is most respectfully pointed out to this Hon'ble Tribunal that the earlier notification regarding Cadre Schedule issued by the Govt. of India during 1987, these 22 posts of D.C.F. were not shown as "Territorial", which otherwise does not carry any meaning. Every Forest Division, whether it is normal, social Forestry, Wildlife, Aforestation etc. etc. has ~~not~~ its own territorial jurisdiction. By trying to claim that only normal Divisions are Territorial Divisions meant for IFS officers only, the petitioners have tried to claim that IFS officers are not meant for the other Divisions like social forestry and Afforestation Division which involve scientific management of forests by proper planning and orientation.

It is further pointed-out to this Hon'ble Tribunal that there are some cases which have come to the notice of the Govt., that some the IFS officers posted in normal Divisions have indulged in activities which are against the interest of the conservation of Forests of the State. The State Govt. can not encourage such activities of these officers.

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The recent order of the Hon'ble Supreme Court of India in writ petition (Civil) No. 202 of 1995 with W.P. (Civil) No. 171/96 banning felling of trees and movement of timbers out side the N.E. Region simply magnify the failure on the part of some of the IFS Officers of Assam in controlling illegalities, checking deforestations and non - forestry activities.

For effective and efficient administration in the Forestry Sector of Assam the Govt. have taken steps to post right person in the right place irrespective of the Indian Forests Services or State Forest Service without any discrimination. It is further to point out to this Hon'ble Tribunal that the State Forests Service Officers become eligible for promotion to IFS after completion of 8(eight) years of service as envisaged under Rule 5 of the IFS (App. by promotion) Regulation, 1966. The State Forests service officers becoming eligible after completion of 8 years though not promoted to IFS due to want of posts in the Cadre strength, are also no less competent to look after some of the Divisions.

As regards 14 Nos. of posts of D.F.O., the deponent has no comment to be made which relates to the orders passed by this Hon'ble Tribunal.

As regards to the reference made to the posting of Sri C.Mohan, IFS, it was mentioned as an example only to show that some of the IFS officers do not like to join even if they are posted against the cadre post. The deponent has not made any comment in regards to the O.A.No.3/96. The deponent submits that there were 26 IFS officers at the DCF level against 33 posts as pointed out in the affidavit filed in counter. The number of officers at the DCF level at present has been reduced due to promotion of some of the officers to next higher rank of Conservator of Forests, recently. It has also come to the notice of the Govt. that the petitioner No.3 Sri K.S.P.V. Pawan Kumar who was also one of the petitioners in O.A. No. 141 of 1996 as already pointed-out in the fore-going paragraphs have suppressed the very vital fact that he did not clear the prescribed "the Working Plan exercise" of 1992-94 course at the Indira Gandhi National Forest Academy as will be revealed from the telegraphic message received from the Joint Director of the said Academy by the principal Chief Conservator of Forests, Assam communicated to him vide letter no. 1657/97-NFA/21, 12/TOUR dtd. 6.3.97.

The "Working Plan exercise" is a subject prescribed under the Indian Forests Service (Probationers' Final Examination) Regulation, 1968 and in this

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regard appropriate action can be taken by the Govt. as envisaged under Rule 12(3) of the Indian Forest Service (Probation) Rules, 1968.

A copy of the aforesaid letter dtd. 6.3.97 from the Joint Director, Indira Gandhi National Forest Academy is annexed hereto and marked as ANNEXURE : B.

(9) It is further to be pointed-out to this Hon'ble Tribunal that the petitioners Sri K.S.P.V. Pawan Kumar had joined in the State on 3.2.95 and Sri R.P.Singh on 11.1.95. It is pertinent that judgement in O.A.No. 52/93, O.A. No. 53/93, O.A.No. 59/93 and O.A. No. 96/94 was delivered by the Hon'ble Tribunal on 1.2.95/8.2.95. While the applicants in O.A.No. 52/93, 53/93, 59/93 have not made any complaint to the State Govt. pointing-out violation of the order of the Hon'ble Tribunal, the General Secretary IFS Association (Assam Unit) did not also point-out the State Govt. regarding violation of the said order of the Tribunal as involved in O.A.No.96/94 in as much as the contentions in the aforesaid application before this Hon'ble Tribunal were regarding posting of S.F.S. officer in IFS cadre post of Conservator of Forests and the creation of the post of Chief Conservator of forests as an ex-cadre posts, as already cited in paragraph 2 of judgement of the Hon'ble Tribunal.

Contd...13.

13.

The deponent Craves leave of this Hon'ble Tribunal to examine the fact if such a contempt petition lie against the deponent and 3 (three) others as the petitioners have failed to produce any material record to show that after delivery~~s~~ of the judgement till filing of this contempt petition no. 35/96, they have ever ~~been~~ pointed-out to the State Govt. or the deponent no.1 regarding violation of the said order of Hon'ble Tribunal.

The deponent further begs to point out to this Hon'ble Tribunal that none of the petitioners can claim for their posting in a cadre post as they are not yet promoted to the Senior time scale due to the reasons cited in the foregoing paragraphs. They are not holding any Cadre post being officers of Junior Time Scale at ACF level.

Rule 10 of the IFS cadre Rules, 1966 gives the liberty to the State Govt. to keep regular I.F.S. Cadre posts in abeyance or vacant subject to the fulfilment of the provision contained in the Rule.

The Govt. of India have decided vide DP & AR letter no. 3/7/72-AIS(IV), dtd. 24.9.1973 as in under Rule 6-A of the IFS (Recruitment) Rules, 1966 amongst others that ..... It has been decided that in

- order to determine the suitability of direct recruit to the IFS for promotion to the post in the senior time scale, their works and performance should be watched for a period of atleast two years after have completed successfully the period of probation....."

As regards posting of cadre officers against 22 (Territorial) posts, the State Govt. have not, as yet, identified the Cadre posts and, therefore, posting of SFS officers as D.F.O. in the Cadre post does not arise.

As regards promotion of IFS Officers of Junior Time Scale of 1991 and 1992 batches to the Senior Time Scale, the matter was subjudiced in O.A.No. 141 of 1996 filed by the same petitioners. The reasons were submitted before the Hon'ble Tribunal and in the meantime the Hon'ble Tribunal has passed an order dtd. 2.4.97.

From the above, it appears that being Junior Time Scale Officers the petitioners have no jurisdiction to file any contempt petition during the pendency of O.A. 141 of 1996 while the matter was subjudice.

As regards posting of D.F.O. in Assam State Zoo, the matter has already been explained in the

earlier affidavit. Out of the 3 I.F.S. officers from IFS officers namely, Sri D.Hara Prasad and Sri A.Rabha have already been promoted to the Conservator of forests and Sri A.K.Singh, I.F.S. is holding the post of Working Plans Officer which is a Cadre post. In this connection it may be stated that petitioner No. 3 Sri K.S.P.V. Pawan Kumar of 1992-94 batch has not yet completed the Working Plan exercise.

(10) As regards the posting of Sri R.C. Bhattacharjee in the State Zoo as the D.F.O., the deponent stoutly denies the scurrilous and baseless allegations brought against him regarding his posting and Govt. have already received a formal complaint filed by Sri R.C. Bhattacharjee against high uncalled statements made against him by the petitioner.

As regards the death of animal in the State Zoo a comparative Statement showing the death of Zoo animals during the period of Sri R.C.Bhattacharjee and his predecessor along with bio-data of Sri Bhattacharjee will clearly show that mortality rate was further reduced during his period compared to earlier period.

Copies of the Chart, complain petitioner and Bio-data, date are Annexed as ANNEX-  
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URES : C, C & C respectively.

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The deponents No. 1 categorically denies the statement quoted in paragraphs 8, 9, 12 and state that the Hon'ble Tribunal in its order dtd. 1.2.95 and 8.2.95 passed No.52/93, O.A. 53/93 has never refrained the State Govt. from posting suitable officers in suitable post. On that basis the Hon'ble Tribunal only restrained the State Govt. from promoting or appointing any officers of the Assam Forest Service to any IFS Cadre including the post of Conservator of Forests.

The term cadre is not defined in the cadre Rule. It is defined in F.R. 9(4) as follows:-

(A) Cadre means the strength of a service or a post of service sanctioned as a separate Unit (emphasised) From the emphasised word it would appear that cadre has nothing to do with nomenclature but with numbers. Cadre post, therefore would mean the number of posts comprised within the sanctioned strength of a service or posts.

Posts beyond that strength may be either ex-cadre or non-cadre and may be filled up appointment of non cadre officers. Rules do not contain any bar against such appointment.

Moreover, the petitioner by their statement

17.

in the contempt petition regarding posting of state officers to cadre post held by IFS are trying to confuse the term "Cadre" with nomenclature of posts. Moreover, Rule 9 of the Cadre Rules clearly enables posting of non-cadre officers to cadre posts on fulfillment of certain conditions. Since the condition under which the power may be exercised are prescribed in the Rule itself, there is no scope of exercise of such power and the allegation of the petitioners are untenable, unsustainable in the eye of Law.

(12)

Thus from the foregoing para it is clear that

there is no wilful violation on the part of deponents and as the petitioners are not Senior Scale Officers they have no jurisdiction to file contempt petition on the grievances which do not relate to them and hence the contempt petition be dropped and the contemners discharge by the Hon'ble Tribunal.

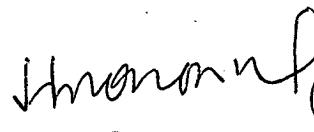
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13. I hat the statements made in the additional affidavit in paragraphs   are true to my knowledge and those made in  To 12 are derived from the records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal and I sign this affidavit on this  th day of July 1997 at Guwahati.

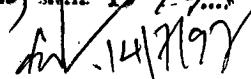
Identified by me

  
(Debajit Kr. Das)  
Advocate.

  
Shri Harish Sonowal  
Deponent.

Solemnly affirmed, declared and signed before me by the deponent who is being identified by Shri Debajit Kr. Das Advocate, on the  th day of July, 1997 at Guwahati..

Solemnly affirmed before Magistrate.  
me on 14/7/97 day  
of July, 1997

  
Deputy Registrar  
Central Administrative Tribunal  
Guwahati Bench.

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RECD. WITH A. 10/11/1977

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH ::::::::::::::: GUWAHATI

DESPATCH NO.

2016

DATED, GUWAHATI THE 6.6.97.

ORIGINAL APPLICATION NO.

141/96 Regd No. 7

MISC. PETITION NO.

4545

CONTEMPT PETITION NO.

916/97

REVIEW APPLICATION NO.

4545

TRANSFER APPLICATION NO.

916/97

P. Roy M. Ors.

APPLICANT(S)/PETITIONER(S)

U.O.E. M. Ors.

RESPONDENT(S)

To

Principal Chief Conservator  
of Forests Admin. Assam,  
Rehabari,  
Guwahati.

Sir,

I am directed to forward herewith a copy of Judgment/Final Order dated 2.4.97 passed by the Bench of this Hon'ble Tribunal comprising of Hon'ble Justice Shri D. N. Barnah Vice-Chairman and Hon'ble Shri G. L. Sanghade Member, Administrative in the above mentioned case for information and necessary action, if any.

Please acknowledge receipt of the same.

Yours faithfully,

16/6/97

SECTION OFFICER (JUDICIAL) - 1  
C. O. (JUDICIAL) - 1  
Guwahati Bench

SLC

Encls : As stated above.

101  
141  
Anuradha

CENTRAL ADMINISTRATIVE TRIBUNAL  
GUWAHATI BENCH

-20-

Original Application No. 141 of 1996

Date of decision : This the 2nd day of April, 1997.

The Hon'ble Justice Shri D.N.Baruah, Vice-Chairman.

The Hon'ble Shri G.L.Sanglyine, Administrative Member.

1. Shri Prantosh Roy, I.F.S.,  
Son of Shri Brajendra Nath Roy  
At present posted as Assistant  
Conservator of Forests,  
Sonitpur East Division  
Biswanath Chariali.
2. Shri Raj Pal Singh, I.I.S.  
Son of Shri Shyam Lal Singh  
At present posted as Assistant  
Conservator of Forests, Sonitpur  
West Division, Tezpur.
3. Shri K.S.P.V. Pavan Kumar, I.F.S.  
Son of Shri K.V.N. Nagendra Sai,  
At present serving as Assistant Conservator  
of Forests, Namas National Park,  
Barpeta Road, Barpeta. Applicants.

By Advocate Mr. G.K.Bhattacharyya.

-versus-

1. Union of India (Represented by:
  - (A) Secretary to the Govt. of India,  
Ministry of Personnel, Public Grievances,  
and Pensions, Department of Personnel  
and Training, New Delhi.
  - (B) Secretary to the Govt. of India,  
Ministry of Environment and Forests,  
Department of Forests and Wildlife,  
Prayavaran Bhawan, C.G.O. Complex,  
Lodhi Road, New Delhi.
2. State of Assam, (Represented by the  
Commissioner and Secretary to the Govt.  
of Assam, Forest Department, Dispur,  
Guwahati).
3. State of Meghalaya (Represented by the  
Secretary to the Govt. of Meghalaya, Forest  
Department, Shillong).
4. Chief Secretary to the Govt. of Assam,  
Dispur, Guwahati.

5. Chief

5. Chief Secretary to the Govt. of Meghalaya, Shillong.
6. Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi. (Represented by Secretary, UPSC).
7. Principal Chief Conservator of Forests, Assam. Rehabari, Guwahati.

## Respondents

By Advocate Mr. A.K.Choudhury, Learned Addl. C.G.S.C.

O R D E R

BARUAH J. (V.C.).

These three applicants have filed this application praying inter alia for a direction to the respondents to treat the applicants that they had been promoted ~~to the~~ <sup>to</sup> Senior Scale from the date of their selection i.e. with effect from 1.4.95 in respect of applicants No. 1 and 2 and with effect from 1.4.96 in respect of applicant No. 3. The facts for the purpose of disposal of this application are :

The applicants were appointed in the Indian Forests Service : the applicant No. 1 was appointed in September 1991, applicant Nos. 2 and 3 in the year 1992 and since then they have been serving as Assistant Conservator of Forests in various places. The contention of the applicants is that on completion of 4 years of service as per Rule 3 (1) of Indian Forests Service (Pay) Rules, Annexure I, conditions have been issued by the Government of India, Ministry of

Environment & Forests, New Delhi. Under the said rule and the guidelines the applicants are entitled to be promoted to the senior scale. However, they were not so promoted under the said rules and the guidelines.

2. Being aggrieved by and dissatisfied with the inaction of the Respondents the applicants separately submitted representations Annexure 2 series by the applicant No. 1 and Annexure 3 by the applicant No. 3. In paragraph 10 of the application, the applicants have stated that the representations had ~~been~~ <sup>been</sup> disposed of till filing of this application. Even now, to the knowledge of the applicants those representations have not yet been disposed of. The present applicant has been filed for the failure of the Respondents to promote the applicants as per Rules and guidelines.

3. Respondents have entered appearance and have filed written statement disputing the claim of the applicants. In paragraph 3 of the written statement the respondents have stated inter alia that the applicants had not been promoted to the post of senior scale in view of the fact that they failed to pass departmental examination.

4. We have heard Mr. G.K.Bhattacharyya, learned counsel appearing on behalf of the applicants and Ms. M.Das, Govt. Advocate, Assam appearing on behalf of the Respondent Nos. 2 and 4. Mr. A.K.Cheudhury, Adol.

C.G.S.C. on behalf of the respondent No. 1 (A) and (E). The contention of Mr. Bhattacharyya is that passing of the departmental examination was not condition precedent for promotion to the post of Senior Scale

.....post

post. Therefore, the action of the respondents in denying the right of the applicants was arbitrary, unreasonable & unfair and contrary to the provisions of law. Mr. Bhattacharyya has also drawn our attention to the Judgement and Order dated 19.7.1991 passed by this Tribunal in O.A. No. 198 of 1990. Mr. Bhattacharyya has specifically drawn our attention to paragraph 5,6 and 7 of the said judgement passed. By pointing out to those paragraphs he has tried to show that the passing of departmental examination was not a condition precedent for getting promotion. He has also submitted that during that time and even before also other officer of the Govt. of Assam belonging to All India Service were given promotion without requiring them to pass departmental examination. It is admitted by the parties that the provision contained in all India Services Act are applicable to the members of Indian Forests Service. By referring to that Mr. Bhattacharyya submits that passing of departmental examination was not required for getting promotion to the senior scale. Mr. A.K. Choudhury does not dispute the legal position. He also submits that passing of the departmental examination was not a condition to get senior scale. Ms. Das has not been able to show the contrary. In the case of A.M. Singh and Ors. vs. Union of India & Ors. in Original Application No. 198 of 1990 similar question came for consideration before this Tribunal. In the said decision this Tribunal held thus :

""Although the State Government in their counter have pointed out the all four applicants have not cleared one or more subjects in the departmental examination, at no stage till the filing of this application, the applicants were told by the Government of Assam

....that

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that as a matter of deliberate decision the State Government have decided to withhold the promotion of direct recruited IFS officers from junior time scale to senior time scale .....

5. We find that the judgement of the above case squarely covers the present case and accordingly we dispose of this application with a direction to the respondents that if there are vacancies in the senior time scale, the applicants shall be deemed to be promoted to the senior time scale with effect from their respective due date. The applicants shall be entitled to receive all the consequential benefits.

6. This shall be done within a period of two months from the date of receipt of the copy of this order. We also give liberty to the respondents to revert the applicants to the junior time scale if they fail to clear all the parts of the departmental examination for confirmation within one year of this order. For that purpose 2nd respondent shall arrange to hold the examination within a period of one year, but not earlier than six months from the date of this order.

Considering the facts and circumstances of the case, we make no order as to costs.

Sd/-VICE CHAIRMAN

Sd/-MEMBER (A)

TRUE COPY

6/6/1976

Supplementary  
Central Administrative Tribunals  
Gujarat Bench

6/6/76

STATE

TELEGRAM

ORDINARY

PCCF

ASSAM

RAHBARI, GOWAHATI

WORKING PLAN EXERCISE SCHEDULED FROM 27TH MARCH, 97 TO  
15TH APRIL, 97(.) DIRECT. MR. KSPV PAWAN KUMAR IFS 1992-94 COURSE  
TO REPORT ACADEMY LATEST BY 26TH MARCH 1997(.)

NOT TO BE TELEGRAPHED

NEW FOREST

DEHRA DUN

DATED 6.3.1997

JOINT DIRECTOR  
INDIRA GANDHI NATIONAL FOREST ACADEMY

DATED 6TH. MARCH, 1997.

Copy by post to the Principal Chief Conservator of Forests,  
Assam, Rehabari, Gowahati for information. The Working Plan  
Exercise of 1994-97 Course is scheduled to be held from 27.3.97  
to 15.4.97. It is requested that Mr. KSPV Pawan Kumar, IFS(P)  
1992-94 Course who has not completed the Working plan Exercise,  
may be directed to attend the exercise. He should report at  
IGNFA, Dehra Dun latest by 26th March, 1997.

JOINT DIRECTOR  
INDIRA GANDHI NATIONAL FOREST ACADEMY

20/3/97  
19-3-97

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Antecomm - C

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GOVERNMENT OF ASSAM  
 OFFICE OF THE CHIEF CONSERVATOR OF FORESTS (WILDLIFE) ASSAM  
 R.G. BARUAH ROAD: GUWAHATI-24

NO. WL/FG. 15(2)/Zoo-Animals-dead/97,

dt..... 20. 6. 97

To:

Subject:

Shri Harish Sonowal, IAS,  
 Commissioner & Secretary, to the Govt. of Assam,  
 Forest Department, Dispur, Guwahati-781006.

Mortality rate of Zoo animals.

Sir,

With reference to your telephonic request on 14th June 1997, I am sending herewith the information as below regarding death of animals in the Assam State Zoo for your information and onward action.

MORTALITY STATEMENT OF ASSAM STATE ZOO FOR THE  
 PERIOD OF 1993-94 TO 1996-97  
 (UPTO-DATE TILL 16-6-97)

	MAMMALS	BIRDS	REPTILES	TOTAL
1993-94	41	48	51	140
1994-95	43	46	42	131
1995-96	77	103	27	207
1996-97	47	39	17	103
(1-6-97 to 16-6-97) 13		2	4	19
	221	238	141	600

MORTALITY DURING THE PERIOD OF MR. R.C. BHATTACHARJEE,  
 D.F.O, ASSAM STATE ZOO, GYM-5 (i.e., FROM 10-7-96 to 16-6-97)

MAMMALS	BIRDS	REPTILES	TOTAL
47	28	19	94

Yours faithfully,

26/6/97  
 20.6.97

CHIEF CONSERVATOR OF FORESTS (WL):  
 ASSAM

26/6/97

GOVT. OF ASSAM  
OFFICE OF THE DIVISIONAL FOREST OFFICER: ASSAM STATE ZOO DIVISION  
GUWAHATI-6

M.No. Z/F.F.R.C. Bhubaneswar/2338-42

Date :--. 23/6/97.

To,

The Commissioner, Govt. of Assam,  
Forest Department,  
Dispur, Guwahati-6.

Sub :-

Defamatory and faulty allegations made in Court affidavit by Sri E.S. P.V. Pavan Kumar, A.C.F. in C.P.No.35 of 1996, in the Central Administrative Tribunal, Guwahati Branch.

Sir,

With reference to the above mentioned C.P.No.35, of 1996, I have the honour to inform you that my attention has been drawn to the above mentioned court affidavit submitted by Sri Pavan Kumar, A.C.F. where he has categorically mentioned in Para-10 that I was posted as Divisional Forest Officer, Assam State Zoo Division, by the Govt. with ulterior motive, and that 49 rare animals died in six months during my tenure and there was hue and cry in the public as well as the media and there was suggestion for my removal from the post for myself being of A.F.S. cadre.

In the light of above I like to request you to kindly enquire into the (a) source from which Sri Pavan Kumar, I.F.S., Asstt. Conservator of Forests has collected these information as to my knowledge it was never supplied officially from this office (b) Correctness of the information as from the death records of last five (5) years it is clear that rate of death during my tenure is minimum although the death rate is not proper yard-stick to judge the performance of a Divisional Forest Officer in a Zoo, (c) The media records from which Sri Pavan Kumar reported about hue and cry for my removal from the post of D.F.O., Zoo as after my posting the media and public by and large are appreciating the improvement in the general management of the Guwahati Zoo.

Any simple enquiry will reveal the difference in the past management and the present management.

As regards my Service career I spent 21 Years(75-77 Forest Ranger) of regular service in the department and belong to 79-81 batch of Assam Forest Service(Class I). My batchmates elsewhere in the country has been promoted to the rank of I.F.S.

Contd...2.

as back as 1985, Karnataka 1986 (Himachal) even though some of them were below me in the All India merit list unfortunately I could not be promoted due to shortage of vacancies in Assam.

I completed the post Graduate Diploma in Wildlife management from W.I.I. DehraDun during 1982-83 and since then continuously working in the Wildlife Wing and had been responsible for constitution, development and management of number of protected areas like Orang, Nameri, Burachapari, Pobitora, Laokhawa, Bernadi, Dibru Saikhowa etc. So far I have never been communicated anything adverse in the A.C.R.

As such I strongly object to the manner in which my image was projected in the affidavit. Sri Pavan Kumar is very Junior in the department and I really wonder what motivated him to take such unsuprising, incorrect and faulty attempt for projecting my image in a distorted and incorrect way and misguiding the Hon'ble Court law. There are several other A.F.S. Officers at present posted in Cadre Divisions.

So, I request you kindly to examine whether any relevant service conduct rule permits Sri Pavan Kumar to defame me quoting my name and also permit me to go for a Judicial recourse in proper forum.

I also impress upon you that such kind of behaviour of neglect shown by junior officer is the main cause of disorders created among various cadres and degenerates the Administrative machinery of the department.

Enclosure :- Comparative Statement showing death report of last 5 Years.

Yours faithfully,

(R.C.Bhattacharjee,  
Divisional Forest Officer  
Assam State Zoo Division  
Guwahati-5.

Copy To The :-

President,  
Indian Forest Service, Association, Assam.

President,  
Assam Forest Service (Class I) Association

Contd...3.

President,  
Assam Forest Rangers' Association. | for information  
President,  
Assam Forest Employees Association. | and necessary  
action.

Divisional Forest Officer  
Assam State Zoo Division  
Guwahati-5.

M.No. A/P.F. K.C. Bhattacharyya/1223-24. Date:-..23/6/97.

Copy to the Principal Chief Conservator of Forests,  
Assam, Rehabari, Guwahati-8, for information and necessary action.

Copy to the Chief Conservator of Forests, Wildlife, Assam,  
R.G.B.Road, Guwahati-24, for information and necessary action.

*R. Bhattacharyya*  
23/6/97

Divisional Forest Officer  
Assam State Zoo Division  
Guwahati-5.

\* \* \* \* \*

GOVERNMENT OF ASSAM  
OFFICE OF THE CHIEF CONSERVATOR OF FORESTS:WILDLIFE:ASSAM  
R.G.BARUAH ROAD:GHY-24

Letter NO.WL/FE/22

dtd.21.6.1997

To

The Principal Chief Conservator of Forests,  
Assam, Rehabari, Guwahati-8.

Sub:- C.P. Case No.35/96 of Shri P.Roy, IFS.

Ref:- Your letter No.FE 1/CAT/96 dtd.20.8.97.

Sir,

With reference to your letter I have the honour to submit herewith my comments on para -9 as desired by you.

Shri R.C.Bhattacharjee was posted as Divisional Forest Officer, Assam State Zoo and he joined there on 10.7.96. Shri Bhattacharjee was actively involved in management of Wildlife for the last 15 years and was involved in training, management and development of number of wildlife areas like Orang, Nameri, Barnadi, Pabitora and Diphu-Saikhowa sanctuaries for 15 years. Considering his service records he was perhaps posted as Divisional Forest Officer, Assam State Zoo. There is no question of manipulation or favouritism in any way. Perhaps he is the most suitable officer to run the Assam State Zoo. His credential are as follows :

- (1) Post-Graduate Diploma Course in Wildlife management from Wildlife Institute of India, Dehra Dun.
- (2) Attended short course on Electric Fencing to check wildlife depredation held in Dudhwas National Park
- (3) Attended Regional Workshop on protected area Buffer Zone Management sponsored by UNESCO at Dehra Dun.
- (4) Attended workshop on Biological Monitoring sponsored by British Council at Dehra Dun.
- (5) Attended a course on Education and Interpretation sponsored by Wildlife Institute, Dehra Dun.
- (6) Attended workshop on Forest Fire Protection sponsored by F.A.O. at Nainital.

(2)

(7) Attended capsule course for Zoo Directors sponsored by Central Zoo Authority. (1996)

It is not true that 49 rare animals died within a span of 6 months during Shri Bhattacharjee's tenure at the State Zoo.

The death of animals at the State Zoo during last 3 years are as follows :

	<u>Mammals</u>	<u>Birds</u>	<u>Reptiles</u>	<u>Total</u>
1995-96	77	103	27	207
1996-97	47	39	17	103
(1-4-97 to 16.6.97)	13	2	4	19

Number of animals died during the tenure of Shri R.C.Bhattacharjee from 10.7.96 to 16.6.97 are mammals 47, birds 28, reptiles 19 total=94 only.

Yours faithfully,

*Q.S. 21/06/97*  
Chief Conservator of Forests,  
Wildlife: Assam.

Biocard of Sri R.C. BHATTACHARJEE, DIVISIONAL FOREST OFFICER, ASSAM STATE ZOO DIVISION, GUWAHATI-5.

Professional Qualification :-

- i) Diploma in Forestry and Allied subject (1975-77) from Eastern Forest Ranger's College, Kurseong (under F.R.I.)
- ii) Diploma Forestry and Allied subject (1977-81) from State Forest Service College, Burnihat (under F.R.I.).
- iii) Post Graduate Diploma in Wildlife Management (1982-83) from Wildlife Institute, Dehra Dun.

Others :-

- i) Attended short course on Electric Fencing to check Wildlife depredation held in Dudhwa National Park (1984).
- ii) Attended Regional workshop on protected area Buffer Zone Management sponsored by UNESCO at Dehra Dun (1991).
- iii) Attended workshop on Biological Monitoring sponsored by British Council at Dehra Dun, (1994).
- iv) Attended a course on Education and Interpretation sponsored by Wildlife Institute, Dehra Dun (1995).
- v) Attended workshop on Forest Fire Protection sponsored by F.A.O. at Nainital (1995).
- vi) Attended capsule course for Zoo Directors sponsored by Central Zoo Authority (1996).

Experiences :-

The incumbent is working in the Wildlife wing for last fifteen years and has been involved in planning, Management and development of number of Wildlife areas like Orang, Namoria, Burnadi, Pobitora, Dibru Saikhowa, etc.

At present he is regularly engaged as a guest lecturer in North East Forest Rangers College, College of Veterinary Science, Assam Administrative staff College, etc.

Sri R.C. Bhattacharjee has joined as Assistant Conservator of Forest w.e.f. Nov' 1991, he has maintained very good service record all along his career. He could not be nominated to the I.F.S. due to non availability of posts, whereas his batchmate in other states has been nominated with year of allotment as late as 1985-86. He was also posted as D.F.O. <sup>He 1985</sup> Western Assam Wildlife Division, Tezpur, a cadre post from 1984 where he managed his duties very efficiently.

Hence his posting as D.F.O., Assam State Zoo is fully justified.