
(2016) 03 KL CK 0051
In the High Court Of Kerala
Case No : O.P(CAT) No. 59 of 2015 (Z)

P. Suresh Babu

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Constitution of India, 1950 — Article 136, Article 166

Citation : (2016) 3 ILRKerala 130 : (2016) 3 KerLJ 449 : (2016) 3 KHC 529 : (2016) 2 KLT 18

Hon'ble Judges : K. Surendra Mohan and P.V. Asha, JJ.

Bench : Division Bench

Advocate : D. Kishore, Advocate, for the Appellant; K. Thyagarajeswaran, CGC, Thomas Mathew Nellimoottil, UPSC and N. Nagaresh, Assistant Solicitor General, for the Respondent

Final Decision : Disposed Off

Judgement

P.V. Asha, J.—1. The question to be considered in this Original Petition is whether the period of training undergone by the petitioner, who was advised by the Kerala Public Service Commission (hereinafter referred to as the "PSC" for short) for appointment as Deputy Collector, can be reckoned as service for the purpose of consideration of his case for appointment by promotion to All India Service. The Central Administrative Tribunal (hereinafter referred to as the "C.A.T") dismissed his O.A. rejecting his claim.

2. The facts leading to the impugned order are as follows:

The Kerala Public Service Commission, as per letter No. R1A(2) 1414/05/GW dated 15.01.2005, advised the petitioner for appointment as Deputy Collector on Rs. 7800-12975/- (revised) in the Land Revenue Department by direct recruitment as envisaged in Rule 2 of the Special Rules for the Kerala Civil Service (Executive). As per Annexure A5 order dated 9.8.2005, the Government accorded sanction for creation of one supernumerary post of Deputy Collector for a period of 14 months from the date of joining of the petitioner. Simultaneously,

by the very same order Annexure A5 the Government appointed the petitioner as Deputy Collector on training and ordered that he would undergo training in Quilon district in accordance with the programs prescribed in G.O.(MS) No. 1373/77/R.D. dt. 15.10.1977. The District Collector, Quilon was directed to arrange the training program for the petitioner, except secretariat training. Further, the Government accorded sanction for payment of Rs. 7,800/- per month, being the minimum of the scale of pay of Deputy Collector plus the usual allowances during the period of the training. It was stated that he would be entitled to the regular scale of pay only on successful completion of the prescribed period of training. By Annexure A6 order dated 27.5.2010, the Government regularized the services of the petitioner in the cadre of Deputy Collector with effect from the date of joining duty in service, viz. 29.10.2005. By Annexure All order dated 2.11.2005, the District Collector, Thiruvananthapuram admitted the petitioner to duty with effect from 29.10.2005 and posted him for training with the Village Officer, Vanchiyoor in Thiruvananthapuram Taluk for one month and to hold independent charge of the Village Officer, Vanchiyoor for one month from 29.11.2005 and for training with Revenue Inspector, Taluk Office, Thiruvananthapuram, for three weeks from 29.12.2005. It was ordered that the petitioner, Deputy Collector, on training was deemed to have attended the program w.e.f. 29.10.2005. Thereafter, on the successful completion of the training, the Government, by Annexure A14 dated 6.1.2007, posted the petitioner as Revenue Divisional Officer, Thrissur in the existing vacancy w.e.f. 29.12.2006. The petitioner had successfully completed the 14 months" training program on 28.12.2006.

3. A Deputy Collector is eligible for promotion to Indian Administrative Service (IAS) on completion 8 years continuous service. A person who has crossed the age of 54 as on 1st day of January of the year of selection is not eligible for consideration. The petitioner's date of birth is 31.05.1960. As the applicant was the second senior most candidate in the State Civil Service, he submitted a representation on 29.10.2013 to place his case for consideration by the committee. Though he had requested to consider the service rendered by him in the I.S.R.O. prior to his appointment in the Land Revenue Department, he is not pressing that claim in this O.P. The Commissioner for Land Revenue as per Annexure A2 letter dated 30.10.2013, forwarded his representation to the Secretary, Department of Revenue, in which it was stated that he had completed 8 years" service in the cadre of Deputy Collector; his service was regularized w.e.f. 29.10.2005. As there was no action, the petitioner submitted Annexure A3 representation on 10.01.2014 addressed to the Chief Secretary requesting to forward the proposal for his promotion to the UPSC/Do P.T. for promotion to I.A.S. While furnishing the details of his service, he pointed out that he had already crossed 53 years of age. Immediately thereafter, he filed O.A. No. 180/2014 before the C.A.T., Ernakulam Bench and the O.A. was disposed of as per Annexure A4 order dated 5.3.2014, directing the Chief Secretary to the Government of Kerala to take all necessary further action highlighted in his

representation, specifically directing respondents 2 and 3 to ensure that all the necessary records relating to him were forwarded to the Union of India, within a period of one month and to complete the entire process of selection within a period of 4 months.

4. But the respondents did not forward his case, as directed. On the other hand, by Annexure A1 letter dated 9.4.2014, the Chief Secretary to the Government - the 2nd respondent, informed the petitioner that he did not complete 8 years of continuous service in the post of Deputy Collector and hence as on 1.1.2014 he was not eligible to be considered for promotion to I.A.S. as per Regulation 5(2) of the Indian Administrative Service (Appointment by Promotion) Regulations, 1955, (hereinafter referred to as "the Regulations 1955" for short). It was stated therein that, as per Rule 5(b) of the Kerala Civil Service (Executive) Rules (hereinafter referred to as the "Special Rules") and Rule 2(9) of Part I of Kerala State and Subordinate Services Rules, 1958 (hereinafter referred to as the "KS & SSR"), he became a probationer and member of service only on 29.12.2006, i.e. the date from which he started his probation and as such, he had to complete 8 years of continuous service as Deputy Collector on 28.12.2014. Aggrieved by this, the petitioner approached the C.A.T., Ernakulam Bench, filing O.A. No. 180/00380/2014 challenging Annexure A1 order and praying for a declaration of his eligibility to be considered for promotion to the I.A.S. as on 1.1.2014 and for consequential direction to forward the relevant records to the 1st respondent for consideration of his case for promotion to I.A.S. The petitioner challenged Annexure A1 not only with respect to the decision relating to the completion of 8 years service but also against the action of the 2nd respondent in violation of the order of the C.A.T. in Annexure A4 by which the C.A.T. directed the respondents to see that all the connected records relating to him were forwarded for consideration by the Committee for promotion to I.A.S.

5. The petitioner further points out that all his seniors of the immediate previous batch, i.e. of 1989 batch of Deputy Collectors - M/s. A. Ajith Kumar, V.M. Gopala Menon, X. Anil, M.N. Gunavardhan, etc., were considered for promotion by the respondents reckoning their training period towards the 8 years continuous service and all of them were granted promotion to IAS. It is further pointed out that, in the case of another batch of Deputy Collectors including M/s. L. Radhakrishnan, Smt. Lida Jacob, K.B. Valsala Kumari, etc. also, the training period was considered for promotion. He further pointed out that, challenge against the proceedings for promotion of M/s. Ajith Kumar, V.M. Gopala Menon, X. Anil, etc. in O.A. No. 1298/98 and O.A. No. 1304/98 was rejected by the C.A.T. by its common order dated 4.3.99 specifically holding that, the training period of the Deputy Collectors is to be reckoned towards 8 years continuous service. In this context, the petitioner has produced the relevant pages of the file containing the remarks of P & AR Department made on 9.7.2013 that the period of training undergone by the Deputy Collectors was to be considered as service. The remarks of the Personnel and Administrative Reforms Department rendered on 9.7.2013 were as follows, as can be seen from Annexure A12.

"Para 31: The other issue in this file is regarding the 14 month training that the Deputy Collectors have to undergo and whether the same is categorized as "Pre-service or In-Service" training. Since Kerala doesn't have a State Administrative Service, Deputy Collectors are appointed through P.S.C. who are taken to be in the place of State Civil Service. The Deputy Collectors proceed on training immediately on appointment. This is how the training period is treated for last many years. So the moot point is whether the 14 month training period is to be counted as part of the Officer's service when considering his/her induction into the All India Service. The answer to this is in the affirmative. The same interpretation has been followed in the past as far as Dy. Collectors promotion into I.A.S. is considered. The Revenue Department may be advised accordingly and may be asked to accept the training as induction training".

(Emphasis supplied)

Thus it can be seen that the P & AR Department has advised to treat the period of training of Deputy Collectors as service for promotion to All India Service, taking note of the practice hitherto followed and also the fact that they were proceeding for training immediately on appointment. It was being treated as in-service training for the last several years. The petitioner points out that, the Chief Secretary had endorsed the views of the P & AR Department, as seen from Annexure A12. But thereafter, he changed that view without any consultation with the Revenue Department. The petitioner further points out that, it is on the basis of the remarks furnished by the Finance Department that, the decision was taken not to reckon the training period towards the 8 years continuous service, as can be seen from Annexure A15.

6. In this context, it is the case of the petitioner that, the Finance Department does not have any role in the interpretation of the provisions contained in the Special Rules or General Rules, as can be seen from the Rules of Business of the Government of Kerala, which provides for the distribution of business among the departments of the Secretariat. The Rules of Business have been framed in exercise of power confined to clauses 3 and 4 of Article 166 of the Constitution of India. Rule 1 relates to allocation and disposal of business. As per Rule 4, the business of the Government shall be transacted in the Department specified in the first Schedule and shall be classified and distributed between those departments as laid down therein. Rules 37 to 43 of the Rules of Business provide for functions to be discharged by the Finance Department. None of these provisions provides for interpretation of the Special Rules, especially the computation of service or regarding the nature of training imparted by the Revenue Department, etc. Therefore, it is the case of the petitioner that the decision not to reckon the period of training towards service, on the basis of advice by Finance Department, was taken in a most unlawful manner subjecting the petitioner to arbitrary and discriminatory treatment and this exercise of power has not been bona fide which caused him substantial prejudice and irreparable injury. The petitioner submits that he is singled out in the matter of

consideration for promotion by the illegal action of the 1st respondent by not forwarding his records despite the orders passed by the C.A.T. in Annexure A4 order and contrary to the interpretation and practice followed in the Department till that time. According to the petitioner, the orders of his advice, appointment, regularization of his service as well as the order of posting will reveal that he was appointed to the post of Deputy Collector. He further emphasised on the fact that, a supernumerary post of Deputy Collector was created for a period of 14 months, for his appointment and he was undergoing training holding that post which was created for him. According to him, the supernumerary posts are to be treated as regular posts and hence the service rendered by him during the period of training has to be reckoned towards service.

7. The contentions raised by the petitioner are refuted by the respondents in the reply statement, in which they took the stand that the petitioner's service can only be reckoned with effect from the date on which he was posted as Deputy Collector after completion of training. His service records were not forwarded to the 1st respondent for consideration since he did not have the requisite service as provided under Regulation 5(2) of the Regulations. The petitioner had pointed out the cases of several Deputy Collectors, who were considered and promoted to I.A.S., reckoning their training period as part of the 8 years continuous service. In the case of one Mr. Biju Prabhakar, the respondents stated that he had to his credit, service in the Factories and Boilers Department, which was equivalent to that of Deputy Collector, and that his case was considered on the basis of the directions of the C.A.T. Referring to the Special Rules, it was stated that, when the training period was not counted for probation, increment etc. and when he was drawing only minimum pay, it cannot be treated as service. The period from the date when he commenced probation alone can be reckoned for service. The petitioner filed a rejoinder in answer to the reply statement.

8. The C.A.T. dismissed the O.A., accepting the contentions of the respondent. Petitioner submits that C.A.T. ought to have followed the order passed in O.A. No. 1298/1998, by the C.A.T. Ernakulam Bench on an identical issue, where it held that period of such training of Deputy Collectors is liable to be counted towards service. C.A.T. found that since petitioner was sent for training immediately on his recruitment and as his appointment was as "Deputy Collector on training" and not as Deputy Collector and the training period was not reckoned for probation or increments, petitioner became a member of service only when he commenced probation, after completing training. Even though the order of appointment dated 9.8.2005 was produced in the O.A. as Annexure A5, the C.A.T., in paragraph 13 of its order, observed that, the nature of appointment of the petitioner would have been discernible in case it was produced. Further it was held that even though sub rules 2(1) and 2(9) of KS & SSR mention that a person appointed to service includes a person on probation or training, since Rule 6(b) of Special Rules prescribes training for direct recruits before commencement of probation under Rule 5(b) thereof, it should be presumed that the petitioner became a member of service only after the completion of the training prescribed

under Rule 6(b) of the Special Rules. The C.A.T. further held that, the contention of the petitioner relating to promotions granted to other Deputy Collectors like M/s. A. Ajith Kumar, V.M. Gopala Menon etc. treating the period of training as part of 8 years" continuous service, when he was singled out denying that benefit, was untenable saying that there is no parity in extending the benefit of illegal orders. In the above circumstances, the C.A.T. dismissed the O.A. accepting the contentions raised by the respondents. This O.P. is filed aggrieved by this Ext. P4 order dated 22.01.2015 of the C.A.T.

9. We heard Shri D. Kishore, the learned counsel for the petitioner and Smt. Girija Gopal, the learned Special Government Pleader for the respondents and the learned ASGI at length and considered the contentions. The learned counsel for the petitioner relied on the judgments in Kunhikrishnan v. State of Kerala [, AIR 1965 KERALA 84 (FB), State of Kerala v. Premavalsalan [, 2008 (3) KLT 320], Haridasan v. State of Kerala [, 1987 (2) KLT 466], and order dated 4.3.99 in O.A. No. 1298/1998 and 1304/1998. The learned counsel argued that the judgments relied on by the C.A.T. will not apply in the facts and circumstances of this case. Smt. Girija Gopal relied on the judgments in Nandan v. Jyothish Kumar [, 2004 (1) KLT 142], M. Shamsul Huda v. State of Kerala [2007 Lab. I.C. 1924 : , 2007 (2) KLT 864], Mohanan v. Director of Homeopathy [, 2006 (3) KLT 641 (F.B)], R. S. Jayakumar and others v. State of Kerala and another [, 2008 (1) SCC 567], Baldev Raj v. State [, AIR 1969 Punjab and Haryana 181]. The contention raised by the learned Special Government Pleader is that, the petitioner started discharging the duties attached to the post of Deputy Collector only after completion of the 14 months" training and on commencement of probation as provided in Rule 5(b) of the Special Rules and therefore his service commences only from the date on which he commenced his probation. It was pointed out, referring to the order of his posting Annexure All that, the petitioner was given the charge of Village Officer, Revenue Inspector, etc. on his training and he was not discharging the duties of Deputy Collector. These contentions were refuted by the learned counsel for the petitioner pointing out that, by Annexure A6 the Government had ordered that, his services in the cadre of Deputy Collector was regularized w.e.f. 29.10.2005, the date of joining duty in service. Therefore, the respondents cannot be heard to contend that he did not join duty or that he was not regular in the cadre of Deputy Collector. Moreover, the notification as well as his advice by PSC were for appointment to the post of Deputy Collector and not for training for appointment to the post of Deputy Collector, which are entirely different. It was after creating a post for him that he was appointed and admitted to duty. But according to the learned Government Pleader, the contents of the order or precedents or practice hitherto followed need not be looked into, if those are not in terms of the Special rules. According to her the issue is covered by judgments in Nandan"s case and Shamzuls Huda"s case (supra). According to her the petitioner was appointed as trainee and the orders of regularization, posting etc. will not help him on interpretation of the Special Rules as well as the provisions contained in the General Rules.

10. We find that the issue to be resolved is whether the period during which petitioner underwent training can be treated as service. First of all we will examine the relevant provision relating to promotion to IAS. Regulation 5 of Regulations 1955 provides for the preparation of a list of suitable officers, according to which, the Committee constituted for State Cadre shall ordinarily meet every year and prepare a list of such members of the State Civil Service suitable for promotion to the All India Service. The number of members of the State Civil Service to be included in the list is to be determined by the Central Government in consultation with the State Government with reference to the number of substantive vacancies available as on the first day of January of the year in which the meeting is held. Regulation 5(2) provides that the Committee shall consider the cases of members of the State Civil Service in the order of seniority in that service of a number which is equal to three times the number of vacancies. The third proviso to Regulation 5(2) provides as follows:

"Provided also that the Committee shall not consider the case of a member of the State Civil Service unless, on the first day of January of the year for which the Select List is prepared he is substantive in the State Civil Service and has completed not less than eight years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent thereto by the State Government."

Thus under third proviso to Regulation 5(2) of the I.A.S. (Appointment by Promotion) Regulations, a Deputy Collector becomes eligible for consideration for promotion to IAS if (i) he is substantive in the State Civil Service (ii) he has completed not less than 8 years of continuous service (whether officiating or substantive) in the post of Deputy Collector or in any other post or posts declared equivalent by the State Government, as on the 1st day of the year for which the committee meets.

11. In this case the only dispute is with respect to the completion of 8 years continuous service in the post of Deputy Collector, for which it is necessary to decide whether the training period can be counted towards service.

12. In this context, it is necessary to examine the circumstances under which the petitioner was sent for training. The petitioner applied for selection for appointment to the post of Deputy Collector pursuant to a notification dated 29.3.2005 issued by the Kerala Public Service Commission ("PSC" for short), wherein one vacancy of Deputy Collector in the scale of pay of 2500-4000 in the Department of Revenue (Kerala Civil Service Executive) was notified for appointment by direct recruitment. Annexure A5 dated 9.8.2005 is the order issued by the Government based on the advice memo issued by the PSC as per letter No. R1A(2)1414/05/GW dated 15.1.2005, which according to the Special Government Pleader, is only recruitment; whereas the petitioner asserts that it was appointment, i.e. after crossing the stage of recruitment. Relevant portion of Annexure A5 order read as follows:

"As per Govt. letter read as 1st paper above, Govt. has reported one Non Joining Duty vacancy to the Public Service Commission for making direct recruitment to the post of Deputy Collector. Kerala Public Service Commission in the letter read above advised Shri P. Suresh Babu xxxx for appointment as Deputy Collector on Rs. 7500-12975 (revised) in the Land Revenue Department as envisaged in Rule 2 of the Special Rules for KCS (Executive) issued in G.O.(MS) No. 377/3/PD dated 21.8.1963.

In the circumstances, sanction is accorded for creation of one supernumerary post of Deputy Collector on Rs. 7800-12975 for a period of 14 months from the date of joining of the incumbent. The expenditure on this account will be met from the Head of Account "2053-00-093-99-01-salaries."

"Government are pleased to appoint Shri P. Suresh Babu as Deputy Collector on training under Rule 9(a)(1) of the General Rules, as provided in Rule 10(b)(iii) of the said Rules. His appointment will be subject to Rule 3(c), Part II of Kerala State and Subordinate Service Rules, 1958. He will undergo training in Quilon district in accordance with the program prescribed in G.O.(Ms) 1373/71/RD dated 15.10.1977 (copy enclosed). The District Collector will arrange the training program accordingly.

Sanction is accorded for payment of Rs. 7800, the minimum of his scale of pay plus usual allowances admissible to the trainee during the period of his training. The regular scale of pay of Deputy Collector will be admissible to him only on successful completion of the prescribed period of training, xxxxxxxxxx"

(emphasis supplied)

13. On the basis of Annexure A5 order, the District Collector, Thiruvananthapuram admitted the petitioner to duty with effect from 29.10.2005 and posted for training and issued Annexure All order dated 2.11.2005 stating the following:

"In the circumstances Sri P. Suresh Babu, Deputy Collector on training is admitted to duty w.e.f. the forenoon of 29.10.2005 and posted for training with the Village Officer, Vanchiyoar, Thiruvananthapuram for one month, xxxx xxxxx xxxx xxxx xxxx xxxx."

Annexure A11 order shows that the training to be imparted to him was in accordance with the programme prescribed in G.O.(Ms) No. 1373/77/RD dated 15.10.1977. The petitioner has produced Ext. P10 order dated 7.2.2007 by which the schedule for the in-service training of Deputy Collectors prescribed as per the order dated 15.10.1977 was revised, saying that it was outdated and even the on-going training programmes were to be modified as per the revised schedule. Government had described the training as "in-service" training, as evident from Annexure A10 order.

14. Thereafter, the Government regularized the services of the petitioner as per Annexure A6 order dated 27.05.2010 stating as follows:

"Government are pleased to order that services of the following officers in Deputy Collector cadre are regularized with effect from their date of joining duty in service noted against each".

The date noted against the name of the petitioner was 29.10.2005. Accordingly, the petitioner's services in the cadre of Deputy Collector was regularized w.e.f. 29.10.2005.

15. The appointment of Deputy Collectors is governed by the Special Rules for the Kerala Civil Service (Executive), hereinafter referred to as the "Special Rules". Rule 2, thereof provides for the method of appointment of Deputy Collectors as follows:

"2. Appointment-Appointment as Deputy Collectors shall be made by recruitment by transfer from the Kerala Revenue Service or by direct recruitment.

One fifth of the substantive posts in the permanent cadre in the category of Deputy Collectors shall be filled by direct recruitment."

Rule 5 (b) of the Special Rules, which provides for probation reads as follows:

"5. Probation: (a) xxx

(b) Every person appointed as Deputy Collector by direct recruitment shall, from the date on which he completes the training prescribed in sub rule (b) of Rule 6, be on probation for a total period of 2 years on duty within a continuous period of 3 years."

Thus Rule 5(b) would show that a Deputy Collector who is appointed by direct recruitment shall undergo training as prescribed in Rule 6(b) and after completion of that training he commences his probation. Rule 6(b) which provides for the training to be undergone before he commences probation, reads as follows:

"6. (a) Tests:-xxx xxxx xxxx

(b): Training:-Every person recruited direct shall also undergo such training as may be prescribed by the State Government from time to time. Such person shall, during the period of training, draw allowances as may be prescribed by the Government from time to time. The period of training shall not count for increments in the time-scale of pay."

Therefore, as per Rule 5(b) read with Rule 6(b), a Deputy Collector who is appointed by direct recruitment has to undergo training; that training is to be imparted as prescribed by the Government from time to time; and the period of training is not counted for probation or for increment in the time scale of pay. Allowances to be drawn during the period are also to be prescribed by the Government from time to time. Annexure A10 is an order issued by Govt modifying the schedule of training and describes the training as in-service training.

16. The C.A.T. held that service can be reckoned only from the date on which the petitioner started discharging the duties attached to the post of Deputy Collector i.e. only after completion of training, when he commenced probation as provided in Rule 5(b) and hence his service in the cadre of Deputy Collector can be computed only from the date on which he commenced his probation and the 8 years continuous service can be reckoned only with effect from 29.12.2006. According to them, the duties assigned to petitioner, while undergoing training, as seen from Annexure A11 were of Village Officer, Revenue Inspector, etc. and he was not discharging the duties of Deputy Collector. In the light of the creation of the post by Annexure A5, regularization by Annexure A6 of his service, in the cadre of Deputy Collector w.e.f. 29.10.2005, the date of joining duty in service, can the respondents be heard to contend that he did not join duty or that he was not in the cadre of Deputy Collector, while undergoing training? Moreover, he submitted application on the basis of a notification inviting application for appointment as Deputy Collector; he was advised by the PSC for appointment to the post of Deputy Collector and not for training for appointment to the post of Deputy Collector which are entirely different.

17. The contentions raised by either side are with reference to the words and expressions employed in Rule 5(b) and Rule 6(b) of the Special Rules and also with reference to the provisions contained in the KS & SSR. The Tribunal has, accepting the contentions of the respondents, held that the definitions given under sub rules 1 and 9 of Rule 2 of KS & SSR cannot be applied in the present case because the provisions in Rules 5(b) and 6(b) of the Special Rules will prevail over the general rules. But it is to be noted that, the Special Rules do not define the words and expressions employed therein, i.e. either in Rules 5(b) or 6(b). Therefore, we have to import the meaning of those expressions from the definitions given in Part I of KS & SSR. Hence it is necessary for us to examine the relevant provisions in the KS & SSR as well as those in the Special Rules.

18. The KS & SSR, 1958 contains 3 Parts. Part I of those rules contains only 2 rules; i.e. Rule 1 relating to short title and commencement and Rule 2 containing various definitions in the sub-rules (1) to (18). Rules in Part II of KS & SSR containing Rules 1 to 39 are the General Rules and Part III forms the Special Rules. General Rules are defined in Rule 2(8) of Part I to mean the Rules in Part II of KS & SSR. Rule 2(16) defines Special Rules to mean the rules in Part III of the KS & SSR applicable to each service or class of service. Service is defined in Rule 2(15) to mean a group of persons classified by the State Government as a State or Subordinate Service as the case may be. There is a Note also given in this sub rule 15, which has to be referred to, later. Rule 2 of Part II of KS & SSR i.e. of the General Rules provides that, if any provision in the General Rules contained in that part i.e. part II is repugnant to a provision in the Special Rules applicable to any particular service contained in Part III, the provisions in the Special Rules will prevail over the provisions contained in the General Rules. As rightly contended by Sri D. Kishore, there is nothing in either of these rules which provides for an overriding effect to the provisions in the Special Rules over

the definitions provided in Part I of KS & SSR, as contended by the respondents or as held by the Tribunal. Now we will examine definitions given under various sub rules in Rule 2 of Part I of KS & SSR which are relevant.

"2. Definitions.--In these rules unless there is anything repugnant in the subject or context-

Rule 2(1):

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

Rule 2(9):

"(9) Member of a service means a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service, or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service."

Relevant portion of Rule 2(6):

"(6) A person is said to be on duty as a member of a service:--

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

Recruited direct

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

(i) he is not in the service of the Government of India or the Government of a State; or

(ii) being in the service of the Government of India or the Government of a State, he satisfies all the qualifications (including age) and other conditions prescribed for such recruitment to that service, class, category or post and is permitted to apply for such recruitment by the competent authority, or

(iii) he holds a post, the conditions of service of the holder of which have been declared to be matters not suitable for regulation by rule."

Rule 2(15):

"(15) Service means a group of persons classified by the State Government as a State or subordinate service, as the case may be.

Note.--When the context so requires "service" means the period during which a person holds a post or a lien on a post or is a member of a service as above defined.

R. 2(18):

"(18) Cadre.--The permanent cadre of each service, class, category and grade shall be determined by the State Government."

(emphasis supplied)

19. Thus going by these definitions in Part I KS & SSR, a person can be said to be appointed to a service when he is on training prescribed for members thereof. A person appointed to the service is a member of service once he started attending the training. The petitioner commenced the training prescribed for the members in the cadre of Deputy Collector on the basis of Annexure A5 order on 29.10.1995. Apart from that, it can be seen from Annexure A5 order that, the petitioner was holding the post of Deputy Collector, which was specifically created for him, while undergoing the training prescribed for Deputy Collectors. Thus while undergoing training, petitioner who was holding the post of Deputy Collector, was on duty as a member of service in the cadre of Deputy Collector and therefore the period of training is to be counted as service under the Note to sub-rule 15 also, read with sub rule (6), (9) and (1) of Rule 2. That is, going by the definition of service, duty, as well as member of service and also "appointed to a service", it can be seen from Annexures A5 and All orders that he had become a member of State service in the cadre of Deputy Collector, on being admitted to duty as a person appointed to the service as soon as he joined and was sent for the training. In other words, he can be treated as a member of service on duty on being appointed to the service in the cadre of Deputy Collector in the State Service as soon as he started attending the training prescribed for the Deputy Collectors, as provided in sub rule (6)(a) read with sub rules 1, 6, 9 and Note 2 to sub rule 15 of Rule 2 of Part I KS & SSR. The definition of service in Note 2 to Rule 15 alone is sufficient to justify the conclusion that the period that, the petitioner underwent training while holding the post of Deputy Collector created in Ann A5 is liable to be counted as service.

20. According to the learned Special Government Pleader, since Rule 6(b) specifically provides that every person "recruited direct" shall undergo training and "not appointed direct", it will go to show that training is to be undergone before the appointment and after recruitment, i.e. training should precede appointment and only when a person starts discharging his duty on probation or when such person commences probation, his service can be reckoned for the purpose of the 8 years continuous service, as held by the C.A.T.

21. Going by Rule 5(b) it can be seen that training is to be undergone by a person appointed as Deputy Collector by direct recruitment and it is a person appointed as Deputy Collector who is to be on probation from the date on which he completes training. A conjoint reading of Rule 5(b) read with Rule 6(b) with

reference to the order of appointment of the petitioner would show that the distinction between "appointed" and "recruited" do not have much significance as far as the present case is concerned, though the two expressions appointed and recruited denote different stages in the process leading to appointment.

22. In this context it is to be noted that, Rule 5(b) of the Special Rules only provides that, a person appointed as Deputy Collector by direct recruitment shall from the date on which he completes training be on probation for a period of 2 years on duty within a continuous period of 3 years. It does not mean or provide for a proposition that such a person who is appointed direct as Deputy Collector is not on duty when he is undergoing training. It is in this context that, the definition of "duty" given in Rule 2(6) becomes relevant, which provides that, a person is on duty as a member of a service when he is undergoing probation or training prescribed for such service. It cannot be disputed that the petitioner was undergoing training prescribed for Deputy Collector in the Civil Service (Executive). It cannot also be said that, he was not a member of the service because going by the definition "member of a service", a person who has been appointed to the service and continuing in that service is a member of the service and service includes the period of training also.

23. In this case, it can be seen from Annexure A11 that, the petitioner was admitted to duty and posted for training w.e.f. 29.10.2005. Therefore, an overall analysis of all these provisions will lead to the conclusion that, the petitioner was on duty as a member of the Civil Service (Executive) in the cadre of Deputy Collector w.e.f. 29.10.2005. During the period of training, the petitioner was holding the post of Deputy Collector and he was a member of the service also, which means that he was in service as defined in the Note to Rule 2 (15). Therefore, 8 years continuous service provided in Regulation 5(2) has to be reckoned from the date of commencement of his training.

24. The learned Special Government Pleader referred to various Special Rules under the Kerala State Services pointing out that, the words employed in different service rules are different whenever training is necessary before appointment and after appointment. According to her, in-service training is the one imparted after appointment; training given in order to equip one for appointment is not in-service training. She has taken us through the Special Rules for Chemical Examiner's Laboratory Service and the Special Rules for Factories and Boilers Service Rules in which Rules 8 and 6 respectively provide that every person appointed direct to the post of Joint Chemical Examiner as well as Assistant Chemical Examiner and Inspector of Factories/Inspector of Factories and Boilers Gr II as well as Chemical Inspectors/Technical Inspectors shall undergo in-service training for a period of one year/6 months and that the said period would be reckoned for probation. It was therefore contended that wherever the rules provided for a training for a person appointed, the said period would count for probation and can be taken as service. On the other hand, when training is provided for a person recruited direct, it would be one preceding

appointment and would not be counted for probation. Reference was also made to the Special Rules of Public Prosecutors, the Kerala Police Service, etc. in support of her contentions that, the training imparted to the Deputy Collectors is pre-appointment training which cannot be treated as in-service training and cannot be reckoned towards service. Similarly Rule 7 of the Special Rules for Kerala Local Fund Audit Service provides that, the persons selected shall undergo training for one year, which will not be counted for probation or pay.

25. However we find that provisions in the various special rules are not consistent regarding the effect of the period of training for persons appointed direct as well as for persons recruited direct. On the other hand, while some of the special rules provide that the period of training would be counted for increments, probation, etc. with admissibility of pay in the time scale where the training is provided for persons appointed direct, some of the special rules do not provide for the same even if the training is provided for a person appointed direct. Similarly the expression in-service training is not also used in cases where the training period can be counted for probation, increment, etc. for eg. Rule 8 of the Special Rules for Kerala State Assistant Public Prosecutors Gr. II provides that "a person appointed as" Assistant Public Prosecutor Gr. II shall undergo training for a period of 6 months from the date of his appointment. But the period of this training given after appointment, is not counted for probation or increments; he is entitled to allowances alone during the period of training. Therefore counting the period of training towards probation or increment or for time scale or the expression "in-service training" as per the Special Rules, by itself cannot be criteria to treat the period of training as service, in the absence of any express provision in the Special Rules to that effect.

26. It is an admitted fact that, the practice hitherto followed in the State was to treat the period of training of Deputy Collectors as in-service training and to reckon the period of training towards total service for the purpose of Indian Administrative Service till the turn of the petitioner reached. It is evident from Annexure A12 and from the contentions of the respondents that they were wrongly interpreting the rules till Annexure A1 reply was given.

27. In this context, the order dated 4.3.1999, passed by the C.A.T. in O.A. No. 1298 of 1998 is also relevant where the promotee Deputy Collectors challenged the proceedings for selection for appointment to I.A.S. of directly recruited Deputy Collectors, reckoning the training period also towards the 8 years service prescribed under Regulation 5(2). The contention raised by the Government, in that case, is available in paragraph 7 of the order and it is seen that the very same 2nd respondent contended that, the period of training being duty according to Rule 2(6)(a) of KS & SSR, the contention of the applicants that the consideration of such persons during the period of training as on duty was against Rules, had no force. The inclusion of the party respondents therein in the zone of consideration, reckoning their training period towards service was accordingly upheld. The contention of the petitioner therein, i.e. a promotee

Deputy Collector, as can be seen from paragraph 8 of the order, that the party respondents therein i.e. the directly recruited Deputy Collectors were appointed after training, only in October, 1990 and hence they were ineligible for consideration was repelled, distinguishing an earlier decision rendered by the C.A.T. in O.A. No. 722/1993 wherein the C.A.T. had held that the period of training could not be treated as service for computing 8 years, relying on the decision of the Honorable Supreme Court in Prafulla Kumar Swain v. Prakash Chandra Misra , (1993) 3 SCC 181. It was held therein that, such a decision was rendered without considering the provisions contained in Rule 2(6) of the KS & SSR which provides that, a person is said to be on duty when he is undergoing training prescribed for such service, since it was not brought to the notice of the Bench at the relevant time. The C.A.T. also found that, in Prafulla Kumar's case (supra), the relevant regulation 5 therein had stipulated that, the period of training would not be counted as service under the Government and specifically provided that, such service would be counted only from the date of appointment after successful completion of training. Pointing out that there is no such provision in the Kerala Civil Service (Executive) Rules, it was held that, the said decision was not applicable with respect to the service of Deputy Collectors. There is no such provision which specifically excludes the period of training towards service or to the effect that it cannot be considered as duty. On the other hand, Rule 6(b) only provides that the period of training will not count for increments in the scale of pay alone. The petitioner was appointed against supernumerary post in the scale of pay attached to the post of Deputy Collector, though they were paid only the minimum of the scale of pay. Going by the Special Rules read with the definition provided under Part I of the KS & SSR, there cannot be any doubt for the fact that, the period of training undergone by the Deputy Collectors is to be treated as service, which in turn is duty and they are members of service. Therefore, in the face of such a decision interpreting the relevant rules, the C.A.T. ought not have dismissed the case of the petitioner.

28. Now we will examine the judgments referred to by the learned counsel on either side. In the judgment of the Full Bench of this court in P.C. Kunhikrishnan Nambiar and another V. State of Kerala and others relied on by Sri. D. Kishore, learned Counsel for the petitioner, the issue which arose for consideration of the Full Bench was with respect to eligibility of Deputy Collectors for appointment by promotion to IAS. The State Government did not include them in the list of eligible hands for promotion to IAS on the ground that, they did not have 8 years" service, refusing to count the temporary service rendered by them under Rule 10(a)(i) of the Madras Subordinate Service Rules. It was held that the only condition was service should be continuous and one should be a substantive member of service. As per the order of the Government of India the provisional or emergency service rendered prior to 1.11.1956 was liable to be counted only if that service was regularized, if in a time scale of pay, reckoned for increments and is continuous. It was found that the petitioners were continuously serving as Deputy Collectors from 1953 onwards and they had completed 8 years of service

in 1961. It was found that what is required under the Regulations was actual service in the post and questions whether that service counts for increments, whether it was in time scale of pay, whether it was regularized, etc. were irrelevant. As the only requirement was it should be substantive or officiating, it was held that, temporary service could be counted. The issue regarding the reckoning of training period as such does not appear to have been raised there.

29. In *Haridasan & Others v. State of Kerala & others* : [1987 (2) KLT 466], the claim of the appellants who were advised for appointment as Instructors Gr. II for assigning seniority above the party respondents who were advised one month prior to them, for training for appointment as Instructors, was accepted, holding that seniority can be assigned from the date of advice only in a case where advice is for appointment and not where advice is for training for appointment. It was held that, training as an eligibility for appointment, as a qualification to be acquired before appointment is not the same thing as training for equipment after appointment and that training undergone after appointment alone is taken care of under R. 2(6) of the KS & SSR and not training which is a pre-requisite for appointment, a training which precedes the appointment. This judgment is relied on by both sides. The learned Special Government Pleader relies on the distinction explained with respect to the training before appointment and after appointment whereas the petitioner's counsel relies on the reference made therein to the training prescribed for persons recruited as Deputy Collectors under Rule 6(b) of the Kerala Civil Service (Executive) Rules, as one in contradistinction to the training prescribed in other special rules which provides for training for those selected for appointment to the post. At any rate, the dispute resolved therein was regarding seniority.

30. In *Lakshmanan v. State of Kerala* : 1995 (1) KLT 115, the question which arose for consideration was whether the period of training undergone by the petitioner on his recruitment as Sub Inspector of Police could be counted for increments and fixation of pay. The appellant was advised by the Public Service Commission for appointment as Sub Inspector of Police in the General Executive Branch of the Police Department, on certain conditions. Condition No. iv, therein was that, on successful completion of the training in Police Training College and practical training, the candidates will be on probation. After referring to the decisions of this Court in *Louis v. Kerala Public Service Commission* : 1965 KLT 1282 and the decision in *Haridasan's* case and the definition of duty under sub rule 6(a) of Rule 2 of KS & SSR, it was observed in para 7 of the judgment:

"7. xxxxxxxx If after training no advice is called for under the relevant rules and none is given under any provision, the person who is appointed subsequently can only rest his claim for seniority with reference to the date of appointment under Rule 27 (a) of the said Rules, 1958. What is required to be considered is whether it is an advice for training when it cannot be considered as advice for appointment. It has to be considered as to whether training is an eligibility for appointment, as a qualification to be acquired before appointment and is not the

same as a requirement of training for equipment after appointment. Much depends on the factual position as to whether the selection was to a course of training rather than to an office or post."

It was found therein that the advice was not for training but to the post. The appeal was allowed granting the prayer to treat the period of training from July 15, 1976 up to June 3, 1978 be treated as "duty" in the post of Sub Inspector of Police and to fix his pay in the time scale. It is pertinent to note that the apex court approved the judgment in Lakshmanan's case in its judgment in Civil Appeal No. 2018 of 2000 observing as follows:

"The High Court has consistently taken the view that the period of training undergone by the respondent should be treated as period spent on duty for the purpose of scale of pay, increments and other consequential benefits. This view was expressed by the High Court in the case of Lakshmanan v. State of Kerala (1995 (1) KLT 115) and that decision in turn follows other decisions in Louis v. Kerala Public Service Commission (1965 KLT 1282) and Haridasan v. State of Kerala (, 1987 (2) KLT 486). As this has been the consistent view and the orders in those cases not having been challenged before this court, we do not think that it is a fit case for our interference under Art. 136 of the Constitution. The appeal is, therefore, dismissed."

31. However Haridasan's case was not approved by a Division Bench of this Court in State of Kerala and others v. Thirumeni and others : , 2007 (4) KLT 938, while considering a batch of appeals filed by the Government against the judgments directing grant of service benefits to about 30,000 police personnel who had approached this Court long after their retirement claiming benefits reckoning their training period in the light of the judgment in Lekshmanan's case. It was found that the impact of the Special Rules was not subject matter in Lekshmanan's case. Explaining the Special Rules which provided that the probation of Sub Inspectors of Police in the General Executive Branch was to commence after the training and the period of training will not count for probation or increment and they were eligible for allowances alone during the period of training, it was held that the provisions in KS & SSR were not to govern them when there are specific provisions in the special rules. As the Police personnel could discharge duties and responsibilities of the post only after completion of training, it was found that even according to Rule 2(6)(a) of the KS & SSR, the petitioners' pre-service training could not be treated as duty when it was specifically stated that trainees were entitled only stipend during the period of training. The Division Bench referred to certain executive orders issued in 1961 and thereafter in 1964 whereby it was directed that the period of such training imparted prior to appointment need not be counted for probation, increments, duty or service. However, in view of the earlier judgment rendered by a co-ordinate Bench, the Division Bench examined whether the respondents therein were entitled to extension of the benefit of Lekshmanan's case at that distance of time by way of discretionary relief. It was held that the respondents

had not furnished any materials in support of their claim and that their cases were not covered by Lekshmanan's case. Finally the writ appeals were allowed on the ground of delay on the part of the writ petitioners in approaching the court and also for want of service particulars.

32. But it is pertinent to note that another Division Bench of this Court in *State of Kerala v. Premavalsalan* : , 2008 (3) KLT 320 held that the period of in-service training has to be counted in the case of Police Constable Drivers, though the relevant Special Rules provided that their period of training will not be counted for probation, while the training was one described as in-service training. Rule 7 of the Special Rules provided that every person appointed by direct recruitment, shall undergo in-service training for a period of 6 months in the District Armed Reserve/Armed Police Battalions/Police Training College/Police Training Schools in the appeal. The Government had filed the appeal contending that the training which does not count for increments or which cannot be counted for probation, cannot be treated as service, relying on *Thirumeni's case* and *Nandan V. Jyothish kumar* : , 2004 (1) KLT 142. But this Court repelled the contentions observing that the training covered by the special rules which were under consideration in those cases, was not an in-service training. The judgment in *Thirumeni's case* (supra) was distinguished observing that the main consideration therein was of limitation and delay; it was a case concerning Police Constables. However reference was made to the judgment rendered in *Lekshmanan's case* and its approval by the Apex Court in its judgment in Civil Appeal No. 2018 of 2000.

33. Much reliance was placed by the C.A.T. and the learned Special Government Pleader on the judgment in *Nandan v. Jyothish Kumar* : , 2004 (1) KLT 142, wherein a Division Bench of this Court was considering the question whether the period of training, which does not count for probation or grant of increments, can be treated as qualifying service for the purpose of promotion of a Technical Assistant to the post of Assistant Geologist. The Special Rules concerned in that case viz. the Special Rules for special recruitment of SC/ST candidates in Kerala Geology Subordinate service provided that a candidate selected for different categories of posts have to undergo a training for the period prescribed against each post. As per the Special Rules, the period of training would not be counted for probation or increments. Every person appointed to the category, shall be on probation from the date on which he joins duty after completing the training. Contentions raised on behalf of the directly recruited Technical Assistant relying on various definitions given under Part I of KS & SSR under sub rules (i), (6)(a), (9), (15), etc of Rule 2 of KS & SSR were repelled holding that those provisions were of general nature over which the Special Rules have overriding effect. It was held that Rule 7 of the Special Rules provided that a person can join duty only after he completed the training and going by the provisions in the Special Rules read with Rules 2(1) and (6) of the 1958 Rules, a person can be treated as appointed to the service and performing the duties thereof only when he actually discharges for the first time the duties of a post borne on the cadre of such

service or commences probation. Contention with reference to the order regularizing the services was also not accepted observing that it was only on verification of character and antecedents and the same cannot be interpreted to mean that he was actually discharging duties. The contentions relying on the judgments in *State of Kerala v. Mathu and Haridasan*'s case were also not accepted observing that those were on issues relating to fixing of the seniority and not eligibility for promotion. The Division Bench further noticed that the respondent did not choose to produce his order of appointment deliberately.

34. It is pertinent to note that the petitioner in this case has produced the order of his appointment. It is seen that a post of Deputy Collector was created for the petitioner for a period of 14 months. He was admitted for training while he was holding that supernumerary post. Though the period of his training is not counted for probation or increment, being a holder of the post he has to be treated as a member of service. In this context it is also relevant to note that, as we have found earlier, Part I of KS & SSR provides for the definitions of terms employed in service rules including special rules. At the same time there is no such definition in the special rules. Therefore the special rules have to be explained with reference to the definitions given in KS & SSR. There is no question of supercession of the definitions by the provisions in the Special Rules. At any rate in view of the fact that petitioner was undergoing the training while holding the post of Deputy Collector, as evident from Ann A5 and A11 and moreover when Ann A10 show that the respondents themselves have treated the training as in-service training there is no reason for not reckoning the period during which he was a holder of the post towards his service for the purpose of consideration for promotion to All India Service.

35. The judgment of the Apex Court in *State of Gujarat v. C.G. Desai and others* [, (1974) 1 SCC 188], relied on by the learned Special Government Pleader was in a case where the directly recruited Deputy Engineers under the Engineering Service of the State of Bombay, challenged the discriminatory treatment meted out to them in as much as the pre-selection service as officiating or temporary Deputy Engineers was not uniformly computed towards their eligibility for promotion as Executive Engineer, while it was being reckoned in the case of promotees, though both the categories were to be on probation for a period of 2 years. After considering various service rules, the chances of the promotees of getting acquainted with service conditions; the age of the promotees and the remote chance of getting promotion as Officiating Executive Engineer, etc. it was held that, the classification was valid and serious complications can be avoided. The facts and circumstances arising in this case do not appear to be similar as the one considered by the Apex Court.

36. In the decision in *Prafulla Kumar*'s case (*supra*) the issue considered was regarding the computation of seniority in a dispute between direct recruits and promotees in the cadre of Assistant Conservators of Forest in the Orissa Forest Service. There also, the dispute arose with respect to the eligibility for being

considered for promotion to I.F.S. The issue considered was whether the period of training undergone by the directly recruited Assistant Conservators of Forest would be reckoned towards service. Paragraph 28 of that judgment shows that Regulation 12(c) of the Orissa Regulations, provides that the period of training will not count as service under Government and such service would count only from the date of appointment to the service after successful completion of the course of training. It was after considering those regulations that, the Honorable Supreme Court held that, the service of directly recruited assistant Conservators of Forest was liable to be reckoned only w.e.f. the date of their appointment after completion of the course of training as provided under Regulation 12(c). The Special Rules relating to the Deputy Collectors in the State do not contain such a provision as the one considered by the Honorable Supreme Court, as rightly held by the CAT in its order dated 4.3.99 in O.A. 1298/1998.

37. In *Shamsul Huda v. State of Kerala* : , 2007 (2) KLT 864, the directly recruited Forest Rangers claimed seniority with effect from the date of their advice. They were advised for recruitment as Forest Range Officers. In the notification published by PSC inviting applications, there was a Note to the effect that Persons recruited direct to the category of Rangers shall undergo practical training for a period of one year in the Forest Department prior to their appointment as Rangers. The period spent on practical training in the department will not be counted for probation, leave, increment, pension etc. During the period of practical training the trainees will be eligible for a monthly allowance. After analyzing the meaning of the terms "appointed to the service", "duty", "member of service", "recruited direct", etc, it was held that a person can be stated to be appointed to a service only when he discharges for the first time the duties of a post borne on the cadre of service. It was found that their advice was not for appointment, but for a course of training and that they joined duty for training. The contention that a person undergoing training was on duty was not accepted on the ground that clause (d) in sub rule 6 of Rule 2 was inserted by G.O.(P) No. 452/79/GAD. Dated 6.8.1979 alone after the appointment of petitioners and because petitioners did not discharge any of the duties of the post of Rangers. It was held that in some cases training is an eligibility for appointment, as a qualification to be acquired before appointment. Such a training is not a training for equipment after appointment. In those circumstances it was held that the seniority cannot be reckoned in such a case with effect from the date of advice.

38. A Full Bench of this court in its judgment in *Mohanan V. Director of Homeopathy* : , 2006 (3) KLT 641 (F.B.), while considering the effect of amendment to the special Rules on a rank list in force had dealt with the distinction between "recruitment" and "appointment", in para 17 of the judgment. After referring to the ratio laid down in the judgments in *Gurudev Singh Gill v. The State of Punjab*, 1968 (2) SLR 538, *Basant Lal Malhotra v. State of Punjab & Ors.*, , AIR 1969 Punjab 178 and *Man Mohan Kaushiba & Anr. v. State of Rajasthan & Ors.*, , AIR 1971 Rajasthan 60, this Court approved the

distinction found in those judgments, to the effect that, the terms "recruitment" and "appointment" are not synonymous and connote different meanings. The term "recruitment" connotes and clearly signifies enlistment, acceptance, selection or approval for appointment and not actual appointment or posting in service while "appointment" means an actual act of posting a person to a particular office. There cannot be a dispute over the distinction between recruitment and appointment. In this case training is imparted to a person holding the post of Deputy Collector.

39. Going by Note to Rule 2(15), service means the period during which a person holds a post or a lien on a post or is a member of service. Petitioner satisfied all those pre-requisites for treating the period of training as service. Moreover, the training was described as in-service training by the respondents themselves as can be seen from Annexure A10 as well as the file notes Annexure A12. Apart from that Annexure A12 shows that the practice hitherto followed was to count the period of training for the 8 years service. There is no specific provision which says that the period of training will not be counted as service, especially when the Department had been treating it as in-service training and had been reckoning the training period as service.

40. We find that in none of these cases a situation, where a person was sent for training creating a supernumerary post in the cadre of Deputy Collector, after advice by the PSC as done in the case of the petitioner as per Annexure A5, appears to have been considered. It is, in these circumstances, that the note to Rule 15, the definition of "service" becomes relevant, which has also not come up for consideration in the cases relied on either by the respondents or the CAT.

In the above circumstances, we are unable to agree with the interpretation given by the Central Administrative Tribunal to the provisions contained in the Special Rules as well as KS & SSR. In these circumstances, the Original Petition is allowed. The Order Ext. P4 of the C.A.T. is set aside. It is declared that the period of training undergone by the petitioner as training was liable to be counted as service and the petitioner was entitled to be considered for appointment by promotion to IAS as on 1.1.2014. Therefore, the respondents shall place the case of the petitioner before the committee for consideration for promotion to IAS for the year 2014 and shall take appropriate follow up action in accordance with law, within a period of 2 months from the date of receipt of a copy of this judgment.