
(1983) 06 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 111 of 1977

R.C. Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-06-1983

Acts Referred:

All India Services Act, 1951 — Section 2A, 3(1)
Constitution of India, 1950 — Article 226
Indian Forest Service (Cadre) Rules, 1966 — Rule 3, 4, 4(1), 5, 5(2)
Forest Service (Initial Recruitment) Regulations Rules, 1966 — Regulation 3, 4, 4(1), 5, 6
Forest Service (Recruitment) Rules, 1966 — Rule 4(1), 4(3A)
Indian Forest Service (Regulation of Seniority) Rules, 1968 — Rule 3, 6

Citation : (1983) 12 ILR HP 209

Hon'ble Judges : V.D. Misra, C.J.; T.R. Handa, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; Kamlesh Sharma, for Respondents 1, 5, 7 and 9, P.N. Nag, General for Respondent 2, Chhabil Dass, for S.R. Arya, intervener and Kapil Sibal, for S.K. Pandey, intervener, for the Respondent

Final Decision : Dismissed

Judgement

T.R. Handa, J.—The Petitioner Shri R.C. Sharma is a member of the Indian Forest Service (Himachal Pradesh cadre). He seeks to invoke the writ jurisdiction of this under Article 226 of the Constitution for establishing his claim to certain benefits in service and also for establishing his seniority over Respondents Nos. 3 to 13 who are also now members of the same cadre.

2. The facts in so far as they are material and relevant for the purposes of disposal of this writ petition may be briefly sketched as under:

3. The Petitioner on successful completion of his two-years training in Superior Forest Service (1962-64 Course) from the Indian Forest College, Dehra Dun, was appointed to officiate with effect from 1-4-1964 against a temporary post in the Himachal Pradesh Forest Service Class I in the pay scale of Rs.

350-40-750/40-950-50-1200. His letter of appointment is found at Annexure R.A. In terms of para 2 of this letter of appointment the Petitioner was to remain on a trial for a period of two years from the date of his appointment.

4. As a member of the Himachal Pradesh Forest Service Class I, the Petitioner was governed by the service rules known as "the Himachal Pradesh Forest Department (Class 1 Posts) Recruitment Rules, 1963". As per these Rules there was a joint cadre of Assistant Conservators and Deputy Conservators, the combined strength of which was fixed at 16. Officers drawing pay up to Rs. 510/- per mensem were to be designated as Assistant Conservators and those drawing pay above Rs. 510/- per mensem as Deputy Conservators.

5. On 1-7-1966 the Central Government issued a notification u/s 2A of the All India Services Act, 1951 providing for the constitution of a new All India Service known as the Indian Forest Service (for short, "the IFS"). Soon thereafter in exercise of the powers vested in it under Sub-section (1) of Section 3 of the All India Services Act, 1951, the Central Government proceeded to make certain Rules and Regulations for recruitment to and for regulating the conditions of service of the members of this Service. The Rules and Regulations so framed and with which we are concerned in the present petition are the following:

(i) Indian Forest Service (Recruitment) Rules, 1966: for short "the Recruitment Rules"

(ii) Indian Forest Service (Initial Recruitment) Regulations, 1966:
for short "the Initial Recruitment Regulations".

(iii) Indian Forest Service (Cadre) Rules, 1966: for short the Cadre Rules"

(iv) Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966: for short "the Cadre Strength Regulations".

(v) Indian Forest Service (Regulation of Seniority) Rules, 1968: for short "the Seniority Rules".

6. By Rule 3 of the Cadre Rules the IFS cadre was constituted for each State or a group of States and the cadre so constituted was called as a "State Cadre" or a "Joint Cadre" as the case may be. A separate cadre was constituted in the Union Territories. The strength and composition of each cadre was dealt with by Rule 4 of the Cadre Rules which provides that the strength and composition of each of the cadres constituted under Rule 3 would be determined by regulations made by the Central Government in consultation with the State Governments. Rule 5 provides for the allocation of members to the various cadres by the Central Government in consultation with the State Government concerned. It also empowers the Central Government with the concurrence of the State Government concerned to transfer a cadre officer from one cadre to another cadre. In exercise of the powers conferred by Sub-rule (1) of Rule 4 of the Cadre Rules, the Central Government in consultation with the State Governments

framed the Cadre Strength Regulations fixing the strength and composition of different cadres of the I.F.S. in each of the States and the Union Territories as specified in the Schedule annexed thereto with effect from 1-10-1966. The Initial Recruitment Regulations were made effective with effect from 1-7-1966. Since the composition and strength of the various States cadres of I.F.S. was fixed only on 1-10-1966, the initial recruitment to this Service was made only with effect from this date which may be taken as the actual date of constitution of this Service.

7. Regulation 3 of the Initial Recruitment Regulations empowered the Central Government to constitute a Special Selection Board for selection of officers for appointment to the various cadres of the I.F.S. Regulation 4 of such Regulations deals with the conditions of eligibility for selection to the Service, the Regulation 5 with the preparation of list of suitable officers and Regulation 6 with the appointment to the Service. Regulation 4 is important and may be extracted:

"4. Conditions of eligibility.-(1) Every officer of the State Forest Service who, on the date of constitution of the Service:

(a) is holding a cadre post substantively or holds a lien on such post, or

(b) (i) holds substantively a post in the State Forest Service,

(ii) who has completed not less than eight years of continuous service (whether officiating or substantive) in that Service, and

(iii) who has completed not less than three years continuous service in an officiating capacity in a cadre post or in any other post declared equivalent thereto by the State Government concerned, shall be eligible for selection to the Service in the senior scale.

(2) Every officer of the State Forest Service who has completed four years of continuous service on the date of constitution of the Service shall be eligible for selection to the Service in the junior scale.

Explanation.-In computing the period of continuous service for the purpose of Sub-regulation (1)(b) or Sub-regulation (2), there shall be included any period during which an officer has undertaken:

(a) training in a diploma course in the Forest Research Institute and Colleges, Dehra Dun; or

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

8. In accordance with the aforesaid Rules and Regulations, the initial constitution of the Service and recruitment thereto was made by a notification of the Central Government dated 29-7-1967. This was later challenged before the Supreme Court in the case of A.K. Kraipak and Ors. v. Union of India 1969 S.L.R. 445 and was struck down. As a result of this decision of the Supreme Court the

Recruitment Rules were amended and a new Sub-rule (3A) was added to the then existing Rule 4. This new Sub-rule (3A) reads:

"(3A) Notwithstanding anything contained in Sub-rule (2), when the appointment of any person to the Service in pursuance of the recruitment under Sub-rule (1) is declared invalid by any judgment or order of any Court, the Central Government may make fresh recruitment under that Sub-rule to fill up such appointment and may give effect to the appointment so filled up from the same date on which the appointment which is declared invalid as aforesaid has been given effect to."

The validity of this Sub-rule has since been upheld by the Supreme Court in the case of *Parvez Qadir v. Union of India* reported in 1975 (1) S.L.R. 4.

9. In view of the position explained above, the initial recruitment to the cadres of the States and the Union Territories Indian Forest Service was made only in the year 1971, though all the appointments so made were made effective with effect from 1-10-1966, the date when the earlier appointments which had been declared void in *Kraipak's* case, had been made. The Petitioner was also appointed to the junior scale of the I.F.S. at the time of its initial constitution with effect from 1-10-1966 though the actual orders of his appointment were issued only in 1971.

10. Respondents 3 to 13 were before the constitution of I.F.S., all members of the State Forest Service Class II of the erstwhile State of Punjab. Consequent upon the re-organisation of that State with effect from 1-11-1966 under the provisions of the Punjab Re-organisation Act, all these Respondents were initially allocated to the then Union Territory of Himachal Pradesh with effect from 1-11-1966 under the provisions of Section 82 of the Punjab Re-organisation Act. They were integrated with the members of the Himachal Pradesh Forest Service Class II which was admittedly a service inferior to H.P.F.S. Class I of which the Petitioner was a member. The obvious result of this integration was that Respondents Nos. 3 to 13 were en bloc ranked junior to the Petitioner as the latter, as already stated, was at that time considered as a member of the superior service H.P.F.S. Class I.

11. Now as narrated above, the initial recruitment to the various State cadres of I.F.S., though actually made in the year 1971 was made effective with effect from 1-10-1966. The erstwhile State of Punjab had not been re-organised by that date and Respondents Nos. 3 to 13, therefore, were very much members of the Forest Service of the erstwhile State of Punjab at that time. Like the Petitioner, all these Respondents were also selected and appointed to the I.F.S. at the time of its initial constitution with effect from 1-10-1966. They were of course appointed to the Punjab cadre of I.F.S. whereas the Petitioner was appointed to the U.T. cadre of I.F.S. In view of the induction of these Respondents in the IFS (Punjab cadre) with effect from 1-10-1966, the Central Government superseded its earlier orders passed u/s 82 of the Punjab Re-organisation Act

allocating these Respondents to the then Union Territory of Himachal Pradesh with effect from 1-11-1966 as the members of the Himachal Pradesh Forest Service Class II. In supersession of these earlier orders passed u/s 82 of the Punjab Re-organisation Act, the Central Government passed a fresh order under Sub-rule (2) of Rule 5 of the Cadre Rules transferring these Respondents from IFS (Punjab cadre) to IFS (U.Ts. cadre) with effect from 1-11-1966. A copy of this order is found at annexure P. 11. The inter se seniority of Respondents Nos. 3 to 13 and the members of IFS (U.Ts. cadre) to which cadre these Respondents were transferred was fixed in accordance with the Seniority Rules. Though the Petitioner as also all the Respondents No. 7 to 13 had been assigned the same year 1965 as the year of allotment in IFS, the Respondents were en bloc ranked senior to the Petitioner by virtue of the provisions of Rule 6 of the Seniority Rules. Later with the enactment of the State of Himachal Pradesh Act, the Petitioner as also Respondents Nos. 3 to 13 were transferred from the U.T. cadre of IFS to the State of Himachal Pradesh cadre of IFS with effect from 25-1-1971.

12. The facts as narrated above are not in dispute. The Petitioner, as observed above, was appointed to IFS in the junior scale at the time of its initial constitution with effect from 1-10-1966. His first grievance is that he was in terms of Regulation 4(1)(a) of the Initial Recruitment Regulations eligible for selection to the Service in the senior scale and his appointment to the junior scale is, therefore, bad in law. There can be no dispute that in case the Petitioner fulfilled the conditions of eligibility for selection to the Service in the senior scale as enjoined by Regulation 4(1)(a) of the Initial Recruitment Regulations, he was entitled to induction in the senior scale of the Service right from the date of its constitution and his appointment to the junior scale would be bad. Now in order to substantiate his claim for eligibility for selection and appointment to the senior scale of the Service under Regulation 4(1)(a), the Petitioner must show (i) that he was a member of the State Forest Service and (ii) that he was holding a cadre post substantively or held a lien on such a post as on the date of constitution of the Service.

13. That the Petitioner was a member of the Himachal Pradesh Forest Service Class I at the time of constitution of the IFS, may not be disputed. The material question that arises for consideration is "whether as on the date of constitution of the IFS, the Petitioner was holding a cadre post and if so, was he holding it substantively or in the alternative whether he held a lien on such post". The term "cadre post" has been defined in the Cadre Rules as under:

" "cadre post" means any of the posts specified as such in the regulations made under Sub-rule (1) of Rule 4."

The following posts had been specified as "cadre posts" for the then Union Territory of Himachal Pradesh in the Cadre Strength Regulations:

"Chief Conservator of Forests .. 1 Deputy Chief Conservator of Forests .. 1
Conservators of Forests .. 4 Conservator of Forests, Working Plan . . 1

Conservator of Forests, Utilization Circle .. 1 Conservator of Forests, Development and Wild Life .. 1 Deputy Conservators of Forests . . 26 Deputy Conservator of Forests, Timber Extraction Division . . 1 Deputy Conservator of Forests, Silvicultural Forest Division .. 1 Deputy Conservator of Forests, Working Plan Division 1 Deputy Conservator off Forests, Training Division . . 1."

The case for the Petitioner is that as on 1-10-1966, the date of constitution of the Service, he was substantively holding one of the cadre posts, namely, the post of "Deputy Conservator of Forests, Timber Extraction Division". In support of this contention the Petitioner relies upon Notification No. Ft. 12-39/58-II (E), dated May 7, 1966 issued by the then Administrator, Himachal Pradesh posting the Petitioner as D.F.O. Logging Division. A copy of this Notification has been placed on the record as annexure "C-1". This notification only shows that the Petitioner was transferred from the post of D.F.O. Pangi to the post of D.F.O. Logging in place of Shri P.S. Chandel who was transferred from the post of D.F.O. Logging to that of D.F.O. Pa bar Valley. It is not disputed that Shri P.S. Chandel whom the Petitioner replaced as D.F.O. Logging was a member of H-P.F.S. Class II. The fact that as on 1-10-1966 the Petitioner was holding the post of D.F.O. Logging is not controverted. The question that next arises is "whether the post of D.F.O. Logging held by the Petitioner was a cadre post". Prima facie not. The contention of the Petitioner is that this very post of D.F.O. Logging was redesignated as Deputy Conservator of Forests, Timber Extraction Division with effect from 1-10-1966 and hence the Petitioner should be deemed as holding the cadre post at the time of initial constitution of the Service. The Petitioner, however, could not draw our attention to any notification or order of a competent authority redesignating the post of D.F.O. Logging as Deputy Conservator of Forests, Timber Extraction Division. In the absence of such a notification or order we find ourselves unable to agree with the Petitioner that the post of D.F.O. Logging held by him at the time of initial constitution of the Service was redesignated as Deputy Conservator of Forests, Timber Extraction Division and, therefore, he should be treated as holding a cadre post as on 1-10-1966. It may be that with the constitution of IFS the post of D.F.O. Logging held by the Petitioner was abolished and in its place the post of Deputy Conservator of Forests, Timber Extraction Division, was created or that the post of D.F.O. Logging was up-graded to the post of Deputy Conservator of Forests, Timber Extraction Division but in either case it cannot be said that the Petitioner was holding a cadre post as on the date of constitution of the Service.

14. On the other hand we find that on the date of constitution of the Service, that is, immediately before its constitution the Petitioner was a member of the Himachal Pradesh Forest Service Class I. The members of this Service were designated either as Assistant Conservators of Forests or Deputy Conservators of Forests depending Upon their monthly pay. If it was upto Rs. 510/- they were designated as Assistant Conservators and if in excess thereof, they were designated as Deputy Conservators. Under Regulation 4(1)(a) of the Initial Recruitment Regulations, a person was not eligible for selection to the Service in

the senior scale merely because he happened to be a member of the State Forest Service Class I whether substantively or otherwise. In addition he had to show that he was on the date of constitution of the Service, holding a cadre post substantively or held, a lien on that post. A reference to the Schedule annexed to the Cadre Strength Regulations would show that all the senior posts mentioned in the Schedule and which are to be treated as cadre posts for the purposes of Regulation 4(1)(a) are of the rank of Deputy Conservator of Forests and above. There is no "cadre post" mentioned in the Schedule with the rank or designation of Assistant Conservator which was admittedly the designation of the Petitioner at the relevant time since his monthly pay at that time did not exceed even Rs. 500/-. We may further observe that the post of Deputy Conservator of Forests, Timber Extraction Division, which is a senior cadre post could be held only by an officer of the rank of a Deputy Conservator of Forests. The Petitioner being only an Assistant Conservator of Forests was not entitled to hold this post. The post of D.F.O. Logging Division like any other post of a Divisional Forest Officer could be held even by an Assistant Conservator of Forests or any member of the State Forest Service Class II. It is apparent from annexure "C. 1" which shows that this post of D.F.O. Logging was previously held by Shri P.S. Chandel who admittedly was a member of H.P.F.S. Class II. These two posts, therefore, cannot be equated or treated at par.

15. We must, therefore, repel the first contention of the Petitioner that he was eligible for selection to the Service in the senior scale at the time of its constitution.

16. At this stage we may observe that there was a sharp controversy between the parties on the point "whether the appointment held by the Petitioner as a member of H.P.F.S. Class I was substantive or in an officiating/temporary capacity". Lengthy arguments were advanced by either side in support of their respective contentions. This controversy, in our view, needed to be resolved only if we had found that the Petitioner at the time of constitution of IFS was holding a cadre post. He had in that case to satisfy us that he was holding such post substantively. Since as per our findings above the Petitioner was not holding a cadre post at the material time the question that he was a substantive member of H.P.F.S. Class I or otherwise is immaterial. We, therefore, have not considered it necessary to advert to the arguments addressed to us in this regard.

17. The next grievance of the Petitioner is with regard to his seniority in the IFS vis-a-vis Respondents Nos. 3 to 13. As already stated the Petitioner as also Respondents Nos. 3 to 13 were all appointed to IFS at the time of its initial constitution with effect from 1-10-1966. The Petitioner was appointed to the U.T. cadre of the Service while Respondents Nos. 3 to 13 were appointed to the Punjab cadre of the Service. Subsequently Respondents Nos. 3 to 13 were transferred from Punjab cadre to U.T. cadre with effect from 1-11-1966 under Sub-rule (2) of Rule 5, of the Cadre Rules. The inter se seniority of the Petitioner and Respondents Nos. 3 to 13 was fixed under Rule 6 of the Seniority Rules. On

application of this rule, Respondents Nos. 3 to 13 were all ranked senior to the Petitioner.

18. Now the first contention of the Petitioner as also of the interveners is that Respondents Nos. 3 to 13 having already been allocated from Punjab to the then Union Territory of Himachal Pradesh u/s 82 of the Punjab Re-organisation Act as Class II Officers of the State Forest Service and they having been integrated as such with the members of the Himachal Pradesh Forest Service Class II, they could not be recruited to the Punjab cadre of IFS. In this connection our attention was drawn to the notification dated 26-12-1973 issued by the Governor of Himachal Pradesh (annexure P. 2) vide which Respondents Nos. 3 to 13 were confirmed in substantive HPFS Class II posts with effect from various dates falling between 1-10-1964 and 30-8-1966. It was argued that in view of this notification, Respondents Nos. 3 to 13, if at all, could be appointed to the U.T. cadre of IFS at its initial constitution and not to the Punjab cadre of this Service. In case these Respondents were so appointed to the U.T. cadre of IFS on the date of its initial constitution, they, must all rank junior to the Petitioner who had also been appointed to that cadre since the inter se seniority between the Petitioner and these Respondents as it obtained in the Union Territory at the time of initial constitution of the Service could not be disturbed.

19. We find no substance in this argument. It is true that initially Respondents Nos. 3 to 13 were allocated from the State of Punjab to the then Union Territory of Himachal Pradesh as Class II Officers of the State Forest Service with effect from 1-11-1956 and that this was done u/s 82 of the Punjab Re-organisation Act. This fact by itself suggests that till 30-10-1966 these Respondents were very much the members of the Punjab State Forest Service Class II. Now admittedly IFS with its different State cadres was constituted with effect from 1-10-1966 and the initial recruitment to such cadres was also made with effect from the same date though notifications to that effect were issued subsequently in the year 1971. This could legitimately be done in terms of Sub-rule (3A) of Rule 4 of the Recruitment Rules. Now in case the initial recruitment was to take effect from 1-10-1966, it was the position obtaining on that date alone which was required to be taken into consideration for determining the eligibility of persons for selection and appointment to the Service at its initial constitution. If Respondents Nos. 3 to 13 were as on 1-10-1966 members of Forest Service of the State of Punjab, they could be appointed only to the Punjab cadre of IFS. They were on that date, neither the members of the HPFS nor were they eligible for selection and appointment to the U.T. cadre of IFS. In fact the cadre strength under the Cadre Strength Regulations would not permit their induction in the U.T. cadre of IFS. As regards the notification dated 26-12-1973 found at annexure P. 2 vide which the Governor of Himachal Pradesh ordered confirmations of Respondents Nos. 3 to 13 in substantive HPFS Class II posts with effect from various dates falling between 1-10-1964 and 30-8-1966, we have only to say that this notification was issued without jurisdiction and is of no consequence. Respondents Nos. 3 to 13 were never the members of HPFS Class II during the

period when the confirmations in that Service had been ordered vide this notification. We have also reason to assume that there were no substantive posts available in the cadre of HPFS Class 11 during 1964-66 against which these Respondents could be confirmed. This notification for whatever reason it was issued, can be conveniently ignored and we would refuse to take notice of it.

20. The Petitioner next contended that even if Respondents Nos. 3 to 13 were required to be re-allocated to the U.T. of Himachal Pradesh as members of IFS, the same should have been done only u/s 82 of the Punjab Re-organisation Act and not under Sub-rule (2) of Rule 5 of the Cadre Rules. According to the Petitioner Sub-rule (2) of Rule 5 of the Cadre Rules could be invoked only in stray cases of transfers and that it was not intended to be used in cases of bulk transfers as in the instant case. We see no force in this contention either.

21. Chapter IX of the Punjab Re-organisation Act contains "provisions as to Services". Section 81 of this Act is under the caption "provisions relating to All India Services". This section provides for the allocation of only two of the All India Services, namely, Indian Administrative Service and Indian Police Service. It does not provide for any other All India Service including IFS. The next Section 82 is under the caption "provisions relating to other Services". When read in conjunction with Section 81, the caption "provisions relating to other Services" used in Section 82 would suggest that this Section was enacted to provide for Services other than All India Services. In other words it was not intended to cover members of IFS which is admittedly an All India Service. We, therefore, find that while Section 81 which was enacted to provide for All India Services makes no provision in respect of the members of IFS, the other Section 82 was never intended to cover any All India Service including IFS. Sub-rule (2) of Rule 5 of the Cadre Rules is on the other hand a specific provision providing for transfer of a cadre officer from one cadre to another cadre and we see no reason to subscribe to the view that this was intended to be invoked only in stray cases.

22. The next contention of the Petitioner was that even if it be accepted that Respondents Nos. 3 to 13 had been rightly appointed to the Punjab cadre of IFS with effect from the date of its initial constitution and they had later been validly allocated/transferred to the then Union Territory cadre of the Service under Sub-rule (2) of Rule 5 of the Cadre Rules, these Respondents could not be ranked senior to the Petitioners and that the inter se seniority of the Petitioner and Respondents Nos. 3 to 13 had not been fixed properly in accordance with the relevant rules. For a proper appreciation of the reasoning advanced in support of this contention, it would be expedient to have a look on the following table, the correctness of which was admitted at the bar:

Sr. No.	Name of officer	Year of Allotment	Date of birth
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1.	Shri S.K. Pande (Intervener)	1965	3-7-1942
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2.	Shri R.C. Sharma (Petitioner)	1965	2-6-1938
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3. Shri S.R. Aryan (Intervener) 1965 29-9-1936
4. Shri Sarbansh Singh (Respondent) 1965 -----
5. Shri H.C. Sharma (Respondent) 1964 -----
6. Shri Chaman Lal (Respondent) 1964 ? -----
7. Shri D. Chauhan (Respondent) 1964 ? -----
8. Shri P. Gupta (Respondent) 1965 24-5-1938
9. Shri G.C. Gupta (Respondent) 1965 11-1-1940
10. Shri G.C. Chaudhary (Respondent) 1965 8-4-1940
11. Shri Moti Singh Dod (Respondent) Retired -----
12. Shri D.D. Shagoter (Respondent) 1965 9-7-1923
13. Shri Gurcharan Singh (Respondent) 1965 7-9-1931
14. Shri R.D. Rawal (Respondent) 1964 ? -----

The year of allotment marked against each officer was assigned to him under Rule 3 of the Seniority Rules. This rule reads:

3. Assignment of year of allotment.-(1) Every officer shall be assigned a year of allotment in accordance with provisions hereinafter contained in this rule.

(2) The year of allotment of an officer appointed to the Service shall be-

(a) XX XX XX XX XX XX XX XX XX (b) where an officer is appointed to the Service at its initial constitution in accordance with Sub-Rule (1) of Rule 4 of the Recruitment Rules, such year will be determined in accordance with the following formula:

Year of allotment-1966 minus (N1 plus half of N2) wherein-

N1 represents completed years of continuous service upto 1st July, 1966 in a post equivalent to or above a senior scale post included in the State Cadre, provided that any such Service rendered during the first eight years of gazetted service of the officer shall be excluded for this purpose.

N2 represents completed years of continuous gazetted service upto 1st July, 1966 excluding that included in N1.

In computing the period of continuous service for purpose of N1 or N2 any period during which an officer has undertaken training in a diploma course in the Forest Research Institute and College, Dehra Dun or an equivalent course in any other institution which training is approved by the Central Government for this purpose, shall not be taken into account:

Provided that

Provided further....

Provided further that where in a case or class of cases, application of the formula given in this Rule, results in hardship or anomaly, the seniority of officers concerned shall be determined ad hoc by the Central Government in consultation with the State Government concerned and the Commission".

23. Now the argument of the Petitioner was that though the year of allotment assigned to the Petitioner and Respondents Nos. 3 to 13 had been correctly calculated in accordance with the formula prescribed in Rule 3(2), the application of this formula had resulted in anomalies as also hardship to the Petitioner and the interveners. The anomaly according to the Petitioner was that whereas immediately before the initial constitution of IFS, he was a member of the State Forest Service class I, Respondents Nos. 3 to 13 were all members of the State Forest Service Class II and with the constitution of the Indian Forest Service, the Petitioner who belonged to a superior service was ranked junior to Respondents Nos. 3 to 13 who belonged to a comparatively inferior service. The Central Government, therefore, proceeds the argument, should have determined the seniority of the Petitioner and the interveners ad hoc in terms of the third proviso quoted above. The argument is obviously misconceived. It loses sight of the fact that Rule 3 reproduced above applies only at the initial constitution of the Service and that the third proviso relied upon by the Petitioner can be invoked only in case the application of this rule results in hardship or anomaly in assigning the year of allotment to the members of the same State cadre at the time of its initial constitution. It is clear from the language of the proviso which provides that in case of hardship or anomaly, the seniority of officers concerned shall be determined ad hoc by the Central Government in consultation with the State Government concerned and the Commission. In case, this proviso was intended to cover the cases of hardships and anomalies resulting from assignment of the years of allotment to the officers of different State cadres also, the language of the proviso should have read "...in consultation with the State Governments concerned ..." for the existing words in consultation with the State Government concerned....

24. Another argument advanced by the Petitioner was that it was a fit case where the Government should have relaxed the Rules in exercise of the powers vested in it under Rule 3 of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960 so as to do justice to the Petitioner. Rule 3 (supra) is in the following terms:

"3. Power to relax Rules and Regulations in Certain cases.- Where the Central Government is satisfied that the operation of-

(i) any rule made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or

(ii) any regulation made under any such rule, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any

particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such -extent and subject to such exceptions and conditions, as it may consider necessary for dealing with the case in a just and equitable manner."

Government of India's decisions regarding application of this rule and as mentioned at page 360 of the AH India Services Manual (Second Edition) would show that it is not a fit case which calls for relaxation of rules in favour of the Petitioner under the afore said rule. These decisions may be extracted:

Government of India's Decisions;

1. A doubt was raised whether the powers of relaxing rules was intended to be applicable to "recruitment rules" also.

The Govt. of India have held that the. "recruitment rules" cannot be relaxed under Rule 3 of the A.I S. (Conditions of Service-Residuary Matters) Rules, 1960. [MH.A.F. No. 14/ 2/55-AIS (III)].

2. A question arose regarding the extent of the powers vested in the Government under Rule 3 of the A.I.S. (Conditions of Service-Residuary Matters) Rules, 1960, to deal with-cases involving relaxation of rules and regulations.

The Government of India have held that:

(a) "undue hardship signifies unforeseen or unmerited hardship to an extent not contemplated when the rule was framed and does not cover any ordinary hardship or inconvenience which normally arises;

(b) the relaxation should enable the case to be dealt with in a just and equitable manner and not on grounds of compassion however justified; and

(c) the benefit to be conferred in relaxation of any rule or rules must be of a nature already provided for in the rules, Government are not empowered by this rule to confer benefits which are not contemplated in the rules.

[G.I., M.H.A. letter No. 30/1/63-IAS (II), dated the 1st January, 1966].

We find nothing in the view taken by the Central Government with respect to the scope of Rule 3 of the All India Services (Conditions of Service-Residuary Matters) Rules, 1960 and hence would hold that the Petitioner cannot have any grievance in case the Central Government did not agree to relax the rules in his favour.

25. The last argument advanced by the Petitioner was that Rule 6 of the Seniority Rules which undisputedly governed the fixation of seniority of the Petitioner vis-a-vis the Respondents, had not been properly applied while determining the inter se seniority of the Petitioner and the Respondents. The relevant portion of this rule is in the following terms:

"6. Fixation of seniority on transfer to another cadre.-(1) If an officer is

transferred from one cadre to another in the public interest, his position in the gradation list of the cadre, to which he is transferred, shall be determined by the Central Government in accordance with the following principles:

- (i) his year of allotment shall remain unaffected;
- (ii) the following order shall be maintained among the different categories of officers of the same year of allotment and the seniority of the transferred Officer vis-a-vis officers of his category shall be determined in the following manner:
 - (a) Initial Recruitment Officers.-An officer appointed to the Service under Sub-rule (1) of Rule 4 of the Recruitment Rules shall be graded mainly on the basis of age without thereby disturbing, as far as possible, the existing inter se seniority.

XX XX XX XX XX XX XX XX XX"

This provision lays down in no ambiguous terms that whenever an officer is transferred from one State cadre to another except on his own request, then as between the initial recruitment officers having the same year of allotment, the grading shall be done mainly on the basis of age without thereby disturbing, as far as possible, the existing inter se seniority. The Petitioner and the interveners having all been assigned 1965 as the year of allotment in I.F.S., they can have no grievance with respect to the seniority assigned over them to such of the Respondents as had been assigned a year of allotment earlier than 1965. The Petitioner and the interveners dispute only with respect to the assignment of seniority over them to" such of the Respondents who had been assigned the year of allotment as has been assigned to the Petitioner and the interveners viz 1965.

26. Now a glance at the chart reproduced above would show that all the Respondents having 1965 as their year of allotment were senior in age to Shri S.K. Pandey intervener who was admittedly senior to the Petitioner as also to the other intervener Shri S.R. Aryan in the then U.T. cadre of the Service. All the Respondents with 1965 as the year of allotment had, therefore, by virtue of their age to be ranked senior to Shri S.K. Pandey intervener. Now in order to maintain the then existing inter se seniority of the Petitioner and the interveners, there was no option but to rank all the Respondents of 1965 year of allotment, senior to the Petitioner and the other intervener Shri S.R. Aryan also. Looking from this angle we find no flaw in the seniority allotted to the Respondents vis-a-vis the Petitioner and the interveners at the time of their, transfer from Punjab cadre to the U.T. cadre of I.F.S.

27. The Petitioner, however, contended that the inter se seniority of the Respondents vis-a-vis the Petitioner¹ and the interveners should have been fixed in accordance with the instructions as find place at page 777 of the All India Services Manual (Second Edition). However, he could not satisfy us as to how these instructions. were applicable in the instant case. These instructions clearly specify that they are applicable only for determination of inter se ranking consequent upon States Re-organisation, among officers belonging to the Indian

Administrative Service and the Indian Police Service. In case the intention was to apply these instructions to the officers of the Indian Forest Service also, the instructions should have specified the name of this Service also while mentioning the names of Indian Administrative Service and Indian Police Service. The simple fact that these instructions have been shown as covering the cases of Indian Administrative Service and Indian Police Service only would show that they were not intended to apply to the Indian Forest Service. We, therefore, find that the instructions of the Government of India referred to above have no application for determination of inter se seniority of the members of the Indian Forest Service at the time of transfer from one cadre to the other. Rule 6 of the Seniority Rules is thus the only provision which could be applied in determining the inter se seniority of the Petitioner and the interveners vis-a-vis Respondents Nos. 3 to 13.

28. In view of what has been stated above we have no hesitation in concluding that the inter se seniority of the Petitioner and the interveners vis-a-vis Respondents Nos. 3 to 13 has been rightly determined in accordance with the relevant Rules.

29. In the result we find that the Petitioner is not entitled to any relief and, therefore, dismiss the writ petition. We, however, leave the parties to bear their own costs.