
(1974) 07 CAL CK 0007
In the Calcutta High Court
Case No : Civil Rule No. 3103 (W) of 1971

Satyendra Nath Ghosh

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 25-07-1974

Acts Referred:

All India Services Act, 1951 — Section 2A, 3, 3(2)
Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 14, 16
Forest Service (Appointment by Promotion) Regulations, 1966 — Regulation 5, 5(2)
Forest Service (Recruitment) Rules, 1966 — Rule 2, 2(1), 3, 4, 4(1)

Citation : (1976) 1 ILR (Cal) 34

Hon'ble Judges : Anil K. Sen, J

Bench : Single Bench

Advocate : A.P. Chatterjee and Parimal Kr. Dasgupta, for the Appellant; Balai Chandra Roy, P.K. Sengupta and Ramapati Roy for State, for the Respondent

Final Decision : Allowed

Judgement

Anil K. Sen, J.—This Rule was obtained on a writ petition. The two Petitioners in this Rule are Extra Assistant Conservators of Forests of the Government of West Bengal and as such, are the members of the West Bengal Junior Forest Service. They moved this writ petition in their representative capacity, on behalf of the other members of the West Bengal Junior Forest Service on a leave obtained under Order 1, Rule 8 of the Code of Civil Procedure.

2. In this writ petition, as it stands on amendment, the Petitioners are disputing the validity of Reg. 5(2)(ii) of the Indian Forest Service (Appointment by Promotion) Regulation, 1966. The Petitioners are praying for a mandate directing the Respondents to forbear from giving effect to and/or cancel and/or withdraw the Regulation 5(2)(ii) of the Indian Forest Service (Appointment by Promotion) Regulation, 1966 and further directing the Respondents to treat the Petitioners at par with the Assistant Conservators of Forests and/or officers of the West Bengal

Senior Forest Service.

Such is the prayer as obviously the Petitioners are claiming that the aforesaid Reg. 5(2)(ii) which includes them is void and ultra vires and be held and declared as such by this Court.

3. The Rule is being contested by two sets of Respondents, namely, the Union of India and its authorities and the State of West Bengal and its authorities. Both have filed their respective affidavits in contesting the claim of the Petitioners.

4. On the pleadings of the parties certain undisputed facts emerge. These are as follows:

The State Forest Service of West Bengal has two branches, one senior to the other, but both having the status of gazetted officers. The senior branch is called the West Bengal Senior Forest Service consisting of Conservator of Forests and Deputy and Assistant Conservators of Forests. The Junior branch is the West Bengal Junior Forest Service consisting solely of Extra Assistant Conservators of Forests. In West Bengal there is no separate scale for Assistant Conservators of Forests, but they belong to a cadre known as Deputy and Assistant Conservators of Forests on the unified scale of Rs. 575--1,025--1,475, the Assistant Conservators being Deputy Conservators on passing over a certain stage in the time scale. Members of the West Bengal Senior Forest Service are all directly recruited--the candidates holding either a degree in Forestry or a diploma in Forestry from the Indian Forest College, Dehra Dun.

5. The West Bengal Junior Forest Service, on the other hand, consists solely of the Extra Assistant Conservators of Forests having a scale of Rs. 500--25--750; recruitment to such posts are exclusively by promotion from amongst the Forest Rangers belonging to the Subordinate Forest Service. Posts of Forest Rangers are filled by either direct recruitment or by promotion from Deputy Rangers. The direct recruits are to undergo a training in the Rangers' course in Forestry in Northern Forest Range College. Forest Rangers again when promoted to gazetted rank of Extra Assistant Conservators of Forests are to undergo Special Refreshers' course for six months. Though the members of the West Bengal Junior Forest Service may fortuitously be called upon to discharge the functions of the holders of posts borne on the West Bengal Senior Forest Service on special pay being given to them for the period of such deputation, they are never promoted to the West Bengal Senior Forest Service. Statements made in paras. 4, 9 and 12 of the affidavit-in-opposition filed by the State of West Bengal would substantially bear out these facts.

6. On September 6, 1963, the All India Services Act was amended by the amending Act XXVII of 1963 when Section 2A was inserted therein constituting amongst others the Indian Forest Service. Section 3 of the Act which authorises the Central Government in consultation with the State Governments to make rules for the regulation of recruitment and conditions of service of the members of services so constituted by the Act, the Central Government framed in 1966 the

Indian Forest Service (Recruitment) Rules, 1966.

7. Under Rule 3 of these Rules the All India Forest Service shall consist of (i) initial recruits made under Rule 4(1) and (ii) recruits to be subsequently recruited under Rule 4(2) and (4) of the Rules. Under Rule 4(1) the initial recruits are to be recruited on selection from amongst the members of the State Forest Service in accordance with the regulations made under that sub-rule known as the Indian Forest Service (Initial Recruitment) Regulations, 1966. Subsequent recruits are to be recruited in either of the three ways, namely, (i) direct recruitment by competitive examination to be made in accordance with Indian Forest Service (Appointment by Competitive Examination) Regulations, 1967, framed under Rule 7, (ii) recruitment by selection of disbanded Army officers on Emergency or Short Service Commissions to be made in accordance with the Indian Forest Service (released Emergency Commissioned and Short-service Commissioned Officers)(appointment by competitive examination) Regulations, 1968, framed under Rule 7A and (iii) recruitment by promotion of substantive members of the State Forest Service to be made in accordance with Indian Forest Service (Appointment by Promotion) Regulations, 1966 framed under Rule 8(1) of the Rules.

8. Rule 4 of these Rules prescribes the method of recruitment to the Service. Sub-rules (1) and (2) are important for our present purposes and are set out hereunder:

4. Method of recruitment to the Service.

(1) As soon as may be after the commencement of these Rules, the Central Government may recruit to the Service any person from amongst the members of the State Forest Service, adjudged suitable in accordance with such regulations as the Central Government may make in consultation with the State Governments and the Commission:

Provided that no member holding a post referred to in Sub-clause (ii) of Clause (g) of Rule 2 and so recruited shall at the time of recruitment be allocated to any State cadre other than the cadre of a Union territory.

(2) After the recruitment under Sub-rule (1), subsequent recruitment to the Service shall be by the following methods, namely,

(a) by a competitive examination:

(aa) by selection of persons from amongst the Emergency Commissioned Officers and Short Service Commissioned Officers of the Armed Forces of the Union who were commissioned after the 1st November, 1962 and also who are released in the manner specified in Sub-rule (1) of Rule 7A:

(b) by promotion of substantive members of the State Forest Service.

9. On the method thus prescribed by this Rule framed under the statute, the field of recruitment both for initial; recruitment and for subsequent recruitment on

promotion is the State Forest Service,--the only difference being in the case of former all the members of the State Forest Service are eligible, while in the case of latter only the substantive members of such service are eligible. It is, however, necessary at this stage to note the implication of the term State Forest Service as much of the dispute centers round the true implication of this term. The term has been defined by the Rules. Rule 2(g) defines the State Forest Service to mean:

(g) "State Forest Service" means:

(i) any such service in a State, being a service connected with forestry and the members thereof having gazetted status, as the Central Government may, in consultation with the State Government, approve for the purpose of these Rules; or

(ii) any service in such Central Civil Post, Class I or Class II, connected with forestry, as may be approved by the Central Government for the purpose of these Rules.

10. It is not being disputed by the Respondents that the Central Government, in consultation with the State Government, has approved both the West Bengal Senior Forest Service and the West Bengal Junior Forest Service to be the State Forest Service for the purposes of these Rules. This position is clearly acknowledged by the Union of India in its affidavit filed in the proceeding. It is also not being disputed by the Respondents that the West Bengal Junior Forest Service is a service connected with forestry and its members hold gazetted status. It is further accepted by the Respondents that in the matter of initial recruitment to the Indian Forest Service under Rule 4(1) members of the West Bengal Junior Forest Service were duly considered along with those of the West Bengal Senior Forest Service and some amongst them were fortunate enough to get appointments to the Indian Forest Service on such initial recruitment. Validity of such equating the two unequal branches for the purpose of initial recruitment was challenged by some of the members of the West Bengal Senior Forest Service in this Court in C.R. No. 470(W) of 1970. My learned brother S.K. Datta J. in upholding the validity of such a Rule observed:

As to the contention that senior and junior members of State Service has been treated alike in Rule 4 of the said Rules, it may at once be said that in the newly framed All India Service, a different service altogether, there is no obligation to maintain such distinction in the said service. *Shyamal Kumar v. Union of India* reported in 1972 S.L.R. 627.

11. As the present dispute relates to the subsequent recruitment by promotion under Rule 4(2)(b) it will be necessary to refer to the relevant rules and regulations. It has already been seen that Rule 4(2)(b) has prescribed the field and basic eligibility by limiting the promotion from amongst the substantive members of the State Forest Service which now includes both the Senior and Junior Forest Services in West Bengal on the approval granted under Rule 2(g)(i).

Rule 8 prescribes the method of recruitment by promotion and provides as follows:

8. Recruitment by promotion.

(1) The Central Government may, on the recommendations of the State Government concerned and in consultation with the Commission and in accordance with such regulations as the Central Government may, after consultation with the State Governments and the Commission, from time to time, make recruit to the Service persons by promotion from amongst the substantive members of the State Forest Service.

(2) Where a vacancy occurs in a State cadre which is to be filled under the provision of this Rule, the vacancy shall be filled by promotion of a member of the State Forest Service.

(3) Where a vacancy occurs in a joint cadre, which is to be filled under the provision of this Rule, the vacancy shall, subject to any agreement in this behalf, be filled by promotion of a member of the State Forest Service of any of the States constituting the group.

12. The Central Government had framed regulations under Rule 8(1) known as the Indian Forest Service (Appointment by Promotion) Regulations, 1966. It provides for selection for promotion and preparation of a select list under Reg. 5. Constitution of a Select Committee is in Reg. 3. Regulation 5 has undergone an amendment in 1972 when Reg. 4 was repealed, but similar provisions were incorporated in Reg. 5. Amended Reg. 5 is set out hereunder:

(1) Each Committee shall ordinarily meet at intervals not exceeding one year and prepare a list of such members of the State Forest Service as are held by them to be suitable for promotion to the Service. The number of members of the State Forest Service included in the list shall not be more than twice the number of substantive vacancies anticipated in the course of the period of twelve months, commencing from the date of preparation of the list, in the posts available for them under Rule 9 of the Recruitment Rules, or 10 per cent of the senior posts shown against items 1 and 2 of the cadre schedule of each State or group of States, whichever is greater.

(2) The Committee shall consider, for inclusion in the said list, the cases of members of State Forest Service in order of seniority in the State Forest Service upto a number not less than five times the number referred to in Sub-regulation (i):

(i) in computing the number for inclusion in the field of consideration, the number of officers referred in Sub-regulation (3) shall be excluded:

(ii) the Committee shall not consider the case of a member of the State Forest Service unless on the first day of January of the year in which it meets, he is substantive in the State Forest Service and has completed not less than eight

years of continuous service (whether officiating or substantive) in a post of Assistant Conservator of Forests or any other post or posts declared equivalent thereto by the State Government with the prior concurrence of the Central Government, (iii) the officers belonging to any service referred to in Sub-rule (g) (ii) of Rule 2 of the Recruitment Rules shall not be eligible to be considered for promotion to any cadre other than the Union Territories Cadre.

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

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

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

(iv) where the number of officers who fulfil the conditions referred to in Clause (ii) is less than five times the number referred to in Sub-regulation (1) the Committee shall consider the cases of all those officers who fulfil the prescribed conditions.

(3) The Committee shall not ordinarily consider the case of the members of the State Forest Service who have attained the age of 52 years on the first day of January of the year in which it meets:

Provided that a member of the State Forest Service whose name appears in the select list in force immediately before the date of the meeting of the Committee shall be considered for inclusion in the fresh list, to be prepared by the Committee even if he has in the meanwhile attained the age of 52 years.

(3A) The selection for inclusion in such list shall be based on merit and suitability in all respects.

13. Sub-clause (ii) of Reg. 5(2) is the centre of present controversy. On the latter part of this Regulation, one who was not completed eight years of continuous service in a post of the Assistant Conservator of Forests or a post equivalent thereto has been made ineligible for consideration for promotion. Such exclusion excludes the members of the West Bengal Junior Forest Service because they are all Extra Assistant Conservators of Forests lower in rank and status than the Deputy and Assistant Conservators of Forests and they can never aspire to be the Deputy and Assistant Conservators of Forests under the rule of the State of West Bengal. Reference may be made to para. 9 of the affidavit-in-opposition filed on behalf of the State of West Bengal and its authorities. Feeling aggrieved by such exclusion, the Petitioners have now moved this Court disputing the validity of such a provision.

14. Petitioners are disputing the validity of such a regulation on the two-fold grounds of it (i) being discriminatory and as such violative of Articles 14 and 16

of the Constitution and (ii) being ultra vires the powers under which such a regulation had been framed. Mr. Chatterjee appearing on behalf of the Petitioners has also pressed the very same two points before me. The points so raised have been contested by Mr. Roy, appearing on behalf of the Union of India and its authorities and by Mr. P.K. Sengupta, the learned Government Pleader of the State of West Bengal. According to Mr. Chatterjee, the impugned Regulation is discriminatory, firstly, because it discriminates the members of the West Bengal Junior Forest Service by excluding them at the stage of promotion though not at the stage of initial recruitment and secondly, because such employees are excluded only in the State of West Bengal but not in other States and that such a discrimination is not a differentiation made on reasonable grounds. As pointed out hereinbefore it has not been disputed by the Respondents that at the stage of initial recruitment these members of the Junior Forest Service were not excluded but, on the other hand, they were treated alike with the members of the Senior Forest Service and the selection was made from amongst the members of both the Services. As pointed out hereinbefore, as a matter of fact, some of the fortunate few amongst these members of the Junior Forest Service got appointments to the Indian Forest Service at that stage. On the impugned Regulation there can also be no dispute that these members of the Junior Forest Service would now be excluded from consideration for the purpose of recruitment by promotion. The question raised is as to whether such a differentiation is based on any reasonable ground. In my opinion, the initial recruitment at the stage of the first constituting the Service was like a direct recruitment and the same may reasonably be differentiated from recruitment on promotion on an allotted quota for the promotees at the subsequent stage. If on the latter occasion members of the Senior Forest Service are given the preference and the members of the Junior Forest Service are excluded, that by itself would not be discriminatory on the alleged ground of the differentiation not being based on reasonable grounds. Direct recruitment is made on the basis of finding out meritorious candidates wherever they may be for constituting the Service at its inception, but when a percentage of higher posts are earmarked for being filled up by promotion, it is so done to give an opportunity to the meritorious incumbents in the lower post to upgrade their position. In such cases on the merits of each case the administration may decide whether it would throw open the promotion to the just lower grade or rank or to two or more grades or ranks below. If the administration decides to limit it to just a lower grade or rank as in the present case (on the application of Reg. 5(2)(ii)), without more it cannot be said that it is unreasonable. Such circumstances in my view do not justify any adverse conclusion. In this view the first aspect of Mr. Chatterjee's challenge that the impugned Regulation is discriminatory cannot be accepted.

15. So far as the second aspect is concerned, it is contended by Mr. Chatterjee that in most States other than West Bengal, Forest. Rangers on promotion are appointed as Assistant Conservators of Forests so that they acquire the eligibility when they complete eight years of service as such for promotion to the Indian

Forest Service and are being considered for promotion to the said rank. But in West Bengal such Rangers when promoted are designed as Extra Assistant Conservators of Forests and because of such difference in the designation they lose their eligibility. According to Mr. Chatterjee, when the Extra Assistant Conservators of Forests discharge the same functions as Assistant Conservators of Forests, when the educational qualifications required for promotion of Rangers to Extra Assistant Conservators of Forests are the same as the diploma course of the direct recruits to the posts of the Deputy and Assistant Conservators of Forests and when in other States same or similar candidates are given the same position in the matter of consideration for promotion to the Indian Forest Service, there are no reasonable grounds to discriminate or differentiate the West Bengal employees who on promotion from the rank of Forest Rangers become Extra Assistant Conservators of Forests.

16. In my view, if the differentiation had been made only on the ground of difference in the designation, it would have been unreasonable. But that is not the position. Under the State rules of other States, Forest Rangers when promoted are promoted to the State Forest Service which is equivalent to the Senior Forest Service of West Bengal--in those States there being no intermediary grade like the Extra Assistant Conservators of Forests and there being no bar of Rangers getting promotion to the Senior Forest Service as in West Bengal. It is unfortunate that in this State the rules do not permit promotion of a Forest Ranger to the Senior Forest Service, but in my view each State has its rights to frame its own rules made applicable to all its employees. Differentiation made on the basis of such differences cannot be condemned as discriminatory. Reference may be made to the decision of the Supreme Court in the case of *Shri Kishan Singh and Others Vs. The State of Rajasthan and Others*, . But when the Rangers in West Bengal get promotion to a post lower in rank to those of a Senior Forest Service, they cannot claim equal treatment with such members of the Senior Forest Service or their equivalents in other States only because once such members were Rangers in their origin. Mr. Chatterjee has been unable to point out any case where a member of a Junior State Forest Service like that in West Bengal has been given the eligibility of promotion to the Indian Forest Service, though such eligibility has been denied to such of the West Bengal employees only on the ground of their designation. Really the differentiation is based on consideration of substantial difference in the status of the posts respectively held by such members. Mr. Chatterjee's claim that the members of the Junior Forest Service possess the same education qualification as that by the members of the Senior Forest Service has been denied by the Respondents on facts disclosed by them and I do not find it to be a justifiable claim. The other claim that they are discharging the same obligations and duties as the Assistant Conservators of Forests is also disputed and is in any event not a relevant consideration at all in claiming equality in the matter of further promotion. Reference may be made to the decision of the Supreme Court in the case of *Kishori Mohanlal Bakshi Vs. Union of India*, . In this view I find no real

substance in this aspect of Mr. Chatterjee's contention on the first point. Therefore, the challenge on the ground of discrimination must fail and is overruled.

17. The next point raised by Mr. Chatterjee is, however, of great importance. According to Mr. Chatterjee, Reg. 5(2)(ii) is repugnant to Rule 4 of the Rules and as such, must be held to be ultra vires the regulation making powers under Rule 8(1) of the Rules. According to Mr. Chatterjee, u/s 3 of the All India Services Act, 1951, regulation of recruitment and conditions of service are to be prescribed by Rules made under that section. Rules so made shall not only be statutory but would also have the sanction of Parliament u/s 3(2) thereof. Such Rules, according to Mr. Chatterjee, were framed in the Indian Forest Service (Recruitment) Rules, 1966. Rule 4 of these Rules makes the members of the West Bengal Junior Forest Service eligible for appointment to the All India Forest Service both by initial recruitment and by promotion. This position follows on the approval accorded under Rule 2(g)(1)- Mr. Chatterjee contends that once such eligibility is conferred by these Rules, it can be taken away by amendment of the Rule or on amendment of the approval made under Rule 2(g)(i), but such eligibility cannot be totally taken away by subordinate regulations made under Rule 8 of such Rules. According to Mr. Chatterjee, when Reg. 5(2)(ii) takes away such eligibility totally, it becomes repugnant to Rule 4(2)(b) and as such, is ultra vires the Rule.

18. Mr. Sengupta appearing on behalf of the State has contended that an Extra Assistant Conservator of Forests is lower in rank than an Assistant Conservator of Forests and as such, under Reg. 5(2)(ii) he cannot claim promotion along with those in the higher rank simultaneously and if the Regulation excludes such a junior staff there is nothing wrong in it nor can it be said to introduce any inconsistency. In my opinion, Mr. Sengupta, however, misses the true edge of Mr. Chatterjee's contention. That an Extra Assistant Conservator of Forests is lower in rank and status to a Deputy and Assistant Conservator of Forests in West Bengal is not in dispute. It may or may not be considered to be normal to think that an Extra Assistant Conservator of Forests would be entitled equally to claim to be considered for promotion to a rank higher than the Deputy and Assistant Conservator of Forests. That is a matter for policy decision for the authorities. On the facts of the particular case, it may also be considered to be quite abnormal to think that an Extra Assistant Conservator of Forests, who is not eligible under the State Rules to be promoted as a Deputy and Assistant Conservator of Forests would yet be given the eligibility for being considered for promotion to a still higher rank of the Indian Forest Service along with the Deputy and Assistant Conservator of Forests. But, that is the specific result of Rule 4(1) and Rule 4(2) (b) read with the approval granted by the Central Government in consultation with the State Government under Rule 2(g)(i) of the Rules. It might have been so decided because it is an all India service and in other States forest officers from the lowest ranks are given an avenue of promotion to the All India Service. But the fact remains when the Central Government approved in consultation with

the State Government that the members of the State Junior Forest Service would be a part of the State Forest Service for recruitment also by promotion to All India Forest Service, eligibility for such promotion was expressly conferred on such members of the Junior Forest Service, that is, the Extra Assistant Conservator of Forests. As a matter of fact, this aspect was the foundation of the grievance on which the members of the Senior Forest Service moved this Court in the earlier Rule. But they were opposed by the State Government and this Court upheld the stand taken by the State Government and overruled the objection. Incidentally it may be pointed out that conferment of such eligibility on the Extra Assistant Conservators of Forests as has been conferred by Rule 4 read with the approval under Rule 2(g)(i) would not only lead to anomalies referred to hereinbefore and sought to be relied on by Mr. Sengupta, but is likely to create further anomalies in the matter of determination of seniority under Rule 5(2). But these are the anomalies which are for the Central Government to take into consideration and if necessary, amend the Rules or approval appropriately. But, when such Government has once conferred the eligibility on a specific approval under Rule 2(g)(1) on these members of the State Junior Forest Service, we have to proceed on the basis that what the Rule has given is taken away by the Regulation and whether such taking away is competent in law or not.

19. Mr. Roy appearing on behalf of the Union of India has contended that the impugned Reg. 5(2)(ii) must be read as complementary to Rule 4 of the Rules. According to Mr. Roy, Rule 4 read with the approval under Rule 2(g)(i) no doubt confers eligibility on the members of the Junior Forest Service for promotion to the All India Forest Service, but such eligibility is conferred subject to such further Regulations as to eligibility as may be prescribed by the Regulations made under Rule 8. Therefore, according to Mr. Roy, Reg. 5(2)(ii) when framed under Rule 8 must be read as a complementary to the Rule. This is perhaps the only possible argument which could be made to meet the point raised by Mr. Chatterjee and I shall have to deal with this contention of Mr. Roy.

20. But, before doing so I shall have to find out the true principle of construction of the rules and regulations made thereunder which are apparently not consistent with each other as in the present case. We may remind ourselves that the settled principle is that in case of an apparent conflict between a statute and the instrument made thereunder, the rule of harmonious construction should be applied. If, however, reconciliation is impossible, the subordinate legislation must give way to the clear provisions of the statute. Reference may be made to the enunciation of the principle as made in the case of *Minister of Health v. Yaffee* (1931) A.C. 494 (503). In that case Viscount Dunedin observed:

The confirmation makes the scheme speak as if it was contained in an Act of Parliament, but the Act which provides for the framing of the scheme is not a subsequent Act. If therefore the scheme as conflicts with the Act, it will have to give way to the Act. The mere confirmation will not save it would be otherwise if the scheme had been, per se, embodied in a subsequent Act, for then the maxim

to be applied would have been *posteriora derogant prioribus*. But as it is, if one can find that the scheme is inconsistent with the provisions of the Act which authorises the scheme, the scheme will be bad and that only can be gone into by way of proceedings in certiorari.

That was the principle enunciated though on facts it was found that there was no real inconsistency. Reference may also be made to the following enunciation of the principles in Halsbury's Laws of England (3rd ed., vol. 36, para. 743):

The question whether or not a particular provision is *ultra vires* depends in every case on the true construction of the enabling power concerned. It may, however, be said that an enabling power will not readily be construed as authorising the repeal or modification of enactments (or the granting of powers of repeal or modification), so that, for example, subordinate legislation is *prima facie ultra vires* if it is inconsistent with the substantive provisions of the statute by which the enabling power is conferred, or of any other statute and equally, of course, if it purports to affect existing statutes expressly.

This principle, in my opinion, would be equally applicable in the present case in considering whether the impugned Regulation framed under Rule 8 of the Rules can validly derogate from the provisions of the Rule itself.

21. It is only in the light of these principles that the contention of Mr. Roy assumes importance. In substance, he contends, there is no real inconsistency between the impugned Reg. 5(2)(ii) and Rule 4--the former being complementary to the latter. I would not have any hesitation in accepting such a contention of Mr. Roy had it not been a case where the Regulation totally and permanently excludes all the members of the West Bengal Junior Forest Service from the field of promotion to the Indian Forest Service directly inconsistent with the eligibility conferred by the Rules and the scheme contemplated by the Rules. A provision so inconsistent with and repugnant to the Rules cannot be considered to be complementary. In order to be complementary the Regulation must advance further and supplement what is prescribed by the Rule, but at the same time it must co-exist with the Rule and must not annul it either in part or in whole. I could well understand if the Regulation had provided for further conditions of eligibility like any educational qualification or experience to be acquired or any suitability or departmental test to be passed or the like which could be acquired by a member of the West Bengal Junior Forest Service before he could be considered for promotion to the Indian Forest Service as sanctioned by Rule 4(2)(b). But, here the condition imposed is such that it can never be fulfilled by the members of the West Bengal Junior Forest Service and in the result they can never be considered for promotion to such rank. Thus it is a clear case where what is given or sanctioned by the Rules is being taken away or annulled by the Regulation made under such Rules. Regulation 5(2)(ii) in part is inconsistent with Rule 4(2)(b) read with the approval under Rule 2(g)(i) and it is not possible to reconcile the Rule and the Regulation in this respect. Though both the Rules and the Regulations have been made by the same authority, the Rules

are to be read as part of the statute because of Section 3(2) of the Act and the Regulation having been made in exercise of powers subordinate to the Rules cannot derogate from the Rule and to the extent they derogate they must be held to be ultra vires the powers under which they are made. It would be pertinent in this context to refer to the following observations of Wills J. in the case of *R. v. Bird Ex parte Needs* (1898) 2 Q.B. 340:

I desire in my judgment to adopt a broad principle which is too clear to need cases to be cited for its justification, the principle that where a power to make regulations is given to a public body by a Statute, no regulation made under it can abridge a right conferred by the Statute itself.

If we apply this test, it would be clear to us that in the present case Regulation made under the Rule abridges the right conferred by the Rule and to the extent of such abridgement it is ultra vires the powers under which the Regulation was framed. While on this point it will be pertinent to refer to the decision in the case of *Morrill v. Jones* 27 L.Ed. 267 : (1883) 106 U.S. 466. In that case the statute provided:

animals alive, specially imported for breeding purposes, shall be admitted free upon proof thereof satisfactory to the Secretary of the Treasury and under such Regulations as he may prescribe.

22. A Regulation made under the statute prescribed that before admitting such animals duty-free, the official concerned was to be satisfied that the animals are of a superior stock, adapted to improving the breed in the United States.

When the validity of the limitation in this respect of animals introduced by the Regulation was challenged it was held that the Regulation was ultra vires inasmuch as while the statute included all animals, the Regulation sought to confine its operation to animals of "superior stock" inconsistent with the provision of the statute itself.

23. For reasons aforesaid I accept the second point raised by Mr. Chatterjee and hold that so long under the provisions of Rule 4(2)(b) read with the approval made in Rule 2(g)(i), the members of the West Bengal Junior Forest Service are eligible for consideration for promotion to the Indian Forest Service, the latter part of Reg. 5(2)(ii) which debars them for so being considered must be declared as ultra vires. But the ultra vires part is clearly severable by omitting the following words from the Regulation--

in a post of Assistant Conservator of Forests or any other post or posts declared equivalent thereto by the State Government with the prior concurrence of the Central Government.

24. This application, therefore, succeeds and the Rule is made absolute. Let a mandate do issue on the Respondents directing them that on the existing provisions of Rule 4(2)(b), so long as the West Bengal Junior Forest Service stands approved under Rule 2(g)(i) of the Indian Forest Service Recruitment

Rules, 1966, they must consider the eligibility of the candidates, so far as the State of West Bengal is concerned, for promotion to the Indian Forest Service on Reg. 5(2)(ii) excluding the severable part as indicated hereinbefore which is declared ultra vires the Rules and consider the cases of the Extra Assistant Conservator of Forests who are otherwise eligible for such promotion when conferring promotion to the rank of Indian Forest Service.

25. The Rule is made absolute. There will be no order for costs.