

(1972) 05 CAL CK 0006
In the Calcutta High Court
Case No : C.R. 470 (W) of 1970

Shyamal Kumar Sarkar and others

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 02-05-1972

Acts Referred:

All India Services Act, 1951 — Section 3
Constitution of India, 1950 — Article 16, 16(1), 226(1), 309, 312(1)

Citation : 76 CWN 729

Hon'ble Judges : Salil Kumar Datta, J

Bench : Single Bench

Advocate : Noni Coomar Chakravarty and Nepal Chandra Sen, for the Appellant; Balai Chandra Roy, Somendra Chandra Bose, D.K. Choudhury, M.C. Chanda and Satyajit Banerjee, for the Respondent

Judgement

Salil Kumar Datta, J.—The petitioners in this rule, who are fifteen Assistant Conservators of Forests of the West Bengal Senior Forest Service, have challenged the creation of the All India Forest Service encadreing higher cadre posts of the senior State service to the All India service and also the selections and appointments to such posts. The petitioners' case as stated in the petition is as follows: Originally there was the Imperial Forest Service also known as the Indian Forest Service on All India basis and posts borne on the cadre of the said service were the Chief Conservator of Forests, Conservators of Forests, Deputy and Assistant Conservators of Forests and appointments were made by the Secretary of State for India in Council. The provincial Forest Service for Bengal was recruited and controlled by the then Provincial Government of Bengal and its cadre consisted of posts of Extra Assistant Conservators of Forests. Since 1935, recruitment to the Imperial Forest Service which was initially manned by Europeans with gradual Indianisation subsequently was abolished and by 1947 with the transfer of power, the European members left. In 1938-40 Bengal Senior Forest Service was created by the Government of Bengal to take the place of Imperial Forest Service in due course and after creation of State of West Bengal,

in 1947, the service was redesignated as West Bengal Senior Forest Service while the Bengal Forest Service was redesignated as West Bengal Junior Forest Service. The said senior service was allotted a cadre consisting of the following posts.

Chief Conservator of Forests

1 post

Conservator of Forests

3 posts

Deputy Conservator of Forests

40 posts

Conservator of Soil Preservation

1 post.

45 posts.

The Senior Service is on an unified scale of pay except the posts of Chief Conservator and Conservators which are on special scale. An Assistant Conservator of Forests is entitled after tenth stage in the time scale to be designated as the Deputy Conservator of Forests and also to go up to the highest stage of time scale of Deputy Conservator. He is also entitled to be appointed to the said higher posts of Chief Conservator and Conservator of Forests and no person other than a member of the Senior Service could be appointed to such posts.

2. In 1963, the All India Services Act, 1951 was amended by Constitution amongst others, of the All India Forest Service. Under provisions of the said Act, the Central Government framed various rules and regulations relating the said service. The Indian Forest-Service (Cadre) Rules, 1966, provided inter alia a cadre for each State or group of States, to be filled by cadre officer which means a member of the said service. By the Indian Forest Service (Fixation of Cadre strength) Regulations, 1966 framed under the said rules, the Central Government fixed the strength of the cadre of the said service, to 43 posts for West Bengal, including one post of Chief Conservator of Forests and three posts of Conservators of Forests; excluding some reservations of these posts, only one third i.e. about 14 posts are to be filled by promotion while 29 posts to be filled by direct recruitment.

3. The net result of the fixation of the cadre is, according to the petitioners, that the cadre of the West Bengal Senior Service has been practically annihilated, as all superior posts viz. Deputy Conservator of Forests and upwards have been transferred to the cadre of new service and the petitioners have no higher posts to look up to. The cadre posts of the new posts are not open to the petitioners who are members of the West Bengal Senior Forest Service though they may

hold the posts for short periods under restrictions to meet exigencies. The petitioners also referred to the Indian Forest Service (Recruitment) Rules 1966, Indian Forest Service (Initial Recruitment) Regulations 1966 and Indian Forest Service (Appointment by promotion) Regulations, 1966. It was averred that by creating the Indian Forest Service, the prospects of service and employment of the petitioners have been substantially reduced, denying them equal opportunity to public employment violating Article 16 of the Constitution.

4. The petitioners further stated that the Government of West Bengal by notification No. 5009 dated June 22, 1951 (annexure "A" to the petition) promulgated new Rules for West Bengal Senior Forest Service, revising the old rules, which provide for unified scale of pay with seniority inter se by length of service. Under the said rules, an Assistant Conservator automatically rises to the position of Deputy Conservator by efflux of time. This right has been materially altered by the constitution of All India Forest Service, as in the said service there are two scales, senior and junior, of pay while there is no guarantee of the officers in junior scale going automatically into senior scale who are deprived of the superior post of Deputy Conservators and higher posts and in fact the existence of the West Bengal Senior Service, which is not to be found in other States, was completely overlooked by the Central Government in creating the said service. Instead of absorbing the entire Senior Forest Service of West Bengal to the newly created All India Forest Service, fresh limitations were imposed on the members of the senior service by length of tenure and fresh selections under Regulation 4 of the said Initial Recruitment Regulations confining selection to those who have been in not less than ten years' continuous service. The said provisions as also the action of the concerned Governments in not admitting members of the West Bengal Senior Service straight to the Indian Forest Service is capricious, wrongful, in excess of powers and not in public interest. Further the definition of State Forest Service in Rule 2(g) of the I.F.S. (Recruitment) Rules has placed both the senior and junior service on the same footing, derogating the status, rank and rights of the officers in senior State service and some officers of junior State service as mentioned in the petition have been so appointed in the All India Service superseding the petitioners.

5. The petitioners have also challenged the constitution of the Selection Board constituted under the I. F. S. (Initial Recruitment) Regulations as being illegal as one of its members, K. L. Lahiri, respondent No. 3, was himself a candidate for appointment in the Indian Forest Service. The selection of the respondents Nos. 3 to 44 in the meantime and appointment of the said persons to the Indian Forest Service on probation as also appointments of such officers to the specific posts by the West Bengal Government as published by notifications dated February 20, 1967 and March 15, 1967, (being annexure "F" to the petition) are thus void and illegal.

6. The petitioners further contended that absorption of the posts on the cadre of the West Bengal Senior Service in the cadre of the Indian Forest Service by

paragraph 2 read with Schedule for West Bengal of I. F. S. (Fixation of Cadre strength Regulations) 1966, appointment of respondents Nos. 3 to 44 to the said service under I. F. S. (Initial Recruitment) Regulations, 1966 as also its Regulation 5, Section 3 of the All India Services Act, 1951, Rule 4 of I. F. S. (Recruitment) Rules as also the constitution of the Special Selection Board are invalid, arbitrary, capricious, illegal and void. The reasons inter alia are that the said rules and regulations are in excess of powers, contrary to principles of natural justice, violative of Article 16 of the Constitution while the selections are vitiated by bias and are malafide in character and the appointments have disturbed the seniority of the petitioners as per the senior State service cadre in the new cadre of the Indian Forest Service. The rules and regulations referred to above confer uncontrolled and uncanalised powers of selection to the Selection Board and to the Government.

7. On these allegations and contentions the petitioners moved this Court in Constitutional Writ Jurisdiction and on January 21, 1970, the present rule was issued calling upon the respondents to show, cause why a writ in the nature of mandamus should not be issued directing them to proceed and act in accordance with law, and to recall, revoke, rescind and withdraw the impugned Act, Rules, Regulations and appointments and to forbear from giving effect to the same and also why a writ in the nature of certiorari should not be issued quashing the Act, Rules, Regulations and appointments mentioned in the petition. At the time the rule was issued, no interim order was passed but liberty was given to the petitioners to move for interim order on notice to the respondents. On July 13, 1970, on the applications of the petitioners on notice to the respondents an interim order was issued restraining the respondents from making appointments to the cadre of the Indian Forest Service from persons who are not members of the West Bengal Senior Forest Service.

8. The respondents No. 2, the State of West Bengal and the respondent No. 3, K. L. Lahiri the Chief Conservator of Forests showed return to the rules by filing an affidavit-in-opposition affirmed on September 29, 1970. It was stated that the petitioners and some other members of their service were only in temporary appointment without any lien on the substantive post of West Bengal Senior Forest Service on the material dates. By reasons of constitution of the Indian Forest Service and appointments of the respondents Nos. 3 to 44 to the said service, many of the petitioners were substantively appointed to the West Bengali Service while some of the petitioners had also been allowed to work in the Indian Forest Service due to shortage of officers. The petitioners were not eligible for consideration for initial appointment to the Indian Forest Service and the Constitution of the Selection Board is of no concern to them.

9. It was further stated that the appointments to the Imperial Forest Service was stopped after 1932 while after provincial autonomy as in other provinces, Bengal Forest Service (New) was constituted in 1940 to succeed and replace the Provincial Forest Service and to fill up the vacuum created by abolition of the

Indian Forest Service and it is a misstatement to say that the Bengal Provincial Forest Service was designated as the West Bengal Forest Service. Bengal Forest Service was re-designated as the Bengal Senior Forest Service with effect from January 1, 1946 and became West Bengal Senior Forest Service in 1947 while the West Bengal Junior Forest Service was newly created with effect from December 1, 1951. It was denied that the posts of the Chief Conservator of Forests and Conservators of Forests are selection posts. As such all members of the West Bengal Senior Forest Service could not be entitled to be appointed in due course to such posts. It is also not a fact that no person other than a member of Senior Service could be appointed to the said posts. It was stated that only such members of the service attained the position of Chief Conservator or Conservator of Forest as were found qualified and suitable by the State Government. The cadre strength of the said service was never rigid and it varied according to the administrative needs of the State and fixation of the West Bengali Cadre of the Indian Forest Service has not resulted in the annihilation of the cadre strength of the senior service. As to prospects, the petitioners become eligible for appointment by promotion to the post of Deputy Conservators in the Indian Forest Service as provided in the rules, on completion of six years of service in the time scale of pay in State service with two years' diploma course in the Forest Research Institutes and College Dehra Dun while ten years of service in the said scale is required in the State service for attainment of the posts of Deputy Conservator of Forests with an efficiency bar at eighth stage which prevents automatic elevation of rank. The petitioners accordingly have been benefited by the impugned Act, Rules and Regulations which do not in any way affect the terms and conditions of service of the petitioners in the West Bengal Senior Forest Service. Accordingly there is no violation of Article 16 of the Constitution nor any deprivation of the petitioners of superior posts in the Indian Forest Service as through promotion as provided in the Promotion Regulations they are entitled to the same. As the All India Service is altogether a new service, the question of absorption of all members in the State Service as a matter of course does not arise. It was further stated that all substantive members of the West Bengal Senior Service were considered for initial appointment while the petitioners were temporary officers without any lien and thus not eligible for consideration for initial appointment, though due to shortage of officers and for administrative reasons as transitory arrangements, some officers of the West Bengal Forest Service have been allowed to act in Indian Forest Service Cadre posts. It was also denied that under the Indian Forest Service (Initial Recruitment) Regulations the officers of the Senior and Junior Services of West Bengal were treated on the same footing, as a credit for two years' training in Institute was given to members of the senior service only. Even in appointments by Promotion Regulations, completion of eight years' service will not make the members of Junior service eligible for promotion as none of the posts of such service bears the rank not below that of the Assistant Conservator while the said eight years' service must be in a post not, lower than that of the Assistant Conservator of Forest. Further these was no disturbance of seniority

amongst officers selected as seniority was maintained at the time list was prepared.

10. As to the constitution of the Selection Board and competency of K. L. Lahiri to a member thereof, the deponent who is K. L. Lahiri himself, has craved leave to refer to the decision of the Supreme Court in (1) A.K. Kraipak and Others Vs. Union of India (UOI) and Others, for its applicability and ascertainment of the correct position. It was further stated that the selection of the other respondents was not illegal or void as the deponent was not interested in any of such appointments and further such selection by the Board was neither biased or malafide but in public interest. For the above reasons it was submitted that the rule should be discharged.

11. The Union of India, it is curious, filed two affidavits-in-opposition on identical averments opposing the rule and for our purpose we shall take into consideration the latter affidavit which was affirmed on March 27, 1971. It was stated therein that the Rajya Sabha passed a resolution under Article 312(1) of the Constitution for forming All India Service relating to forestry and in consonance therewith, Parliament passed the All India Services (Amendment) Act, 1963 forming inter alia the All India Forest Service. It was further stated that posts of and above the rank of Deputy Conservator of Forest in the State Forest Service were encadred in the Indian Forest Service. It was denied that the officers of the State Forest Service were left with no prospect of filling higher posts and at the initial recruitment 27 senior duty posts were filled from officers of State service while another 11 officers were appointed in junior time scale. The officers not found fit for appointment to the service as its initial constitution would continued to hold the post they held substantively in the State Forest Service according to rules of the State Government with all benefits attached thereto by virtue of their respective seniority. In Regulation 3 of the Indian Forest Service (Initial Recruitment) Regulations, clauses (iii) and (iv) were substituted with effect from September 6, 1969 providing in clause (iv) with which we are concerned, the Secretary of the State Government dealing with forests or its Chief Conservator of Forests as members of the Selection Board in place of the original provision with the Chief Conservator as one of the members of such Board. It was also denied that the prospects of service or employment of the petitioners were reduced substantially or materially or that Article 16 of the Constitution was violated as all officers identically placed in State Forest Service were equally treated without any discrimination.

12. It was further stated that when an Assistant Conservator of Forests of the State service is found fit for promotion to the Indian Forest Service he is appointed direct to the senior time scale of the service with rank of Deputy Conservator of Forests. When an officer is appointed in junior time scale in the Indian Forest Service, under Rule 6A of the Recruitment Rules, the State Government for consideration of length of service, experience and performance in the junior time scale of pay may appoint him in senior time scale of pay. By

the encadrement of posts of the rank of Deputy Conservator of Forests or higher posts in the Indian Forest Service, the members of State service have not been deprived of the prospect of promotion to the said posts, though some of such posts would go to those directly recruited in the All India Service, which is unavoidable for improving quality of service. The State Forest Service officers had still opportunities to enter All India Forest Service, as for those officers like the petitioners who had not completed four years of continuous service and thus not eligible for appointment to the junior time (sic) at its initial constitution were allowed relaxations in the upper age limit prescribed for direct recruitment for first two examinations held by the Union Public Service Commission in 1967 and 1968. It is further stated that the case of West Bengal was not singular, as all the higher posts as in West Bengal Service were existing in other States. Ad eligible officers of the West Bengal Service were considered by the Board and those found suitable by the Board and the Union Public Service Commission were appointed and there was no obligation to absorb the entire senior service of the State to All India Service under the relevant rules and regulations.

13. It is also denied that the power; in regard to the recruitment are arbitrary, capricious, wrongful or excessive, as under the relevant regulations the selections are made by the Union Public Service Commission from persons held eligible or also not eligible by the Selection Board and ultimate appointments are made by the Central Government on the recommendation of the Commission. Even though the members of the senior as also the junior service are eligible for appointment to the Indian Forest Service for the initial appointment, such appointments are required under the relevant rules and regulations, to be made through the Selection Board and the Union Public Service Commission solely on consideration of merit as reflected in over all assessment of service records of the eligible officers. It is immaterial if some members of the junior State forest service are appointed to the Indian Forest Service at its initial constitution and seniority has not been laid down as the criteria for selection and appointment in the said service. The Selection Board was not unconstitutional, as K. L. Lahiri was not allowed to sit and participate when Board was considering the case of Chief Conservator of Forests and accordingly the selection of respondents Nos. 3 to 44 was not void or illegal in respect of such appointments as there was no question of any bias or conflict between duty and self interest. It was also contended that provisions of the Act, Rules or Regulations referred to by the petitioner, are for any reason unconstitutional or void or bestow uncontrolled or uncanalised powers. Further the petitioners were not eligible for appointment to the service at its initial constitution nor were they affected by the selection of the said respondents for appointments in the Indian Forest Service. It was denied that there would be complete annihilation of the cadre of the State Senior Service. It was submitted that the grounds made out by the petitioners are not valid, legal or tenable for interference in the writ jurisdiction.

14. The petitioners filed two affidavits-in-reply, one affirmed on March 1, 1971 in reply to the State Government's affidavit and the other affirmed on April 21,

1971, against the affidavit of the Union of India. It was stated that the Supreme Court as also other High Courts have held that the selections made by the respective. Selection Boards with the Chief Conservator of Forest as one of its members was void and they were quashed. The petitioners complained that though some of them were entitled to be appointed on probation in the West Bengal Senior Forest Service, in terms of the advertisements and their acquisition of the requisite qualifications they had been wrongly offered temporary posts in breach of the agreement, and as a result of the mala fide act of the State of West Bengal, they even after expiry of two years of probation have not been substantively appointed. Those in such temporary service have also been holding charge of Divisions. Accordingly the petitioners have acquired a constructive lien for the posts they are holding and are entitled to move the present application. The petitioners contended that they were not benefited by the constitution of the All India Service as the senior posts of most of the Deputy Conservators and upwards have been removed from State service and they have little to look upto under the normal conditions of service. In their undiminished cadre the petitioners would have automatically held in due course the posts of Chief Conservator or Conservator of Forests which under the cumbersome regulations they have lost the chance and prospect which again has to be shared with the members of the junior State Forest Service. Such fraud and consequent failure of justice should be prevented by the Court. The petitioners reiterated their case as made in the petition and stated that there was no valid order of the Government of West Bengal reducing the strength of the cadre of the West Bengal Senior Forest Service. The Constitution of the Indian Forest Service with retrospective effect is ultra vires the powers of the Central Government under 2A of the All India Services Act and the Recruitment Rules for above reasons as also Recruitment Regulations which have their source in the said Rules are also bad and invalid in law.

15. In the affidavit-in-reply against the Union of India, the same grievance was made to the effect that by the encadrement of senior posts the petitioners can hold the senior posts by way of promotion hedged with restrictions and promotion is not automatic or in ordinary course. The petitioners complained that the selections under Initial Recruitment Regulations are arbitrary, and, as an instance, it was stated that a competent officer was passed over by the Selection Board without reason, though subsequently he was found fit for promotion. The petitioners also referred to the Civil List published by the Government of West Bengal for 1966 which showed the strength of the cadre of the West Bengal Senior Forest Service, including the posts of one Chief Conservator of Forests and three Conservators of Forests. The amended regulations regarding Constitution of the Selection Board are not relevant, as the petitioners challenged the selections by the Board constituted under the old regulation and the petitioners apprehended that by a new Selection Board constituted under amended regulations, the old appointments would be endorsed with retrospective effect. The petitioners also referred to the inconsistent pleadings by

the respondents and stated that "State Forest Service" in Recruitment Rules included both members of senior and junior State Forest Service which created great prejudice to the petitioners which constitutes a violation of Article 16 of the Constitution, as their prospects for recruitment and promotion have been reduced. The petitioners also contended that there is no order by the State Government that members of the Senior Forest Service would ordinarily hold the cadre posts including the posts of Chief Conservator of Forests or Conservators of Forests, making it patent the loss of prospects the petitioners are made to suffer. The petitioners further reiterated their contentions as made in the petition and their affidavits.

16. The selections to the All India Service made by the Selection Board, consisting amongst others, of the Chief Conservator of Forests of the State under Regulation 3 (1) (a) (iv) of I. F. S. (Initial Recruitment) Regulations, 1966 referred to above, came up for consideration in Kraipak's case (*supra*). It was held that the selections by the Board for the State of Jammu and Kashmir were vitiated by the presence of the Chief Conservator of Forests who was himself a candidate for the post of Chief Conservator which contravened the principles of natural justice. The impugned selections by the Board were accordingly set aside. It appears that thereafter with effect from September 9, 1969 the relevant provision of the said regulation was amended by substituting the said provision about the constitution of the Board, providing in its place for the Secretary of the State Government dealing with forests or the Chief Conservator of Forests of the State Government, as members with others of the Board. There was also an amendment to the I. F. S. (Recruitment) Rules, 1966 by inserting sub-rule (3A) to Rule 4 which gave powers to the Central Government, where any appointment under sub-rule (1) is declared invalid by judgment of the Court, to make fresh recruitment under sub-rule (1) to fill up such appointment and to give effect to such appointment from the date on which the appointment declared invalid was made. By notification dated July 17, 1971 the Central Government declared its intention to take further steps to make fresh recruitment under Rule 4(1) of the Recruitment Rules reciting that the appointments, amongst others, under notification dated February 9, 1967 (annexure F to the petition) had been rendered void abinitio. On the same date the Special Selection Board was constituted. Accordingly on September 7, 1971 an application was filed by the Union of India stating that the Special Board had made its selections on July 20, 1971 and the selected persons were to be appointed to the Indian Forest Service. Accordingly leave was sought for publication of the new selections for initial recruitment to the West Bengal cadre of the Indian Forest Service and for implementation of the same by appointment to the cadre posts as on account of the injunction the Governments were facing serious administrative difficulties. Another application to the similar effect was made by the State of West Bengal on August 31, 1971. The said applications were disposed of by the Court on September 13, 1971 giving liberty to the respondents to publish results of the fresh selection and to implement the same temporarily but both were to be

subject to the result of this rule, so that in the event of the success of the rule such appointments would have to be recalled by the Government. By another order dated November 10, 1972, the Court on application being made granted leave to the respondents to appoint to a cadre post of West Bengal in the Indian Forest Service one Shri V. Rishi who successfully competed in the examination, on the same terms as stated above.

17. The petitioners, as we have seen, inter alia challenged the selections made by the Selection Committee in which K. L. Lahiri as the Chief Conservator of Forests was a member. The said selections have been rendered void ab initio by the decision of the Supreme Court as stated in the Central Government notification of July 19, 1971 (vide annexure "C" to the petition by State Government filed on August 31, 1971) Accordingly the appointments to specific posts to the West Bengal Cadre made by the State Government on the basis of the impugned selections as set out annexure "F" to the main petition also became void ab initio. The petition in the circumstances would succeed in respect of the said selections of respondents Nos. 3 to 44 and their appointments to the posts as mentioned in annexure "K". In view of the above decision, I do not think it proper to issue any writ in respect thereof as prayed by the petitioners" Advocate as such writ in the admitted position would be infructuous when the impugned selections have been declared by the Union of India as void ab initio. In course of hearing, there had been statements of publication of fresh selections and appointments on that basis for which leave was obtained but there is no material before me bringing on records the facts in respect of such selections and appointments. In absence of any amendment to the main petition embracing such selections and appointments and also any challenge thereto of any argument on the same on behalf of the petitioners, it is not at all necessary for me to enter into those matters.

18. Mr. Noni Coomar Chakravarty and Mr. Nepal Chandra Sen, learned Advocates appearing for the petitioners have contended that all superior posts of the West Bengal Senior Forest Service, have been taken away to the Indian Forest Service. As a consequence, the West Bengal Service has been practically annihilated causing serious loss of prospects to the members of the said service. Further on account of the creation of the Indian Forest Service, the petitioners have been, wholly debarred from holding the office of Chief Conservator or Conservators of Forests to which they would be otherwise entitled if the All India service was not there. The prescribed channels of the promotion even to the posts of Deputy Conservators of Forests have shrunk by reason of the creation of cadre posts of Deputy Conservators in the Indian Forest Service, which has reduced the number of such posts in West Bengal Senior Forest Service. Reference was made to the West Bengal Forest Manual Part II (1968) at page 34, which set out the Cadre of the State Forest Directorate. In the category of West Bengal Senior Forest Service, the posts mentioned are Chief Conservator of Forests 1, Conservators of Forests 3, Deputy and Assistant Conservators of Forest 33 permanent, temporary 7, total 40. If, however, reference is made to the civil list of 1971, it would be

found that the number of officers in the West Bengal Senior Forest Office is much less in strength and in fact there is only one Conservator, two Deputy and Assistant Conservators of Forests in permanent service while as temporary officers there are only 23 Deputy and Assistant Conservators of Forests. Even as to the permanent posts, it is mentioned that the posts are in Indian Forests Service but to be held by the officers named till they vacate the posts.

19. Mr. Balai Chandra Roy, Learned Counsel for the Union of India has stated that the superior posts of West Bengal Senior Forest Service have been encadred in the Indian Forest Service but as to the officers of the said service, who are not appointed either by selection or promotion to the Indian Forest Service under its rules and regulations, they would continue in the West Bengal Senior Forest Service with all benefits attached thereto. Mr. Somen Chandra Bose, learned Advocate for the State Government has contended that the cadre strength in the State service is never rigid and the same as also the terms and conditions of service can be varied at any time by the State Government in accordance with law. Further, the posts of Chief Conservator or Conservator of Forest are promotion posts and the chance of promotion is never legal right. Also the officers in the West Bengal Senior Forest Service are not in any way deprived of their pay and status by creation of the Indian Forest Service.

20. It appears that the rules of West Bengal Senior Forest Service have been framed, in supersession of the earlier rules under notification No. 560, for the 29th May, 1946, by notification No. 5009 dated 22nd June, 1951 in exercise of the powers conferred by the proviso to Article 309 of the Constitution. The rules, in short, provide that the appointment to the service will be on probation for two years subject to extensions. The scale of pay is also set out with efficiency bar at 10th and 18th stages. An Officer drawing a pay of Rs. 620/- or less shall be designated as Assistant Conservator and an Officer drawing a pay of above Rs. 620/- (now after the tenth stage in the time scale as stated in the petition) shall be designated as Deputy Conservator. The notification was to be deemed to have effect and to have always had effect from April 1, 1950. Except the automatic elevation from the post of Assistant Conservator to the Deputy Conservator by lapse of time, there is no mention of any automatic elevation to the higher posts nor it is stated in the rules that posts of the Chief Conservator or Conservators of Forests shall be filled in only from members of the West Bengal Senior Forest Service. It is not the case that by the creation of the Indian Forest Service, the members of the Bengal Senior Forest Service would be deprived of their designation and pay to which they are entitled under the said rules in the State service; on the contrary such members as are not recruited to the Indian Forest Service would continue to enjoy the benefits thereunder. There is thus no loss or shrinkage of the prospects to the members of the State service nor their service terms would be adversely affected by the creation of All India Service. As to the still higher posts of Chief Conservator and Conservators of Forests, as we have seen, appointments thereto are not governed by the rules relating the West Bengal Senior Forest Service. These posts are promotion posts and members of

the West Bengal Senior Forest Service could not be entitled to be appointed in due course to such posts. The rules do not provide that the members of State service would be entitled as of right or otherwise to be considered for promotion or to be appointed to the said higher posts. In view of the creation of the All India Forest Service, the State Government may have no occasion to make appointments to the superior posts and to that extent to the chances of promotion of the petitioners to the very top posts referred to above have been practically wiped out. The right to promotion to such posts which the rules do not provide would not be a legal right and thus could not be enforceable by action in Court as was held in (2) The High Court, Calcutta Vs. Amal Kumar Roy, . As to the prospect of the Assistant Conservators of Forests like the petitioners for automatic elevation to the rank of Deputy Conservators by lapse of time, the same has not been in any way affected by the All India Service and the Rules under Article 309 of the Constitution relating the West Bengali Senior Forest Service have not been abrogated but continues to be in full force.

21. Mr. Chakrabarty has further contended that (a) absorption of the posts of the State service cadre in the cadre of the Indian Forest Service as provided in Regulation 2 read with the schedule for West Bengal of the I. F. S. (Fixation of Cadre Strength) Regulations, 1966. (b) section 3 of the All India Services Act, 1951 (c) Rule 4 of the I. F. S. (Appointment by Promotion) Regulations, 1966 confer arbitrary and uncanalised powers on the Central Government and are otherwise capricious, illegal, invalid and void. They are contrary to natural justice, violative of Article 16, instrumental in disturbing the seniority of the petitioners in the new cadre and would result in unjustified supersession of the petitioners by members of the West Bengali Junior Forest Service.

22. We shall now deal with the contentions in stratum. As to the question (a) of absorption, Mr. Chakravarty contends that I. F. S. (Fixation of Cadre Strength) Regulations read with schedule for West Bengal fixes the cadre strength in such way as not to absorb all officers in the West Bengal Senior Forest Service, thereby creating great prejudice by loss of all future prospects to those who are not so absorbed in the All India Service. As we have seen, the All India Forest Service is a service newly created separate and distinct from the State service. The All India Service has not replaced the State service nor was it intended to do so. As a result, the State service continues to exist by its own force and its officers thus continue in their service with all benefits unaffected. There is accordingly no legal warrant for the proposition that it is incumbent for the All India Service to absorb all members of the State Service and its absence does not invalidate the relevant law relating the All India Service. The contention (b) as to the validity of section 3 of the All India Service Act, 1951 was not pressed, as the section has been held to be valid by judicial decisions. About (c) Rule 4 of the Recruitment Rules, its sub-rule (1), provides for recruitment to the All India Service any person from the State Forest Service in accordance with regulations. A grievance is made to the effect that State Forest Service therein means both senior and junior forest service : while under sub-rule (3A), the appointments

could be made with retrospective effect thereby causing prejudice to members of the senior State service. Sub-rule (3A) states the reason for such action, as the original appointments became void on the selections forming its basis being set aside power was reserved to the Central Government for giving retrospective effect to new appointments. In (3) B.S. Vadera Vs. Union of India (UOI) and Others, , it was held that in absence of any act of Legislature to the contrary, rules under Article 309 of the Constitution may have effect prospectively or retrospectively unless they can be impeached on breach of Part III or any other constitutional provision. It was also held that the rules framed by the Railway Board within its powers with which the case was concerned, in absence of any act of legislature will have full effect and if so indicated retrospectively also. On the same principle, it seems clear that the rules framed under the All India Services Act may be given retrospective operation unless thereby there is a breach of Part III or any other constitutional or statutory provision. No such breach has been established in respect of the said rules as we shall presently see. 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. Even so it would appear from the Regulation No. 4 of the I. F. S. (Initial Recruitment) Regulations framed in consultation with the State Government and the Union Public Service Commission that credit of the period taken for training in diploma course in forest research institutes and colleges has been included in computing the requisite eligibility eight years" continuous service which is obviously available to members of senior service. Again under Regulation 5, the Selection Board will prepare, in the order of preference, a list of such officers of the State Forest Service satisfying conditions of Regulation 4 who in its opinion are suitable for appointment to the All India Service. The list will thereafter be forwarded by the Central Government to the Union Public Service Commission with records of all officers included or as also not included as not adjudged suitable by the Selection Board which is to record its reasons for non-inclusion. The Commission will send its recommendation to the Central Government which will make the appointment on the basis of such recommendation. There is accordingly nothing arbitrary or capricious in the matter of such appointments nor any uncanalised powers have been given to the Central Government as contended by the petitioners. On the contrary such procedure ensure selection for such appointment on consideration of merit irrespective of whether the members belong to senior or junior State forest service which distinction the Central Government is under no legal obligation to maintain.

23. Article 16(1) of the Constitution provides for equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. A perusal of the relevant rules and regulations does not disclose that amongst officers similarly situated anyone has been given any unequal differential treatment. On the contrary, all officers identically placed in the State

Forest Service were treated equally under the relevant rules and regulations without any discrimination between members of the service, and equality of opportunity in matters of employment has been held by judicial pronouncements as meaning equality as between members of the same class of employees. Mr. Chakravarty made further grievance about the limited scope of promotions as also the alleged cumbrous restrictions to which the members of the State Forest Service has been, subject to. As already indicated, the All India Forest Service has its own rules and regulations and the Central Government is entitled under the All India Services Act to frame such rules and regulations in accordance with statutory provisions which can only be impeached if they violate any act of Legislature or Part III or any other provisions of the Constitution. No such breach has been pointed out on behalf of the petitioners and as we have seen, there was no obligation on the Central Government to engraft the rules of the State Forest Services to the All India Forest Service. The relevant rules and regulations as indicated above, as it appears to me, are far from giving any uncanalised or arbitrary powers to the Central Government as in respect of recruitment or promotion, on the selection by the Selection Board, provision for consultation with the Union Public Service Commission has been made before the Central Government makes the appointment on the recommendation of the Commission. As to the Cadre Rules and the fixation of Cadre Strength Regulations, it cannot be said that they have created any prejudice to the petitioners in their existing service, as their rights in the State service remain unaltered with prospects of pay, designation and other benefits. For all these reasons, it is impossible to hold that the rules and regulations are unconstitutional or invalid in law.

The State Government has urged that the petitioners being in temporary service were not eligible for initial appointment under the Recruitment Rules. To this the petitioners made a grievance that though they were entitled on the basis of advertisements to a probationary appointment in the senior service, which would be a substantive appointment after lapse of two years, they have been illegally given temporary appointments when they joined, it appears, during 1965-68 and have been retained as such and were given appointments on probation only in 1969 and thereafter. In this rule we are not concerned with the legality or otherwise of such appointments and accordingly no decision on this aspect is called for. In spite of the said objection, the case has been considered on merits.

For the reasons noted above, the application under Article 226(1) fails and the rule is discharged. There will be no order for costs in the circumstances. All interim orders passed in this rule are vacated.