

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

LPA No. No. 201/2018

C/w LPA No. 124/2018

LPA No. 125/2018

Reserved on: 12.07.2022

Pronounced on: 07.09.2022

Ashok Kumar Sarngal and Others

...Appellant/Petitioner(s)

Through: Mr. Z. A. Shah, Sr. Advocate with Mr. J. I. Balwan &
Mr. Jagpaul Singh, Advocates

Vs.

State of J&K and Others

...Respondent(s)

Through: Mr. Dewakar Sharma, Dy. AG
Mr. Abhinav Sharma, Sr. Advocate with
Mr. Adarsh Bhutyal, Advocate

CORAM:**HON'BLE MR. JUSTICE TASHI RABSTAN, JUDGE****HON'BLE MR JUSTICE WASIM SADIQ NARGAL, JUDGE****JUDGEMENT****Per Wasim Nargal J:**

1. The present appeal is arising out of Judgment dated 21st July 2018, passed by learned Single Judge of this Court in SWP No. 1025/2015, along with clubbed petitions, by virtue of which, the writ petitions were allowed and the operative portion of which is reproduced as under:-

“27. Be that at it may, it is held that the private respondents would not have any right of consideration against the 20% quota for the post of Range Officers Grade-I and consequently their names ought not to figure in the said list as contains the Forest Rangers Training Course as in-service candidates. Even when the petitioners have a slightly different route to seek higher promotion, yet there is convergence of interest at the higher levels.

28. Sequel to the above, Circular No.3 of 2013 dated 24.12.2013, to the extent it pertains to the private respondents, along with communication dated 25.10.2013, Forest Order No. 45 of 2015 dated 07.03.2015 and the communication no. FST/Lit/NG/280/2013 dated 17.12.2013, are quashed”.

2. Before proceeding further, it would be apt to give concise factual background of the case with a view to decide the issue in question:-

FACTS OF THE CASE:

- (i) That the writ petition came to be preferred by the petitioners (who were appointed as Foresters in the Forest Department), for seeking quashment of Forest Order No. 45 of 2015 dated 07.03.2015, whereby the Tentative List of DDR Foresters has been issued with a view to make promotions of respondent nos.5 to 78 (appellants herein) as Range Officer Grade I, allegedly in violation of the direction passed by the learned Single Judge of this Court in SWP No. 53/2014, on 10th January 2014, filed by the petitioners 2 and 3 and two other persons titled *Vijay Khosla and Ors. v. State of J&K and Ors.*

The petitioners had sought the following reliefs:-

- (a) Allow the present writ petition;
- (b) Quash Forest Order No. 45 of 2015 dated 07.03.2015, whereby and whereunder the Tentative List of DDR Foresters has been issued with a view to make promotions of respondent no.5 to 78 as Ranger Officer Grade-I, in violation of the direction of the Hon'ble Court passed on 10.01.2014 in SWP No. 53/2014, filed by petitioner nos. 2 & 3 and two other persons titled "*Vijay Khosla & Ors. Vs. State of J&K and Ors.*";
- (c) Quash Communication issued by respondent no.1 under No. FST/Lit/NG/280/2013 dated 17.12.2013, whereby and whereunder, it has been directed that respondent no.2 should finalize the seniority of the private respondents as notified vide Circular no. 03 of 2013 dated 24.12.2013, wherein the names of the private respondents figured at Sr. No. 38 to 115 in the list accompanying the order;
- (d) Quash Office Letter No. PCCF/Seniority/DDR/Foresters/992 dated 22.03.2014 as also Officer Letter No. PCCF/NG/Estt./DDR/File No. 474/2976 dated 29.09.2014, issued by respondent no.2, purportedly in the backdrop of SWP No. 53/2014 titled *Vijay Khosla & Ors. V. State & Ors.* filed by the petitioners

No. 2 & 3 and two other persons as also in the back of SWP No. 1486/2013 titled *Kuldeep Raj &Ors. V/S State &Ors.*; with further prayer that the official respondents more particularly respondent no.2 be directed to produce these Communication vide dated 22.03.2014 and other dated 29.09.2014 for scrutiny of the Hon'ble Court, so as to verify whether these Communications/Letter has been issued in pursuance to the orders passed in SWP No. 53/2014 and SWP No. 1486/2013;

- (e) Command and direct the respondents not to go ahead with finalization of the tentative seniority list of DDR Trained Foresters as on 01.01.2015 figuring as Annexure-A to Forest Order No. 45 of 2015 dated 07.03.2015;
- (f) Command and directing the respondents to consider the case of the petitioners for promotion to the post of Range Officers over and above the private respondents;
- (g) Restrain the official respondents from finalizing the Tentative Seniority List of DDR Trained Foresters (as on 01.01.2015), which forms Annexure-A to Forest Order No. 45 of 2015 dated 07.03.2015”.
- (ii) That under the J&K (Subordinate) Service Recruitment Rules, 1991, the qualification for direct recruitment of Forester is 10+2 or equivalent with science subject and the method of recruitment is (i) 40% by direct recruitment and (ii) 60% by promotion form Class VIII (Deputy Forester) who are matriculates and in case, no matriculates are available, then these 60% promotional posts shall also be filled by direct recruitment.
- (iii) That the next post, to which a Forester can be normally promoted is the Class-IV post of Range Officer Grade-II and the only method of recruitment is 100% by promotion from Class-VI (Forester), who have successfully completed Kashmir Forester Training Course (KFC) and have five years' service in that class.

- (iv) That it was specific stand of the petitioners before the Writ Court that they have completed the Kashmir Forest Training Course during their service.
- (v) That the promotional avenue is available to the persons holding the Non-Gazetted Post of Range Officer Grade-II, inasmuch as, such persons can be promoted to the Gazetted Post of Range Officer/Ranger Officer Grade-I mentioned as Class-V post, under the J&K Forest Service (Gazetted) Recruitment Rules, 1970 and as per the insertion made in these Rules, vide SRO 106 of 1992, the minimum qualification for direct recruited was B. Sc. with Botany, as one of the subjects or B. Sc. Agriculture, Or B. Sc. Forestry, but later, in the year 1994, vide another SRO No. 3 dated 05.01.1994, the academic qualification for Direct Recruitment was changed to (i) B. Sc. Forestry or its equivalent from any University recognized by Indian Council for Agricultural Research and the method of recruitment as under:-

- (A) 30% by Direct recruitment from amongst the persons having passed Range Officers qualifying examination (written & viva) to be held by the J&K Public Service Commission, and the syllabi for the written test was also provided under this column. It is further provided that
- (a) Candidates must obtain at-least 40% marks in each subject for qualifying the test;
 - (b) 50% by promotion from RO-II having at-least 5 years' service in that category; or 20 years' service in the non-gazetted cadre;
 - (c) 20% by promotion from Government sponsored Foresters, having done Range Officer Training Course from a

recognized Forest Rangers College and having 5 years' experience as Forester on the norms prescribed by Government for such Training Course.

- (vi) That since there is no Institute/College in the State of J&K which conducts the Rangers Training Course, all such candidates, as were likely to be sponsored by the State Government sent to such Institutions outside the State, which Institute (Colleges) are of Government of India (One of these being in Dehradun) and as per the Notification dated 21.06.2004, issued vide no. 3-17/99RT(II), published in the Extra Ordinary Gazetted of India, the Central Govt. after consultation with the States concerned framed the "Entrance and Training Rules (Revised) 2004, for the Forest Range Officers" and these rules extend to whole of India.

Under Rule 4 of the Rules, there shall be two categories of candidates, which shall be entitled for Forest Ranger Training: -

- (a) Candidate sponsored by the State/Union Territory &;
- (b) Candidate sponsored by a foreign country.

Under Rule 6 is provided the selection process, for candidates falling under Rule 4 Category (i) above, which is under: -

- (a) Selection of a candidate shall rest with the concerned sponsoring authority;
- (b) The selection procedure adopted by the sponsoring authority must conform to the minimum standards laid down under Rule 7 to 11 for the candidates falling under category (i) of Rule 4 (i.e., candidate sponsored by the State/UT).

- (vii) That it was a specific case of the petitioners before the Writ Court that by coming into force of these Central Rules mentioned supra, the 20% posts of Range Officers Grade I, which were earlier being filled up by the Foresters, who had topped the KFC and sponsored by the State Government, for Range Officers Training, could not be filled up and lying vacant lying vacant since 2004.
- (viii) To buttress this, writ petitioners have specifically pleaded before the Writ Court that as per Advertisement Notice No.PSC/Ex/2013/27 dated 22.04.2013, issued by the J&K Public Service Commission, for the post of Range Officer Grade-I, against 30% quota provided for directed recruitment and the minimum qualification mentioned is B. Sc. Forestry or equivalent from any University recognized by Indian Council for Agriculture and Research (ICAR).
- (ix) That it is stated that as per Advertisement Notice, only such candidates could apply for qualifying for Forest Range Officer Training (DDR) who possess B. Sc. Forestry degree and same is required qualification for direct recruitment for the post of Range Officer Grade-I, prescribed vide SRO 3 dated 05.01.1994 as well.
- (x) That the petitioners projected before the Writ Court that the majority of the private respondents (appellants herein), were engaged in the Forest Department, as Foresters on *ad hoc* basis from time to time and these private respondents before

joining the Forest Department had completed their DDR Training of their own without having been sponsored by the State Government and they were given the benefit of J&K Civil Services (Special Provision), Act, 2010 and vide Government Order No. 514-FST of 2012 dated 31.12.2012, on the recommendations of the Empowered Committee constituted vide Government Order dated 14.10.2009, sanction was accorded to the regularization of the services of these majority of the private respondents in relaxation of the upper age limit.

- (xi) Besides that, it was a specific case of the petitioners that though some of the private respondents, who had completed their DDR Training without having been sponsored by the State Government, yet they were selected/appointed as Foresters along with the petitioner no.3 after having been selected by the Service Selection Board in the year 2010.
- (xii) That in order to give benefit to the private respondents who had not done their Rangers Training Course (DDR) in accordance with the provisions of SRO 106 of 1992, the private respondents were regularized in the year 2012 as Foresters and the petitioners projected that this was at the behest of the official respondents that the private respondents who had done their DDR Training prior to their joining the Government service on *ad hoc* basis, were granted the status of DDR Foresters, equivalent to the status of those DDR

Foresters, who while in Government service, were sponsored by the State Government for such training. The petitioners as a consequence of which were aggrieved of the issuance of the Circular no. 3 of 2013 dated 24.12.2013, by virtue of which the private respondents (appellants herein) were placed in the Tentative Seniority List of DDR Foresters and allotted seniority nos. 38-115, which is evident from Annexure to the said Circular.

(xiii) That the issuance of the aforesaid Circular as per the stand of the petitioners was in pursuant to their regularization as Foresters in 2012 and acceptance of the DDR status of the private respondents as equivalent to the DDR status of the Foresters, who had done their DDR while in service. The petitioners with a view to establish their case, have projected that the private respondents were self-sponsored DDR Foresters and not sponsored by the State Government for DDR Training as in-service Foresters as provided under SRO 106 of 1992 and before joining the Forest Department on *ad hoc* basis, the private respondents had already completed their DDR Foresters Training Course and under rules the private respondents could not have been considered as DDR Trained Foresters and in no case could their seniority be combined with the seniority of DDR Trained Foresters (those who have done their DDR Training while as Foresters and after having been sponsored by the State Government). The

petitioners have also based their claim on the ground that after coming into force the Central Entrance and Training Rules (Revised) 2004, for the Forest Range Officers, the 20% posts of Range Officer Grade-I reserved for the State sponsored DDR Foresters, have not been filled up for the reason that corresponding to Rule 11 of the Central Entrance and Training Rules (Revised) 2004 Rules, no amendment/change/modification was effected in SRO 106 and therefore, from the year 2004, the 20% posts of Range Officer Grade-I in J&K Forest Department which earlier used to be filled up as provided under Clause (C) of the J&K Forest (Gazetted) Service Recruitment Rules, have remained unfilled.

(xiv) That since the petitioners were aggrieved of the Circular dated 24.12.2013, by virtue of which, the impugned Tentative Seniority List was circulated on 01.10.2013, they filed objections therein.

(xv) That feeling aggrieved of the communication dated 25.10.2013 and Circular dated 24.12.2013, the petitioners 2 and 3 and two other persons filed writ petition bearing SWP No. 53 Of 2014, seeking to quash para-2 of communication No. FST/NG/67/2012 dated 25.10.2013, by the medium of which, it has been conveyed that the status of the private respondents Foresters, who had done their DDR Training prior to their joining the Government Service, has been

accepted by the Government on the recommendation of respondent no.2, with further writ of certiorari, to quash Circular no. 03 of 2013 dated 24.12.2013, by medium of which, the private respondents (regularized as Foresters on 31.12.2012) have been put in the same Tentative Seniority List, as contains the names of those DDR Foresters, who had passed their Forest Rangers Training Course (DDR) as in-service candidates, after having been sponsored by the State Government under the provisions of SRO 106 of 1992, with a writ of mandamus, not to accept the DDR status of the private respondents.

(xvi) That the matter was considered by the Court on 10.01.2014, on which date, it was ordered that till next date of hearing before the Bench, the official respondents shall not operate the seniority list issued vide Circular No. 03 of 2013 dated 24.12.2013 for making further promotion to the post of Ranger Officer Grade-I.

(xvii) That it is not so, even some of the private respondents had also preferred a writ petition bearing SWP No. 1486/2013, titled *Kuldeep Raj and Ors. v. State and Ors.*, (i) seeking writ of Mandamus, commanding the respondents to strictly abide by and implement the provisions of J&K Forest (Gazetted) Service Recruitment Rules, 1970, read with SRO 106 of 1992 dated 30.04.1992, to the extent of allowing due quota of 20% to the DDR Trained Foresters as envisaged under the

aforementioned Recruitment; Rules (ii) writ of Mandamus, commanding the respondents to consider the private respondents/petitioners therein for the purpose of promotion to the next higher post of Range Officer Grade-I, in view of their more than requisite number of years of experience as Forester and also DDR Trained against the quota of 20% meant for DDR Trained Foresters; (iii) with further writ of prohibition restraining the official respondents from diverting of quota of 20% meant for DDR Trained Forester in terms of Recruitment Rules of the service in other category of Forester for the purposes of effecting promotion to Range Officer Grade-I, II either on substantive basis or on Incharge basis. It was stated that the writ petition of some of the private respondents was considered by the Court on 02.09.2014, on which date the writ petition was disposed of at very threshold by providing that the official respondents would not divert the fixed quota of 20% meant for DDR Trained Foresters and that they shall considered the cases of the private respondents/petitioners therein strictly in adherence to the J&K Forest (Gazetted) Service Recruitment Rules, 1990 read with SRO 106 of 1992 dated 30.04.1992 and further ordered that this exercise shall be conducted and concluded within a period of one month from the date the occasion for such promotion arises.

(xviii) That in terms of J&K Forest Service (Gazetted) Recruitment Rules, 1990 (hereinafter called as “Recruitment Rules of 1990”) read with SRO 106 dated 30.04.1992, the post of Range Officer Grade-I is required to be filled up as under: -

- (a) 30% by direct recruit;
- (b) 50% by promotion from Range Officer Grade-II, having at least five years’ service in that category or 20 years’ service in the Non-Gazetted Cadre;
- (c) 20% by promotion from Government sponsored Forester having done Rangers Training Course from a recognized Forest Rangers College and having five years’ experience as Foresters in the norms prescribed by the Government for such training courses”.

(xix) It was pleaded before the Writ Court that in terms of the aforesaid Rules, the 20% posts of Range Officer Grade-I, were reserved for those Foresters, who are sponsored by the Government during their service for Ranger Training Course from a recognized Forest Ranger College. It was further pleaded that the private respondents do not fall under this category, inasmuch as, the private respondents had not done their Forest Ranger Course after having been sponsored by the Government during their services as Foresters, but instead the private respondents have done their Forest Ranger Course (DDR) before their joining as Foresters in the Forest Department on *ad hoc* basis by or before in the year 2000.

(xx) That since there was a specific direction passed by the Writ Court in SWP No. 1486/2013, on 02.09.2014, providing that the official respondents shall not divert the fixed quota of 20% meant for DDR Trained Foresters and shall accord

consideration to the case of the petitioners therein, strictly in adherence to the J&K Forest (Gazetted) Service Recruitment Rules, 1990, was of no help to the private respondents inasmuch as, the private respondents were not DDR Trained Foresters and were not sponsored by the Government, which according to the petitioners, was the requirement of the Rules mentioned supra as the private respondents were initially appointed on *ad hoc* basis as Foresters and were regularized in terms of J&K Civil Services (Special Provisions) Act, 2010, vide various Government Orders.

(xxi) That the petitioners were further aggrieved of the impugned order dated 17.12.2014, by virtue of which, it was directed that the Pr. Chief Conservator of Forest, should finalize the seniority list of the private respondents (appellants herein) as notified vide Circular No. 03 of 2013 dated 24.12.2013, within two weeks with a further direction not to divert the 20% quota meant for DDR Trained Foresters pursuant to the orders passed by the Court and there was also a direction in the aforesaid order to process the case of the private respondents along with other DDR Foresters, who obtained the requisite training while in service against the said quota for consideration of the PSC/DPC for elevation against the post of Range Officer Grade-I, as and when they acquire requisite eligibility and post become available for the said quota of 20%.

3. *Per contra*, the stand of the official respondents was that in Forest Department, the post of Range Officers is of two types viz Range Officer Grade-I, which is Gazetted post and Range Officer Grade-II, which is Non-Gazetted post. It was further submitted that there was a provision in the early Rules of 1992 that Forester who stood first in the KFC training were eligible for deputing DDR training and were used to be deputed for the said training course and their promotion and adjustment was being made against the 20% quota for the post of Ranger Officer Grade-I, as provided in SRO 106. It was further submitted that in view of Revised Entrance and Training Rules in the year 2004 KFC, toppers were no more eligible for the DDR Training.
4. The respondents have taken a specific stand that in view of the above facts, the department proposed amendment in the SRO 106 of 1992 that out of 20% quota previously reserved for in-service DDR Forester, 10% was proposed to be reserved for Science Post Graduate Foresters having at least 10 years' service as Foresters. It is pertinent to mention here that 4 DDR Foresters have done DDR prior to entering in service, filed a writ petition bearing SWP No. 2429/2012 titled *Sanjeev Singh &Ors.. v. State &Ors.*, against the proposed amendments. The Court vide order dated 02.11.2012, directed the respondents to maintain status quo.
5. It was further submitted that 72 candidates have done DDR training as private candidates from 1995 to 2000 prior to their appointment. In order to absorb these unemployed DDR candidates, the Government took decision to constitute a screening committee under the

chairmanship of Pr. Chief Conservator of Forests, for appointing the petitioners as Foresters on *ad hoc* basis. The petitioners were appointed as Foresters on *ad hoc* basis for a period of six months vide Forest Order No. 247 of 2000 dated 04.09.2000. However, the service of the petitioners were regularized as Forester under J&K (Special Service) Provisions Act, 2010, in the year 2012, vide Government Order No. 514 FST of 2012 dated 31.12.2012, Government Order No. 112 FST of 2013 dated 15.03.2013 & Government Order No. 325 FST of 2013 dated 02.09.2013. These DDR Foresters wherein private respondents filed a writ petition bearing SWP No. 1486/2013 titled *Kuldeep Raj and Ors. v. State and Ors.*, before this Court, at Jammu, seeking 20% of quota of Ranger Officer Grade-I, which was reserved previously for in-service DDR Foresters. This Court was pleased to pass the following order, which is as under:

“Meanwhile, the respondent shall strictly implement the Provisions of the J&K Forest (Gazetted) Service Recruitment Rules, 1970 read with SRO 106 of 1992 dated 30.04.1992, to the extent of following quota of 20% to DDR Trained Foresters as envisaged under the aforementioned Recruitment Rules. This, however, subject to objections from other side”.

6. The private respondents laid stress for framing separate seniority on the analogy of the in-service DDR Foresters. The Administrative Department vide letter No. FST/NG/67/2012 dated 25.10.2013, directed to fix seniority under DDR Foresters category with due regard to merit determined by SSB/Committee headed by Pr. Chief Conservator of Forests, in respect of *ad hoc* and length of service under rules. Accordingly, a tentative seniority list of DDR Foresters/private respondents was issued vide Circular No. 3 of 2013 dated 24.12.2013,

for inviting objections from the all concerned within a period of 7 days. In the meanwhile, above said tentative seniority list of DDR Foresters has been challenged by the KFC Foresters in SWP No. 54 of 2013, titled *Vijay Khosla and others v. State and Others*, before this Court at Jammu. This Court was pleaded to pass the following orders on 10.01.2014:-

“In the meanwhile, subject to objections from other side and till next date of hearing before the Bench, respondents shall not operate the seniority list issued vide Circular No. 03 of 2013 dated 24.12.2013, for making further promotion of Ranger Officers Grade-I”.

7. It was further pleaded by the official respondents before the Writ Court that the writ petition bearing No. 1486/2013 titled *Kuldeep Raj and Ors. v. State and Ors.*, filed by the private respondents has been disposed of vide order dated 02.09.2014. The operative portion of which reads as under:-

“In view of the short controversy involved, I deem it appropriate to dispose of this petition at the very threshold stage by providing that the respondents shall not divert the fixed quota of 20% meant for DDR Trained Foresters and shall consider the cases of the petitioners strictly in adherence to the J&K Forests (Gazetted) Service Recruitment Rules, 1970 read with SRO 106 of 1992 dated 30.04.1992. This exercise shall be conducted and concluded within a period of one month from the date the occasion for such promotion arises”.

8. It was further submitted that the answering respondents in pursuance of the above referred to judgment accorded consideration to the claim of the DDR Foresters in light of SRO 106 of 1992 and passed a consideration order for finalizing the seniority list of the DDR Foresters notified vide Circular No. 3 of 2013 dated 24.12.2013, vide endorsement No. FST/Lit/NG/280/2013 dated 17.12.2014. Accordingly, Tentative Seniority List of DDR Foresters, was issued

vide Forest Order No. 45 of 2015 dated 07.03.2015, which was impugned before the Writ Court. Moreso, the official respondents with a view to dislodge the claim of the petitioners have specifically projected before the Writ Court that the private respondents were DDR Trained and were regularized in the year 2012 under J&K (Special Service) Provision Act, 2010 and although they have done DDR in private capacity before the joining services, were equal in status to the candidates who have joined DDR Training during the service as Foresters and, therefore, justified the issuance of the tentative seniority list. It was further submitted that there is no disparity in DDR Training done by the private respondents (appellants herein) prior to their appointment and DDR Training done by in-service Foresters. It was further submitted that since the private respondents were in-service as Foresters and, as such, have a vested right of seeking promotion under 20% quota reserved for the purpose of promotion under SRO 106 of 1992, as they have already done DDR Training way back from 1995-2000.

SUBMISSION OF PARTIES:

9. Mr. Z. A. Shah, learned senior counsel assisted with Mr. J. I. Balwan and Mr. Jagpaul Singh, advocates, has vehemently argued that the appointment, *ad hoc* or regular, of the appellants were never questioned in any legal proceedings. Besides that, Mr. Shah, has also projected that the DDR Training which the appellants have done between the years 1994 to 2000, was never questioned. Mr. Shah, has pointed out that it is the admitted case of the parties that the private respondents joined as

Foresters on *ad hoc* basis from time to time and before joining the Forest Department had already completed their DDR Training of their own without having been sponsored by the State Government. He further argued that the services of appellants were regularized on the recommendation of the Empowered Committee vide Government Order No. 514-FST of 2012 dated 31.12.2012. Besides that, Mr. Shah, pleaded that the writ petitioners (respondents herein) do not hold DDR Training and, thus, they cannot claim parity with the present appellants. Instead as per the stand of Mr. Shah, all the writ petitioners have passed Kashmir Forest Training Course (KFC) as averred in para 5 of the writ petition.

10. There is no denying the fact that the writ petitioners came to be appointed as Foresters between the years 1995 to 2010. The first seniority list, after regular appointment of appellants, was circulated vide Circular No. 03 of 2013 dated 24.12.2013. Mr. Shah, pointed out that prior to the regularization of the appellants as trained Foresters, already final seniority list of 37 DDR Foresters existed in the Department working as Incharge Range Officers Grade-I. He further submits that prior to regularization, there were two types of seniority lists. One seniority list was of DDR Trained Foresters and the second list was of Non-DDR Foresters. After the appellants joined services, since they were DDR Trained, the Government took a conscious decision that the appellants need to be shown in the seniority list of DDR Trained Foresters and, accordingly, vide Circular No. 03 of 2013 dated 24.12.2013, a tentative seniority list of DDR Foresters figuring

from S. No. 38 to 114, was notified. The appellants by no stretch of imagination could have been shown in the seniority list of Foresters, who were only KFC Trained and he justified the issuance of the aforesaid Circular and position of the Government which was reasonable and fair.

11. The next plank of argument by Mr. Shah, was that under Rule 24 of CCA Rules, length of service is recognized as the basis of seniority in reference to a service, grade or class. It is further pleaded that it is not the only rule on the basis of which seniority can be determined. The Government, by making DDR Training as the distinguishing feature, was competent, in law, to frame a separate seniority list, in the cadre of Foresters, based on specialized training (DDR). It was further submitted that the principles governing seniority can be adopted by the Government provided that such principles are reasonable, fair and non-discriminatory. He further argued that in the peculiar facts and circumstances of the case, the Government having adopted DDR Training as the basis for determining the seniority, on the one hand of DDR Trained Foresters and on the other hand, KFC Trained Officers has acted reasonably, fairly and in accordance with law.
12. Mr. Shah, has vehemently argued that the specialized Training of DDR whether acquired before or after appointed as Foresters can be valid basis for determining seniority and can validly form a class apart.
13. He further argued that the DDR Trained Foresters cannot be denied seniority and promotion merely on the basis that the training was acquired without having been previously sponsored by the State

Government, when the Revised Rules 1992, permit, such training to all the categories mentioned in Rule 8 of the Revised Rules of 1992.

14. It was further argued by Mr. Shah, that the Cadre Management is exclusively the prerogative of the Government and the Government has free hand in the matter of managing any cadre of the service. The only condition is that the action of the Government must be reasonable and fair and above all non-discriminatory.
15. Mr. Shah, has further argued vehemently that the Government has the power under “Administrative Instruction” to fill up the lacunae/gap in the Rules. By issuing Executive Instruction dated 25.10.2013, the Government has filled up the gap in the Rules by providing for inclusion of Trained DDR Foresters in the category of Trained DDR Foresters previously sponsored by the Government.
16. Mr. Shah, further argued that the judgment passed by the learned Writ Court, accordingly, cannot sustain the test of law and is liable to be set aside.
17. With a view to advance his arguments, Mr. Shah, pointed out that the only question which arose before the Writ Court was whether two seniority lists of Foresters could be maintained, one of those Foresters, who held DDR Training prior to their appointment and the second of those Foresters, who were deputed for training while being in service. Since the learned Single Judge has held that 20% posts of the Range Officer Grade-I, were required to be filled up from such Foresters, who have undergone DDR Training Course, after having been appointed as Foresters for five years and held that only such candidates alone were

claimants to the post of Range Officer Grade-I. Mr. Shah, submitted that the Writ Court has nowhere indicated as to what will be the position of the appellants, who had already undergone DDR training before their appointment and whether such candidates can also be considered for the next promotion of Range Officer Grade-I or they cannot be promoted at all and there is no such finding on this aspect and, thus, the judgment impugned cannot sustain the test of law and is liable to be set aside. The learned Writ Court as per Mr. Shah, has proceeded to answer to this question on the basis of interpretation of the Rules and, according, to the Writ Court, only Foresters, who were sponsored by the Government to undergo Forest Rangers Course were to be only considered for promotion to Range Officer Grade-I. Mr. Shah, pointed out that the implication of the judgment would be that the candidates like the appellants who have already undergone such training course prior to the their appointment can in no way be considered for promotion and they will continue to be stagnated.

18. Although as per Mr. Shah, the learned Writ Court has reproduced Entrance and Training Rules (Revised)1992 and, according, to Clause (8) of the aforesaid Rules, a person can be deputed for training:

- (i) If he is sponsored by States/Union Territories/Government/Autonomous District Councils;
- (ii) Candidates sponsored by Public Sector Undertakings;
- (iii) Private candidates sponsored by Industrial Firms and other Institutions;
- (iv) Candidates sponsored by Foreign countries.

According to Clause 18, a Forester who stands “first” at a State Foresters Training School can be deputed for training by States/Union Territories, Government/Autonomous District Councils. The learned

Single Judge has also held that the candidates who are sponsored by Industrial Firms and other Institutions can also undergo DDR Training but their cases are not covered by SRO 106. The appellants submit that the finding of the Writ Court on this aspect is not correct whereby different modes available to a candidate to undergo DDR Training. A candidate who satisfies otherwise the terms of eligibility can undergo DDR Training Course without being appointed as Forester for a period of five years.

19. Mr. Shah, has further pointed out that the gaps which exist in the Rules can be filled up by “executive orders” and the Government having realized the aforesaid position of the appellants that since they were already DDR Trained Foresters at the time of their initial appointment, rightly decided to prepare a separate seniority list for the DDR Trained Foresters and the Government has the power to do so. (He further pointed out that SRO 106 retained the position so far as the Foresters who were deputed for training by the Government, were concerned, but the position of the appellants was different as it was not necessary for the appellants to be first appointed as Foresters, secure first position in the training course and thereafter undergo DDR training after having served as Foresters for a period of five years). He further pointed out that rule of promotion also makes distinction between trained and untrained Foresters. As per the counsel for the appellants, those who were trained Foresters, have undergone DDR Training Course, were eligible for promotion as Range Officers Grade-I, but those Foresters who were not DDR Trained Foresters can only be promoted as Range

Officers Grade-II. The main plank of arguments by Mr. Shah, was that **it is a training** which is a core issue under rules and which ultimately determines the eligibility for the purposes of further promotion and the petitioners can in no way equate themselves with the appellants herein as both the persons from different class.

20. As per Mr. Shah, the learned Writ Court completely lost sight of the fact that the writ petitioners before the Writ Court were admittedly not DDR Trained Foresters and, thus, had no competition with the present appellants. The writ petitioners could not be the claimants to the post of Range Officer Grade-I, because of lack of training.
21. Mr. Shah, also raised the issue of maintainability of the petition before the Writ Court, as none of the petitioners being DDR Trained Foresters, can claim parity with the appellants and consequently, the writ petition was not maintainable as none of the writ petitioners could be promoted as Range Officers-Grade I.
22. As per the stand of Mr. Shah, that there is no parity between the petitioners who were Foresters but Non-DDR Trained and the private respondents who were Foresters, but DDR Trained. He further pointed out that the appellants herein were nominated to undergo training course by PCCF/Managing Director, SFC and others, before they came to be appointed on *ad hoc* basis as Foresters and were subsequently regularized, as such, under the Special Provisions Act of 2010. He further argued that the Rules of 2004 could not affect the right of the appellants, who admittedly had undergone the said training course much before the promulgation of such Rules, otherwise on fulfillment

and completion of all requisite conditions as were prescribed there. It was further contended that insofar as the regularization of the appellants as Foresters were concerned, the same was not being questioned by the petitioners at any stage and, therefore, having already completed their DDR Training Course before their regularization as Foresters, it would defy logic to ask the appellants to again get sponsorship from the Government after facing a competitive test in terms of Rules of 2004 notified by the Government and before seeking consideration for promotion against 20% quota for the post of Ranger Officers Grade-I.

23. *Per contra*, Mr. Abhinav Sharma, learned senior counsel has pointed out that the benefit of SRO 106 of 1992 can only be extended to such in-service Foresters, who are not DDR Trained at the time of their initial appointment and are sponsored subsequently by the Department. He fairly conceded that the petitioners are not asserting their right to promotion for the post of Range Officers Grade-II. On the other hand, they are questioning the right of the private respondents (appellants herein) to be placed separately in the seniority list to be considered for promotion to the post of Range Officer as against the 20% quota envisaged for Foresters, who have done their Rangers Training Course from the recognized Forest Rangers College as reflected in Class (c) of the Rules notified vide SRO No. 106 of 1992. He argued that the cause of action has accrued to him purportedly on the basis of issuance of a communication dated 25.10.2013, whereby, a seniority list of in-service DDR Trained Foresters, who had done DDR Training prior to their

initial appointment has been framed and objections were invited. He argued that the benefit of SRO 106 of 1992, could not be given to those who have done their DDR Training earlier than their initial appointment and had not been sponsored by the Government for undergoing DDR Training Course.

24. His second plank of arguments was that since the J&K Forest Service (Gazetted) Recruitment Rules 1970, as amended by SRO 106 envisaged as only filling up of 20% of the posts of Range Officers by promotion from only Government sponsored Foresters having done Rangers Training Course from the recognized Forest College with five years' experience as Foresters. He further pleaded that since the private respondents were never sponsored by the Government for undergoing Rangers Training Course and, thus, could never be considered for promotion against the 20% quota of Range Officers in the Gazetted Cadre. Lastly, he argued that the method of sponsoring the Foresters for undergoing the Rangers Training Course was prescribed under the Rules namely, Entrance and Training Rules (Revised) 2004 (for short Rules of 2004) for Forest Range Officers, notified on 22.07.2004, which the private respondents do not satisfy.
25. The official respondents have taken a stand that the petitioners before the Writ Court and the private respondents form two separate categories. Mr. Dewakar Sharma, learned Dy. AG, appearing on behalf of Government argued that two categories have separate avenues of promotion. He further justified that the 20% quota meant for DDR Foresters, was likely to be reverted back to direct recruitment quota as

Ministry of Environment and Forest have issued Revised Entrance and Training Rules in the year 2004 for Forest Range Officers as per which only Range Officers Grade-I, appointed through PSC, were eligible for undergoing Rangers Training Course in the Rangers College at Dehradun and there was now no chance for the in-service Foresters to undergo the DDR Training Course as the only Range Officer Grade-I, appointed through PSC are eligible for undergoing Rangers Training Course at the Rangers College in Dehradun. He further argued that the right of the petitioners, if any, is only against the post of Range Officers Grade-II and have no locus to question the framing of separate seniority list with regard to the private respondents (appellants herein), who were DDR Trained. He further pointed out that the regularization of the appellants as Foresters was never questioned by writ petitioners and, therefore, having already completed their DDR Training Course before their regularization as Foresters, it would defy logic to ask the appellants to again get sponsorship from the Government after facing a competitive test in terms of Rules of 2004 notified by the Government before seeking consideration for promotion against 20% quota for the post of Range Officer Grade-I.

LEGAL ISSUES INVOLVED:

26. The only legal issue which is involved in the present case is whether the Government is competent to make distinction amongst the Foresters on the basis of training of the DDR. If the action of the Government is valid under law, then no fault can be found with the decision of the Government to include the appellants, as Trained Foresters, in the

category of Trained Foresters, who have already acquired DDR Training on the recommendation of the State Government. In both the situations, Non-Trained Foresters cannot be acquainted with Trained Foresters.

27. The second issue is as to the avenues of promotion for both Trained DDR Foresters and Non-Trained Foresters (only KFC).
28. Under SRO 106, 20% posts provide the avenue for promotion to the post of Range Officer Grade-I only of the Foresters who are Trained DDR. The further question is that as per the said SRO, can a Trained DDR Forester, who has not been sponsored by the State Government, also claim promotion to the post of Range Officer Grade-I.

POSITION UNDER THE RULES:

29. The Non-Gazetted Forest service is separately regulated by Subordinate Forest Service Rules. The Gazetted Service is regulated by the J&K Forest Service (Gazetted) Recruitment Rules, 1970. The post of Range Officer is a Gazetted Cadre post governed by J&K Forest Service (Gazetted) Recruitment Rules, 1970 (for short Rules of 1970). Pursuant to the amendment incorporated in the said Rules vide SRO No. 106 of 1992, the post of Range Officer can be filled up through three different modes, i.e., 30% by direct recruitment from amongst the persons having passed Rangers qualifying examination. This is on the basis of an examination conducted by the J&K Public Service Commission, involving a written test and viva voce. Further, 50% posts of Range Officers can be filled up from Range Officers Grade-II having at least five years' service in that category or 20 years' service in the non-

gazetted cadre. While 20% of the posts can be filled up from the Government sponsored Foresters having done Rangers Training Course from a recognized Forest Rangers College with five years' experience as Forester on the norms prescribed by the Government for such training course. The Gazetted Rules use the expression Ranger Officer without qualifying the said category into Range Officer Grade-I and Range Officer Grade-II. So far as the Range Officer Grade-I is concerned, it is included in the Gazetted Rules. For facility of reference, the Rule position is reproduced as under as notified vide SRO 106:

Designation	Method of Recruitment
Range Officer	<p>(a) 30% by direct recruitment from amongst the persons having passed Rangers qualifying examination (written and viva voce) to be held by the J&K Public Service Commission. The written examination will comprise of the following papers:-</p> <ul style="list-style-type: none"> (i) General English; (ii) An essay to be written in English (iii) General knowledge this will include elementary science, Geography and current event. (iv) One of the following subjects <ul style="list-style-type: none"> (a) Botany (Syllabus as prescribed for B. Sc.) (b) Silviculture (Syllabus as prescribed for B.Sc. Forestry). <p>(c) Field Crop Production (Syllabus as prescribed for B. Sc Agriculture)</p> <ul style="list-style-type: none"> (A) Candidate must obtain at least 40% marks in each subject for qualifying the test. (B) 50% by promotion from R.O.II having at least 5 years' service in that category or 20 years' service in the non-gazetted cadre. (C) 20% by promotion from Government sponsored Foresters having done Rangers training course from a recognized Forest Rangers College and having 5 years' experience as Forester on the norms prescribed by the Government for such training course.

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30. From a bare perusal of the aforesaid Rules, it is apparent that the Foresters, who have not undergone DDR Training, can also be promoted under the Non-Gazetted Rules to the post of Range Officer Grade-II. They need at least five years' service in the said grade or 20 years' service in the Non-Gazetted Cadre before they can be considered for promotion to the post of Range Officer Grade-I. The avenue of promotion upto the level of Ranger Officer Grade-I is available to the Non-DDR Trained Foresters.
31. The promotion from Ranger Officer Grade-I is available to the next higher post of Assistant Conservator of Forest (ACF). According to the Gazetted Rules, 50% promotion can be made to the Forest Ranger Officer Grade-I from amongst the persons having successfully completed the Rangers College Training and having not less than 10 years' service in his category. In other words, it means that a person who starts as a Forester, KFC Trained, his further promotion beyond Forest Range Officer Grade-I is not permissible. It is only the Trained Forester who can be promoted from Forest Range Officer Grade-I to Assistant Conservator of Forest because of the training he possesses.
32. The Central Government after consultation with the State Government, has also framed the Rules namely, Entrance and Training Rules (Revised) 2004 for the Forest Range Officers, having jurisdiction all over India which came into force w.e.f., April 2005. Rule 4 of the aforesaid Rules, specify that there shall be two categories of candidate, who shall be entitled for Forest Ranger Officers Training: -

- (i) Candidate sponsored by the State/Union Territory;
- (ii) Candidate sponsored by a foreign country.

Under Rule 6 is provided the selection process, for candidates falling under Rule 4 Category (i) above, which is as under:-

- (i) Selection of a candidate shall rest with the concerned sponsoring authority;
- (ii) The selection procedure adopted by the sponsoring authority must conform to the minimum standards laid down under Rule 7 to 11 for the candidates falling under category (i) of Rule 4 (i.e., candidate sponsored by the State /UT).

Rule 11 of the said Rules 2004, provide that candidates, who are sponsored by the State/UT for undergoing Forest Ranger Officer Course in any Central College shall be selected on the basis of competitive written examination and interview to be conducted by the Public Service Commission of the State/UT and that PSC of the State/UT shall prepare merit but on the basis of total marks obtained in written examination and interview.

33. By the coming into force of these Central Rules 2004, the 20% posts of Ranger Officers Grade-I, which were earlier being filled up by Foresters as had topped the KFC and sponsored by the State Government, for Range Officers Training could not be filled up and are lying vacant since the year 2004.

LEGAL ANALYSIS:

34. We have heard learned counsel for the parties at length and also perused the record.
35. Admittedly, the writ petitioners before the Writ Court do not hold DDR Training instead all the writ petitioners have passed Kashmir Forest Training Course as admitted in para 5 of the writ petition and, thus, by

no stretch of imagination could claim parity with the appellants herein as both form, different class. Besides that, the appellants were not self-sponsored DDR, but were nominated to undergo the Training Course by the PCCF/Managing Director, SFC and others, before they came to be appointed on *ad hoc* basis as Foresters and were subsequently regularized, as such, under the J&K Special Provisions Act, 2010. Thus, the Rules of 2004 by no stretch of imagination would affect the right of the appellants who admittedly had undergone the said course much before the promulgation of the said rules, otherwise, on fulfilment and completion of all requisite conditions as were prescribed there. Thus, the right of the petitioners is confined only against the post of Range Officers-Grade II and have no locus to question the framing of the separate seniority list with regard to the appellants, who were DDR Trained.

36. Admittedly, the appointment, *ad hoc* or regular of the appellants were never questioned by the writ petitioners before any legal proceedings and having acquiesced their right to question the appointment of the appellants, it does not lie in the mouth of the petitioners to agitate at this belated stage. Besides that, the DDR Training, which the appellants have undergone between the years 1994 to 2000, was never questioned.
37. The dominating factor for further promotion to the post of Range Officers Grade-I, is not, where such training is acquired on the recommendation of the Government. It is the DDR Training, which is the basis for promotion to the post of Ranger Officer Grade-I as envisaged in the Rules in vogue. In the absence of any specific

challenge to the training of the appellants, it has to be accepted that the appellants DDR training is valid in the eyes of law and the appellants, as such, are held entitled to the benefits of the said training.

38. The issue whether the appellants were sponsored by the Government or not, as per SRO 106 of 1992, the same being directory in nature and not mandatory. The said question cannot be gone into at this stage because the writ petitioners neither challenged the training of the appellants nor their regularization at any stage and having acquiesced their right, it is too late in the day to agitate with respect to the training of the appellants or their regularization.
39. The training for acquiring DDR is done in various Colleges recognized by the Government of India. Rules have been framed by these Colleges. Under 1992 Rules, four categories of persons could undergo a training. The requirement of those who were sponsored by the State Government to undergo training, were different. Those, who were sponsored by the private firms and other institutions, the requirement was different. Under 1992 Rules, so far as admission is concerned, the selection was required to be done by sponsoring authority which include private candidates sponsored by Industrial Firms and other Institutions. Rules 12 to 18 provide age, minimum educational qualification, physical standard, health certificate etc. In addition, competitive examination for direct recruits was also provided. The requirement of competitive examination under Rule 16 was restricted to the category of candidates mentioned in Rule 8.1 (candidates sponsored by State Governments/Union Territories/Autonomous District Councils). The

competitive examination for direct recruits was not applicable to other category of candidates mentioned in Rule 8.

40. However, exception was made under Rule 18 in respect of a candidate, who is not required to undergo competitive examination in terms of Rule 16 after such candidate had secured first position at the State Forest Training School and had passed the High School in Science or an equivalent examination.
41. It is, therefore, observed that having regard to this Rule, the requirement of passing competitive examination was only meant for those who were sponsored by the State Governments. It was not meant for those who fall in other categories of Rule 8.
42. The Rules were revised in the year 2004. Out of four categories, mentioned in Rule 8 of 1992 Rules, only two categories came to be recognized in Clause 4 of 2004 Rules. The entitlement of a candidate who has secured first position in the State Forest Training Institute (KFC) was dispensed with. In other words, after 2004, any candidate who is desirous of undergoing DDR Training, such candidate is required to qualify the examination to be conducted by Public Service Commission. This alone entitles a candidate to acquire DDR training at the recognized College. According to the learned counsel for the respondents, the method and manner of deputing candidates for undergoing the said course was earlier governed by Entrance and Training Rules (Revised) 1992. Clause 8 of the said rules, envisaged four categories of trainees. For facility of reference, the Rules are reproduced as under: -

- “8.1. Candidates sponsored by States/Union Territories Government/Autonomous District Councils.
8.2. Candidates sponsored by public sector undertaking.
8.3. Private candidates sponsored by Industrial firms and other Institutions.
8.4. Candidates sponsored by Foreign countries.

Clause 11 of the Rules of 1992, pertain to selection of candidates and prescribe thus: -

11.0. Selection of Candidates: -

- 11.1. The selection of candidates' rests with the sponsoring authority concerned. No direct applications are to be entertained by the College.
11.2. In order that a high standard of the training is ensured, the selection procedure adopted by the sponsoring authorities must conform to the minimum standards laid down in Rule 12 to 18.

Clause 12 of the Rules of 1992 prescribe minimum and maximum age limit for the candidates. Whereas clause 13 prescribes the minimum educational qualification as under: -

13. Minimum Educational Qualification: -

Candidates must have passed the intermediate science examination (10+2) of any recognized State Educational Board or University on its equivalent with two or more of the following subjects: - Mathematics, Physics, Chemistry, Botany and Zoology”.

Clause 16 of the said Rules prescribes competitive examination for direct recruits as under: -

16.1. The candidates of category mentioned in Rule 8.1 will be selected on the basis of competitive examination and interview conducted by the Government of the State/Union Territories/Autonomous District Councils or Public Service Commission of the State concerned in the following subjects:

- (i) English (essay, precise writing etc.) 100 marks
- (ii) General knowledge 100 marks
- (iii) Any two paper out of the following subjects: Mathematics, Physics, Chemistry, Botany, Zoology, Forestry, Geology, Agriculture, Civil Engineering, Mechanical Engineering, Electronics Engineering and Chemical Engineering.

The standard of the examination in the above subjects will be of intermediate in science or equivalent.

16.2. **Interview:-** The Government of States/Union Territories/Autonomous District Councils or the State Public Service Commission will, as the case may be

conducted interview of candidates and award marks. There will be 50 marks.

Clause 18 envisages selection of departmental candidates and prescribe thus: -

18. **Selection of Department Candidates included in category mention in Rule 8.1 &8.2:** - A Forester/Dy. Ranger may be deputed for training by States/Union Territories, Government/Autonomous District Councils, stood first at a State Foresters Training Schools and passed the High School, in science, or an equivalent examination”.

43. Thus, the 20% post by promotion which are to be filled up from amongst the Foresters to the Range Officers Grade-I, is exclusively made for those foresters, who have acquired DDR Training irrespective of the fact whether for such training they were sponsored by State Government or not. It is a training which is the basis for claiming promotion under 20% to the post of the Range Officers Grade-I and not the procedure for obtaining the training as envisaged under the aforesaid Rules. Since SRO 106 of 1992, has amended the Rules in the year 1992, it appears that the same year SRO 106, was also issued. The Revised Rules of 1992, governing admission to DDR Course received the approval of the Government of India on 06.12.1991 and on 04.05.1992. However, SRO 106 was issued on 30.04.1992. In case, if the aforesaid view is not accepted, then obviously DDR Trained Foresters will have to fall in line with the Non-DDR Trained Foresters and they can be promoted only as Range Officers Grade-II and thereafter as Range Officers Grade-I and not beyond that. In that eventuality, there will be no advantage of the training which they have undergone. The trained Foresters, who has also undergone DDR

Training at the instance of the Government, such Trained DDR Foresters can claim promotion directly to the post of Range Officers Grade-I without having been previously promoted as Range Officers Grade-II and, therefore, to the post of Assistant Conservator of Forest so on and so forth. Thus, we hold that sponsoring a Forester for training by the Government and Forester acquiring training of his own before his appointment, no distinction can be made merely on the basis as to who sponsored whom, as both are entitled and eligible to undergo DDR Training in terms of the Revised Rules 1992. Thus, the specialized training of DDR whether acquired before or after appointment as Forester can be the valid basis for determining seniority and can validly form a class apart.

44. Thus, the DDR Trained Forester cannot be denied seniority and promotion merely on the basis that the training was acquired without having been previously sponsored by the State Government when the Revised Rules of 1992, permits training to all the categories mentioned in Rule 8 of the Revised Rules of 1992. Thus, the finding of the learned Single Judge to the extent that the Rule framing authority had intended to consider only those Foresters, who were sponsored by the Government to undergo the Forest Rangers Course has no basis and liable to be set aside. The learned Single Judge, has observed that by adopting the **literal interpretation** of Rule, it seems clear that any person who was not a Forester and had not been sponsored by the Government could, therefore, not have been considered at all against the 20% quota. Besides that, the learned Single Judge, has also

observed that even if one were to adopt the **purposive interpretation** rule, even then it limits consideration only to Government sponsored Foresters and, accordingly, the learned Single Judge, held that the private respondents (appellants herein) have no right of consideration against the 20% quota for the posts of Range Officers Grade-I and, consequently, their names should not have figured in the said list, as such, the Circular No. 03 of 2013, was quashed to the extent it pertains to the private respondents (appellants herein) along with communication dated 25.10.2013 and Forest Order No. 45 of 2015 and communication dated 17.12.2013. Since the cadre management is exclusively the prerogative of the Government and only Government has right to manage any cadre of the service. The only condition is that the action of the Government must be reasonable and fair and above all non-discriminatory.

45. There is no denying the fact that the Government has a power under the Administrative Instructions to fill up the lacunea/gap in the Rules. By issuing the Executive Instruction dated 25.10.2013, the Government has filled up the gap in the Rules by providing for inclusion of trained DDR Foresters in the category of trained DDR Foresters previously sponsored by the Government and no fault can be founded with the action of the Government to issue the aforesaid Executive Instruction. Since the Administrative Department of the Government vide communication dated 25.10.2013, has clarified to fix the seniority of other in-service DDR Foresters, who have done DDR Training prior to their initial appointment in pursuance of their selection of SSRB,

appointed under SRO 43 of 1994 and those DDR Foresters who were initially engaged on *ad hoc* basis and later on regularized under J&K Civil Services (Special Provision) Act, 2010. With a view to fill up the gap in the Rules and, thus, no fault can be attributed to the Government with regard to issuance of the aforesaid Circular, which is an offshoot of the Executive Instruction dated 25.10.2013.

46. Under Rule 24 of CCA Rules, the length of service is recognized as the basis of seniority in reference to a service, grade, or class. It is not the only rule on the basis of which the seniority can be determined. We hold that the Government by making DDR Training as the distinguishing factor, was competent under law to frame a separate seniority list in the cadre of Foresters, based on specialized training (DDR). Much emphasis has been laid down on the training which is the basis and the distinguishing factor for separate seniority and the Government is within its rights to frame such rule/principle provided that such principle/rule is reasonable, fair and non-discriminatory. The Government having adopted DDR Training as the basis for determining the seniority, on the one hand, of DDR Trained Foresters and on the other hand KFC Trained Officers, has acted reasonably, fairly and in accordance with law.

47. The only issue involved in the present appeal is whether the Government is competent to make distinction amongst the Foresters on the basis of the training of DDR. Once the action of the Government is valid under law, then no fault can be found with the decision of the Government to include the appellants as trained Foresters in the category of trained

Foresters, who have already acquired DDR Training on the recommendation of the State Government. Thus, the finding of the learned Single Judge, to the contrary, cannot sustain the test of law and is liable to be set aside.

48. The second issue which is involved in this appeal, is with respect to the promotional avenues for both Trained DDR Foresters and Non-DDR Trained Foresters (only KFC).
49. As per SRO 106, 20% posts provide the avenue of promotion to the post of Range Officer Grade-I, only of the Foresters (appellants herein), who are trained DDR. The further question which arises in the present appeal is that as per the aforesaid SRO, can a trained Forester, who has not been sponsored by the State Government, can claim promotion to the post of Range Officer Grade-I. In this regard, we hold that the dominating factor for further promotion to the post of Range Officer Grade-I, is not where such training is acquired on the recommendation of the Government. It is the DDR training, which is the basis for promotion to the post of Range Officer-Grade I. Since there is no specific challenge either to the training of the appellants or their subsequent regularization, it has to be accepted that the training of the appellants is valid as per rules and the appellants, as such, are entitled to the benefit of said training. The requirement of the Foresters, who were sponsored by the State Government to undergo training, were different, when the Rules of 1992, were in vogue.
50. Under 1992 Rules, so far as the admission is concerned, the selection was required to be done by the “Sponsoring Authority”, which included

private candidates sponsored by the Industrial Firms and other Institutions as well. Thus, no fault can be attributed to the appellants having undergone such training in conformity with the rules in vogue.

51. Thus, we hold that the DDR Trained Foresters by no stretch of imagination can be denied seniority and promotion merely on the basis that the training was acquired without having been previously sponsored by the State Government, when the Revised Rules of 1992, permit such training to all categories mentioned in Rule 8 of the Revised Rules of 1992.
52. The law has been settled at naught by the Hon'ble Supreme Court in various authoritative pronouncements that the cadre management is exclusively the prerogative of the Government and the government, as such, has a free hand in the matter of managing any cadre of the service. The only condition is that the action of the Government must be reasonable and fair and above all non-discriminatory. Thus, no fault can be attributed to the Government to have different seniority on the basis of training for the appellants and the finding of the learned Single Judge to the contrary, is not sustainable in the eyes of law and the direction of the learned Single Judge, to that extent is liable to be set aside.
53. We are fortified by the view of the Hon'ble Supreme Court in case titled *State of Mysore v. M. H. Krishna Murthey, reported in AIR 1973 (SC) 1146*. Para 9 and 11 of which are relevant and are reproduced herein below:

“9.In Ram Lal Wadhwa's case (supra), the majority of learned Judges of this Court had reached the conclusion that the historical and other special reasons existing, on the facts of that particular case, justified the difference made in promotional chances of the teachers coming from two different sources. We think that Wadhwa's case, AIR 1972 SC 1982, was decided on its own facts, the most important of what was that, after full consideration of the pros and cons of various alternatives before it, the Government concerned had come to the conclusion that the provincialized cadre must be gradually and not suddenly eliminated. In that case, there was no actual formal decision to integrate the two branches as is the case before us. The rules before us leave no doubt whatsoever, as we have already pointed out, that a complete integration of the service whose members came originally from two sources had been actually accomplished.

11. Other cases mentioned by the Mysore High Court i.e. State of Punjab v. Joginder Singh, AIR 1963 SC 913 and K. M. Bakshi v. Union of India, 1965 Supp (2) SCR 169, also show that inequality of opportunity of promotion, though not unconstitutional per se, must be justified on the strength of rational criteria correlated to the object for which the difference is made. In the case of Government servants, the object of such a difference must be presumed to be a selection of the most competent from amongst those possessing qualifications and backgrounds entitling them to be considered as members of one class. In some cases, quotas may have to be fixed between what are different classes or sources for promotion on grounds of public policy. If, on the facts of a particular case, the classes to be considered are really different, inequality of opportunity in promotional chances may be justifiable. On the contrary, if the facts of a particular case disclose no such rational distinction between members of what is found to be really a single class no class distinctions can be made in selecting the best. Articles 14 and 16 (1) of the Constitution must be held to be violated when members of one class are not even considered for promotion. The case before us falls, in our opinion, in the latter type of cases where the difference in promotional opportunities of those who were wrongly divided into two classes for this purpose only could not be justified on any rational grounds. Learned Counsel for the State was unable to indicate any such ground to us. We, therefore, think that the Mysore High Court rightly held that the impugned notifications were unconstitutional”.

54. In case titled *H. S. Vankan and Ors. v. State of Gujarat and Ors.* the Hon'ble Supreme Court has observed as follows:

“27.....It is a well known Rule of construction that the provisions of a statute must be construed so as to give them a sensible meaning. The legislature expects the court to observe the maxim *ut res magis valeat quam pereat* (it is better for a thing to have effect than to be made void). Principle also means that if the obvious intention of the statute gives rise to obstacles in implementation, the court must do its best to find ways of overcoming those obstacles, so as to avoid absurd results. It is a well settled principle of interpretation of statutes that a construction should not be put on a statutory provision which would lead to manifest absurdity, futility, palpable injustice and absurd inconvenience or anomaly.

28. In this connection reference may be made to the judgment in *R. (on the application of Edition First Power Ltd) v. Central*

Valuation Officer and another [2003 UKHL (20) : 2003 (4) ALL ER 209] at (116),(117), wherein Lord Millett said:

‘The court will presume that Parliament did not intend a statute to have consequences which are objectionable or undesirable; or absurd; or unworkable or impracticable; or merely inconvenient; or anomalous or illogical; or futile or pointless. But the strength of these presumptions depends on the degree to which a particular construction produces an unreasonable result. The more unreasonable a result, the less likely it is that Parliament intended it.....’

30. In *Tinsukhia Electric Supply Co. Ltd. v. State of Assam & Ors.* [1989 (3) SCC 709], this Court held as follows: ‘The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle ‘ut res magis valent quam pereat’. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it.’

32. The above legal principles clearly indicate that the courts have to avoid a construction of an enactment that leads to an unworkable, inconsistent or impracticable results, since such a situation is unlikely to have been envisaged by the Rule making authority. Rule making authority also expects rule framed by it to be made workable and never visualizes absurd results. The decision taken by the government in deputing the non-graduates (1979-81 batch) to a two year training course and graduates (1980-81 batch) to a one year training is in due compliance with Rule 10 of 1969 Rules and Rule 18 of 1974 Rules and the seniority of the both batches has been rightly settled vide orders dated 12.10.1982 and 5.3.1987 and the government has committed an error in unsettling the seniority under its proceedings dated 29th September, 1993.

55. The Hon’ble Supreme Court in case titled *The Distt. Registrar, Palghat and Ors. v. M. B. Koyakutty and Ors*, reported in (1979) 2 *Supreme Court Cases 150*, has held as under:

“22. There can be no quarrel with the proposition that if the statutory rules framed by the Governor or any law enacted by the State Legislature under Article 309 is silent on any particular point, the Government can fill up that gap and supplement the rule by issuing administrative instructions not inconsistent with the statutory provisions already framed or enacted. The Executive instructions in order to be valid must run subservient to the statutory provisions.....”.

56. We are fortified by the view of the Hon'ble Supreme Court in case titled *Union of India v. H. R. Patankar, reported in 1984 AIR (SC) 1587*, the relevant excerpts of which are as under:

“4.The Government of India was in the circumstances entitled to lay down a rule for determining inter se seniority in such a situation and this could be done by the Government of India even by an executive order. It is now well settled law that even if there are no statutory rules in force for determining seniority in a service or even if there are statutory rules but they are silent on any particular subject, it is competent to the Government by an executive order to make appropriate Seniority Rules or to fill in the lacuna in the statutory rules by making an appropriate seniority rule in regard to the subject on which the statutory rules are silent. The Government of India could have, therefore, in the present case issued an executive order laying down a rule for destemming inter se seniority between officers appointed to the service prior to 11th April 1958 on the one hand and officers appointed to the service on or after that date on the other.....”.

57. The dominating factor for further promotion to the post of Range Officer Grade-I, is not where such training is acquired, but it is a DDR which is the basis for promotion to the post of Range Officer Grade-I and on similar analogy Hon'ble Supreme Court in case titled *Government of A.P.: S. Ramamonohara Rao v. M. A. Kareem: Government of A.P., reported in 1990 Legal Eagle (SC) 521*, has held the fixation of seniority on the basis of the special qualifying examination is valid. The relevant paragraph no.15 of the said judgment is reproduced as under:

“15. On merits the reply on behalf of the Government of Andhra Pradesh is that the respondent-officers had joined the office of the Inspector General of Police after qualifying at the general examination held for the purpose, and since the petitioners did not appear at the examination, they cannot be equated with the respondent officers. The general examinations for recruitment to the central office were held in 1964, 1965, 1966, 1967 and 1968, but the petitioners did not choose to avail of the ordinary method for joining the service. Instead they entered the service by the side door and their department, taking an attitude liberal to them and other similar officers, decided to hold special qualifying examinations. It is contended that in these circumstances the rule as laid down in Memorandum No. 473/Y1/70-5 dated 24.7. 1970 (Annexure 'VII') is clearly applicable, and for the purpose of

seniority the petitioners were given the advantage of two years of service rendered by them prior to their successfully completing the special qualifying examination. The argument is well founded. The learned counsel also pointed out that the standard of the special qualifying examination was not the same as that of the general examination held for recruitment”.

58. Even otherwise also, the writ petitioners have no locus to call in question the seniority of the respondents therein (appellants herein) as the petitioners by no stretch of imagination could be held to be claimants to the post of Range Officer Grade-I, because of lack of training. Since none of the writ petitioners were DDR Trained Foresters and, as such, have no locus to call in question either the training of the appellants or their fixation of seniority on the ground that the petitioners can never be promoted as Range Officer Grade-I. The Writ Court without deciding the question of locus, has proceeded to quash the Circular and the consideration order. On this ground also, the judgment impugned cannot sustain the test of law and is liable to be set aside, as the writ petitioners had no competition with the appellants. Another distinguishing factor is that the Rules of 2004, would not affect the right of the appellants, who admittedly had undergone the said training much before the promulgation of such rules on fulfillment and completion of all requisite conditions as were prescribed when the earlier rules were in vogue. The appellants and the respondents herein form two separate categories and have separate avenues of promotion in their own line and, thus, the writ petitioners cannot claim any parity with the appellants herein as the right of the petitioners is only confined to the post of Range Officer Grade-II, and have no locus standi to

question the framing of the separate seniority list with regard to the appellants herein, who were DDR Trained.

59. The finding of the learned Single Judge that the appellants herein were neither sponsored by the Government of Jammu and Kashmir nor they were deputed on account of their exceptional merit in terms of Clause 18, is in contravention to the Entrance and Training Rules (Revised) 1992, which authorizes the sponsorship in terms of Clause 8.3, by the Industrial Firms and other Institutions. Thus, no doubt or ambiguity can be found on the reading of the rule as held by the learned Single Judge and, accordingly, the appellants have a vested right of seeking consideration for promotion against the 20% quota for the post of Range Officer Grade-I, in terms of Rules.
60. Since the appellants were not self-sponsored DDR, but they were nominated to undergo the Course by the respective heads before they came to be appointed on *ad hoc* post as Foresters and were subsequently regularized, as such, under the Special Provisions Act of 2010. Thus, all the appellants herein, who were subsequently regularized after undergoing the Course pursuant to the nomination by their employer falls within the ambit of Clause (c) of SRO 106 of 1992 and have a vested right of being promoted under the category of Government sponsored Foresters having done Rangers Training Course from a recognized Forest Rangers College, having five years' experience as Foresters on the norms prescribed by the Government for such training Course. Rules of 2004, by no stretch of imagination could affect the right of the appellants, who admittedly had undergone the said course

much before the promulgation of such rules and, thus, the finding of the learned Single Judge that the appellants have no right under Clause (c) of SRO 106 of 1992, cannot sustain the test of law and is liable to be set aside. Neither the training of the appellants nor their subsequent regularization as Foresters were questioned by the writ petitioners at any stage and in absence of that, it cannot be assumed that they do not fall in category (c) of the aforesaid rules, when admittedly, the appellants were nominated strictly in conformity with the rules in vogue at that relevant point of time when such sponsorship was held to be legally tenable in the eyes of law as envisaged under Clause 8.3 of the Entrance and Training Rules (Revised) 1992. Once the rule permits such candidates to be sponsored by the Industrial Firms and other Institutions, then it cannot be held that the sponsorship of such candidates does not fall within the ambit of Clause (c) of SRO 106, being Government Sponsored Foresters, more particularly in a situation when all the appellants were nominated to undergo the course by PCCF/Managing Director, SFC, before they came to be appointed on *ad hoc* basis as Foresters and subsequently regularized, as such, under the Special Provisions Act of 2010. Their subsequent regularization itself proves that the training was valid.

CONCLUSION:

61. For the reasons discussed herein above, the present appeal is allowed and the impugned judgment and order dated 21st July 2018, is set aside in the following manner:-

- (i) That the writ petitioners are not DDR Trained and, as such, have no locus to call in question either the seniority or the training, having passed Kashmir Forest Training Course, as such, the writ petition was not maintainable by the writ petitioners.
- (ii) The Government by making DDR Training as the distinguishing feature was competent in law to frame a separate seniority list in the cadre of Foresters based on Specialized Training DDR and such principle adopted by the Government being reasonable, fair and non-discriminatory, cannot be faulted. Thus, the quashment of the Circular and subsequent communication dated 25.10.2013, Forest Order No. 45 of 2015 dated 07.03.2015 and the communication No. FST/Lit/NG/280/2013 dated 17.12.2013, is not legally sustainable and the judgment to that extent is set aside as the petitioners (respondents herein) have a different route of seeking their promotion and cannot claim any parity with appellants herein.
- (iii) The dominating factor for further promotion to the post of Range Officer Grade-I, is not where such training is acquired on the recommendations of the Government. The dominating factor is DDR Training, which is the basis for promotion to the post of Range Officer and in absence of any challenge either to the training, it has to

be accepted that the appellants training is valid and, as such, are entitled to the benefit of said training and have a vested right of seeking promotion under Clause (c) of SRO 106 of 1992, which is directory in nature and not mandatory.

- (iv) Since the requirement of competitive examination under Rule 16 of 1990 Rules, was restricted to the category of candidates mentioned in Rule 8.1 (candidates sponsored by the States/Union Territories/Autonomous District Councils) and as per Rule 8, the competitive examination for direct recruits was not applicable to other categories of candidates. Thus, we hold that the requirement of passing of the competitive examination was only meant for those who were sponsored by the State Government and not for those who fall in category of Rule 8. Thus, the finding of the learned Single Judge that the competitive examination was mandatory as prescribed under Clause 16 to the candidates falling in category of 8.1, is also set aside. The dominating factor of having specialized training of DDR whether acquired before or after appointed as Foresters can be the valid basis by the Government for determining the seniority and can validly form a class apart. Thus, the issuance of Circular and subsequent communications is valid in the

eyes of law as the cadre management is exclusively the prerogative of the Government and the Government has free hand in the matter of managing any cadre of the service. We hold that the action of the Government in fixing the seniority of the appellants being DDR Trained is reasonable, fair and non-discriminatory.

- (v) We further hold that the Government has a power under the Administrative Instructions to fill up the lacunae/gap in the rules by issuing Executive Instructions by way of a communication dated 25.10.2013 and the Government has rightly filled up the gap in the rules by providing for inclusion of Trained DDR Foresters in the category of Trained DDR Foresters previously sponsored by the Government .

62. In view of the above, the connected appeal bearing LPA Nos. 124 & 125 of 2018, challenging the common Judgement and having similar set of facts, are also allowed and disposed of on the above lines.

(WASIM SADIQ NARGAL) (TASHI RABSTAN)
JUDGE JUDGE

This judgment is pronounced by me today on 07.09.2022, in terms of rule 138 sub rule 4 of J&K and Ladakh High Rules 1999.

(TASHI RABSTAN)
JUDGE

JAMMU
07.09.2022
Manzoor

Whether approved for reporting? Yes