

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 244 of 2017

**Present: Hon'ble Mr. Swarup Kumar Mishra, Member (J)
Hon'ble Mr. Tarun Shridhar, Member (A)**

Hari Shankar Upadhyay, aged about 56 years, S/o Late Khemananda Upadhyay, resident of 21 VIP Colony, Nayapalli, P.S. Nayapalli, Bhubaneswar, Dist-Khurda. At present working as Chief Executive, Regional Plan Resource Centre, Forest & Environment Department, Government of Odisha, Ekamrakanan, Nayapalli, Bhubaneswar-751015, Odisha.

.....Applicant

VERSUS

1. Union of India, represented through Secretary, Ministry of Environment and Forest, Govt. of India, Paryavaran Bhaban, CGO Complex, Lodhi Road, New Delhi.
2. State of Odisha, represented by its Chief Secretary to Government, Odisha, G.A.Department, State Secretariat Building, Bhubaneswar, Dist.-Khurda.
3. State of Odisha, represented by its Secretary to Government, Forest and Environment Department, Odisha, Bhubaneswar, Dist.-Khurda.

.....Respondents.

For the applicant : Mr.D.Mishra, counsel

For the respondents: Mr.J.K.Nayak, counsel
Mr.J.Pal, counsel

Heard & reserved on : 15.12.2020

Order on : 21.04.2021

O R D E R

Per Mr.Swarup Kumar Mishra, J.M.

The applicant has filed the present OA under Section 19 of the Administrative Tribunals' Act, 1985 seeking the following reliefs :

- “(i) Direct the Respondents to open the seal cover and consequentially directing the Respondents to grant promotion with effect from 12.8.2011 to the Rank of Chief Conservator of Forests quashing A/9 & A/12;
- (ii) Direct the Respondents to consider the case of the Applicant for Second promotion with effect from the date the Junior had been given promotion;
- (iii) Direct the Respondents to grant all consequential service and financial benefits;
- (iv) And direct the Respondents to pay the applicant all his service and financial benefits retrospectively with interest;
- (v) And further be pleased to pass any other order and orders as deemed fit and proper;

And for this act of kindness, the applicant shall as in duty bound every pray.”

2. The facts of the case in brief are that the applicant is a Member of Indian Forest Service. He had earlier approached this Tribunal in OA 369/2015 and this Tribunal vide order dated 23.7.2015 disposed of the said OA with direction to the respondents to consider and dispose of the representation of the applicant and communicate the decision thereon. In compliance with the direction of the Tribunal, the respondents considered the representation dated 23.7.2015 (Annexure A/8) and rejected the same vide order dated 5.11.2015 (Annexure A/9) by holding that the prayer of the applicant for opening of the sealed cover and promotion to the rank of Chief Conservator of Forests was rejected as it was devoid of merit. The applicant did not challenge the rejection order dated 5.11.2015. However, he made a further representation dated 21.10.2016 (Annexure A/11) to the State Government authorities reiterating the same prayer which has already been turned down. In the meantime, the aforesaid representation dated 21.10.2016 (Annexure A/11) has been rejected vide communication dated 6.2.2017 (Annexure A/12). The applicant has moved this Tribunal in the present OA challenging the above two rejection orders dated 5.11.2015 (Annexure A/9) and 6.2.2017 (Annexure A/12). The applicant has relied upon the judgment of Hon'ble Apex Court in the case of Harsh Kumar Sharma, IFS -vs- State of Punjab & Anr [2016 SCC Online SC 1540] in support of his case.

3. Respondents have filed their Counter. It is stated that the applicant is not entitled for promotion to CCF as vigilance case is pending against him in which charge sheet has been presented to the Court and the Court has taken cognizance of the charges. It is also stated that the representation has been rejected as per the existing Rules and guidelines with regard to promotion of AIS officers against whom the vigilance proceeding is pending. It is further stated that the OA is time barred since the applicant has challenged the impugned order dated 5.11.2015 in the year 2017. The respondents have therefore prayed for dismissal of the present OA being devoid of merit.

4. We have gone through the pleadings and citations relied upon by the learned counsels of both sides.

5. It is seen from the order sheet dated 27.7.2017 passed in this case that learned counsel for the applicant prayed for time to file petition for condonation of delay. But it is seen that no petition for condonation of delay has been filed in this case. The said ground of delay was also mentioned on 20.4.2017 in the order sheet of this case. Filing of successive representations before the same authority without approaching this Tribunal at the earliest to challenge the order dated 5.11.2015 cannot be overlooked. The applicant has prayed for grant of promotion w.e.f. 12.8.2011 to the rank of Chief Conservator of Forest. The delay in approaching this Tribunal to file this OA has not been duly explained. In a promotional matter, delay in approaching the Tribunal cannot be overlooked, since the rights already accrued in favour of some other officers, will be affected and normally Tribunal or Court hesitate to take any steps to unsettle the settled position, due to laches of the aggrieved person, in approaching the Tribunal for redressal of his grievance. The applicant has averred in the OA that some of his juniors have been given promotion without giving promotion to him. The case was earlier posted to different dates including 7.8.2019 and thereafter the case was adjourned to 11.8.2019 and thereafter to other dates. In the additional affidavit filed by the applicant on 8.8.2019, it has been inter alia mentioned that the Govt. of Odisha has promoted the applicant to the post of Chief Conservator of Forest w.e.f. 23.2.2012 vide Annexure A/23. He has also been given further promotion to the grade of Additional PCCF (HAG), Level 15 of the pay matrix w.e.f. 2.6.2018 vide Annexure A/24. The applicant has also mentioned in the said additional affidavit that one Sishir Kumar Acharya of the RR 1986 batch has been promoted to the grade of Additional PCCF by ignoring the applicant who belonged to RR 1985 batch and therefore the applicant claims that he is entitled to all such promotions w.e.f. 5.2.2016. He has also filed document dated 5.2.2016 (Annexure A/26) to that effect, by which two officers of RR 1986 batch have been given promotion. The said persons have not been made

parties in this case. Sri Sishir Kumar Acharya has also not been made party in this case. It is not known if the said persons have retired in the meantime or not. The applicant in the affidavit dated 8.8.2019 has shown his age as about 57 years. In case any relief is granted in favour of the applicant by giving him promotion w.e.f. 5.2.2016, then other junior officers who have already got promotion prior to the applicant to the post in question will be prejudiced if no opportunity of hearing is given to them in this case. The applicant inspite of the said fact has not made them parties for the reason best known to him. The applicant had also not sought for any permission to file the additional affidavit and the documents vide Annexure A/23 to A/25. The subsequent developments after filing of this OA and the promotion given to two juniors as per Annexure A/25 as per order dated 5.2.2016 have not been specifically averred in the OA by making any prayer for amendment in the pleading of the applicant. It is seen from Annexure A/23 that the disciplinary proceeding which was initiated against the applicant on 26.7.2014 has been closed by the government. Hon'ble High Court of Odisha vide order dated 12.9.2017 in CRL MC No. 5412 of 2016 filed by the applicant has discharged him from the charges in CTR case of 70/2007 which was pending in the file of Ld. Special Judge (Vigilance) Sambalpur by wetting aside the order dated 1.12.2015 passed by the said Court at Sambalpur. The sealed cover has been opened as per Para 18.1 of promotional guidelines referred in the said Annexure. These subsequent developments were not brought on record by making any amendment in the OA by the applicant. However, learned counsel for the applicant orally submitted before this Tribunal on 5.3.2020 that the applicant has been promoted and had prayed for ante-dating the promotion.

6. In the above circumstances and due to delay and laches on the part of the applicant, this Tribunal is not inclined to grant any relief to the applicant. Accordingly the OA is dismissed being devoid of merit. There will be no order as to costs.

(TARUN SHRIDHAR)
MEMBER (A)
I.Nath

(SWARUP KUMAR MISHRA)
MEMBER (J)