

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

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Registration (O.A.) No. 83 of 1986

Jagat Narain ..... Applicant.

Versus

State of U.P. & others ..... Respondents.

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Hon'ble S. Zaheer Hasan, V.C.  
Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

3 ✓ This is an application under Section 19 of the Administrative Tribunals Act XIII of 1985. The applicant, Jagat Narain, who had initially joined the U.P. Forest Service, was appointed to the Indian Forest Service in the senior scale in 1970. He challenged his seniority in a civil suit in 1977. According to him this matter is still pending in First Appeal in the High Court of Judicature at Allahabad. While the applicant was working as Divisional Forest Officer, Etawah in March, 1978 <sup>by money</sup> a draft was prepared which was handed over to the Sub-Divisional Officer, Kanpur for purchasing some angle iron from a local firm. Certain material supplied by the firm was sub-standard and it was returned to the firm for replacement but replacement was not made and this caused a loss of Rs.19,606.27 P. to the Government. In September, 1978 the applicant was promoted to the post of Conservator of Forests, but before he could take over <sup>November,</sup> he was communicated another order in/1978 cancelling his promotion and he was ordered to continue as Deputy Conservator of Forests/Divisional Forest Officer. Later on he came to know that the cancellation of the orders <sup>by was</sup> ~~were~~ due to incident of the purchase of angle iron from



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the firm at Kanpur. The applicant has alleged that he had in that case already initiated action against the Sub-Divisional Officer, who had handed over the draft to the firm without complying with the rules. Respondent no.1 when <sup>he</sup> came to know about the incident <sup>3/</sup> he stopped the promotion of the applicant without giving him any opportunity of being heard. However, respondent no.1 later on came to a conclusion that the responsibility for the purchase could not be levelled on the applicant and accordingly he was promoted as Conservator of Forests at Gorakhpur in July, 1979. In November, 1981 a show-cause notice was issued to the applicant to explain his stand in connection with the irregularities in purchase of the angle iron from the firm at Kanpur. The applicant replied to the show-cause notice on 13.1.1982. In February, 1983 on receipt of the enquiry report on the Kanpur incident from the Regional Director the Chief Conservator of Forests sent his report to the Joint Secretary, U.P. Govt. and in the last para of this report he had mentioned that the applicant was not at all responsible for this loss. On the basis of this correspondence the applicant alleges that he was finally exonerated <sup>3/</sup> and he has filed a true copy of the extract on the subject matter which is placed as Annexure 'IX' to the application. When the matter was finalised the applicant wrote to the Secretary, Forest Deptt. in April, 1985 requesting him to ensure that the said matter did not stand as a hinderance in his selection for promotion to the post of Additional Chief Conservator of Forests. This letter was forwarded by the Principal Chief Conservator of Forests to the State Government with a remark that the matter had already been considered in detail and the applicant had been exonerated at all levels. Formal orders for dropping the matter had still



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not been communicated and he requested that this may be done now and the matter finally dropped. In the meantime two posts of Additional Chief Conservator of Forests fell vacant. The applicant was senior to respondents 3 and 4 and he was expecting that <sup>he</sup> would be selected. But at this stage the matter of irregularities in the purchase of angle irons from the firm at Kanpur was raised which the applicant has stated were due to mala fide and ulterior motive. The Departmental Promotion Committee met in April, 1985 and his assessment was kept in a sealed cover subject to the clearance in the said matter. Till April, 1985 no charge-sheet had been served on the applicant and according to the applicant since he had already been promoted as Conservator of Forests in 1979 subsequent to the earlier incident of cancellation of his promotion and the Sub-Divisional Officer was found guilty this denial of promotion to him <sup>& adoption of sealed cover procedure</sup> was unjustified and arbitrary. After the selection of Additional Chief Conservator of Forests which was held in April, 1985 the applicant was asked to look after the work of Additional Chief Conservator of Forests, Garhwal by an order dated 30.3.1985. In September 1985 an order was issued for the promotion of respondent no.3, who is immediately junior to the applicant and <sup>later on</sup> of respondent no.4 who was the second junior to the applicant. Thereafter a charge-sheet was issued <sup>to him</sup> in August, 1985 on the same old incident of Kanpur. According to the applicant he <sup>had</sup> submitted a detailed reply and he had also brought out in this reply that the Minister concerned had already decided that the applicant was not guilty of the charges and, <sup>this</sup> ~~therefore~~, it was not open to the Secretary to treat the Minister's decision as in-correct and, therefore, they should have obtained a fresh order from the competent authority instead of treating the



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Minister's order as void. According to the applicant once the matter had been closed the charge-sheet issued in August, 1985 was manifestly without jurisdiction. Even in regard to the sealed cover procedure which <sup>or was</sup> adopted in the applicant's case he had raised an objection that since there was no occasion for adopting such a procedure the same was manifestly illegal. After the issue of the charge-sheet an enquiry was held and the enquiry officer exonerated the applicant completely and though the applicant had been working as Addl. Chief Conservator of Forests, Garhwal with effect from 1.9.1985 yet his pay was not authorised in this capacity as no formal appointment order had been issued. In January, 1986 other three of his juniors were also selected <sup>or to</sup> for the post of Addl. Chief Conservator of Forests. Even in this Departmental Promotion Committee the applicant's case was again put in sealed cover. Thus the sealed cover procedure had been adopted twice in the applicant's case and according to him his fate for promotion as Addl. Chief Conservator of Forests and Chief Conservator of Forests also appeared sealed to him. Since the matter <sup>or on</sup> of which enquiry was conducted related to <sup>or the</sup> a period 1977-78 and his promotion was already interfered with once in November, 1978, <sup>or</sup> The applicant has challenged the interference again on the same ground <sup>or in</sup> for his promotion as Addl. Chief Conservator of Forests. He has, therefore, sought relief for issue of a mandamus commanding the respondent no.1 to issue formal order <sup>or of</sup> for promotion to the post of Addl. Chief Conservator of Forests with effect from 1.9.1985, the date from which he is working in this capacity in compliance of the order dated 30.8.1985 and to open the sealed cover immediately and

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for issue of a certiorari quashing the charge-sheet dated 23.8.1985 and further directing the respondent not to proceed any further against the applicant in respect of <sup>31/ the case of</sup> purchase of angle iron<sup>2</sup>. He has further prayed that the respondent should be directed not to promote his juniors till formal orders for the applicant's promotion and appointment as Addl. Chief Conservator of Forests are issued and for drawing his pay as Addl. Chief Conservator of Forests with effect from 1.9.1985.

2. In the written statement filed on behalf of the State of U.P., respondent no.1, it has been said in the reply that there was an adverse entry awarding<sup>ed</sup> to the applicant during 1961-62 and again during 1964-65 and 1965-66. He also earned adverse entries during 1978 - 79. His case was duly considered by the Special Selection Board but he was not selected in the Indian Forest Service on account of two consecutive adverse entries. On a writ petition having been filed by him a fresh selection for initial recruitment to the Indian Forest Service was made in the year 1974 consequent to the judgment in that writ petition <sup>31/ by which</sup> and the previous selection was quashed. In the 1974 selection the applicant was selected in the Indian Forest Service. His seniority was determined as per Indian Forest Service (Regulation of Seniority) Rules, 1968. The applicant has been taken up thrice for lapses and bad performances. The last action against him was in connection with the purchase of angle irons at Kanpur. The adverse entries against him made in the years 1964-65 and 1977-78 were represented against by him and his representations have been rejected. After the issue of the orders for his promotion it came to light that the applicant as Deputy Conservator of Forests had

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committed gross financial irregularities in the purchase of angle irons and as such his promotion order was withdrawn as it had not been implemented<sup>34 till then</sup>. The applicant<sup>34</sup> later joined the post of Conservator of Forests<sup>34 on promotion</sup> and has been working as such till now. The departmental proceedings which were commenced against him had been in progress. In these proceedings the matter was thoroughly investigated. There were serious allegations of lapses and irregularities against the applicant. The charges were serious enough for an award of major punishment and the report made by the Regional Director, Brij Bhumi Kshetra, Agra on which the applicant had relied in regard to his responsibility cannot be given much importance. It was an uncalled for report. Neither the Forest Minister had passed any order exonerating the applicant. In fact the Forest Minister had referred the matter to the Chief Secretary seeking clarifications on certain points. The respondents have denied that there was any letter forwarded by the Chief Conservator of Forests in regard to the applicant. They have further said that the proposed disciplinary case has been finalised and it has been referred to the Union Public Service Commission for their information and approval and on receipt of the reply from the Union Public Service Commission final order shall be passed. According to them the applicant has not been exonerated<sup>34 of</sup> from the charges. They have further said that though the applicant has been asked to look after the work of Addl. Chief Conservator of Forests, Garhwal, this does give him any lien for the post and the applicant could not be promoted to the higher post till he is exonerated of the charges. Therefore, there was no illegality committed in promoting his juniors. Since

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disciplinary proceedings are going on against the applicant, his promotion had been validly postponed and proper action will be taken in this respect only after the disciplinary case is finalised.

3. There have been lengthy arguments in this case. We have heard the learned counsel for the parties. <sup>38</sup> *In addition to* ~~Except for~~ the facts as have been narrated in the application which were again elaborated at the Bar it was also said that the finalised disciplinary proceedings had been sent to the Union Public Service Commission on 29.1.1986. Subsequently during the course of the hearing we were informed that the entire disciplinary proceedings have since come to an end and a final order has been passed by the State Government imposing a penalty of censure. The learned counsel for the applicant had challenged this order as being without jurisdiction, <sup>39</sup> *perverse* and against rules and principles of natural justice because it has been passed during the pendency of the proceedings before this Tribunal. According to him the order has been passed mala fide and to justify harassment of the applicant. This stand was challenged by the learned counsel for respondent no.1, who contended that the order was not without jurisdiction and there has been no violation of the All India Services (Discipline & Appeal) Rules. According to him the order of censure dated 1.5.1987 was valid in law as it had been imposed <sup>40</sup> *after* ~~through~~ proper enquiry that the applicant while working as Divisional Forest Officer, Etawah, violated the directions/conditions of agreement contained in the Addl. Chief Conservator of Forests' letter dated 17.2.77 and made the payment to the firm without receiving the supply of material. It is further said on behalf of



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respondent no.1 that it was expected that the applicant should have at least sent the bank draft to the Sub-Divisional Officer with a covering letter, and a copy of which could have been kept in the office file as a written proof. By not doing so the applicant acted in an irresponsible way which caused financial loss to the Government. It was also submitted before us that an order dated 29.8.1987 promoting the applicant to <sup>by the</sup> post of Addl. Chief Conservator of Forest with immediate effect has been issued and if the applicant was aggrieved by the order of the Government dated 29.8.1987 promoting him, he should first represent against the order and exhaust his departmental channels before coming to the Tribunal for any relief against this order. It is not disputed that there were lacunæ in the order of purchase that was given to the Kanpur Firm on 28.3.1978. These purchases were to be made before the end of the financial year, i.e. 31.3.1978 and that the bank draft was sent by the applicant to the Sub-Divisional Officer at Kanpur with instructions on a chit of paper instead of through a proper letter. After this incident had taken place the applicant was promoted as Conservator of Forests and posted to Haldwani in September, 1978. In November, 1978 his promotion was cancelled perhaps on account of the above case which by then had attracted the attention of the Government. The applicant was ultimately promoted in July, 1979 and was also given selection grade with effect from 12.7.1977. In 1981 he was given a show-cause notice for minor punishment for the loss in the transaction at Kanpur to which he had replied immediately after receipt of the show-cause notice. Thereafter there is a lull in the entire proceedings and in March, 1984 the

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applicant was again promoted as Conservator of Forests, Level I. He was considered for further promotion in April, 1985 but his recommendations were kept in a sealed cover. At this time there were no charge-sheet pending against the applicant. In August, 1985 a fresh show-cause notice was issued to him and enquiry was started. At the sametime he was also asked to look after the post of Addl. Chief Conservator of Forests though he was not promoted. Ultimately a punishment of censure was imposed on the applicant.

4. Under ~~Rule 41 of C.F.S. (Conservator) Rules, 1969~~ <sup>3/</sup> ~~which are analogous to~~ All India Services (Discipline & Appeal) Rules, 1969 censure is one of the minor penalties. The Government of India's instruction on promotion of employees on whom penalty has been imposed lay down that censure is not a bar to eligibility to sit for a departmental/promotional examination or for promotion. Every person eligible for promotion and in the field of choice is to be considered for promotion and the imposition of this penalty by itself does not stand against the consideration of such person for promotion. The fitness for promotion is judged on the basis of over all assessment of the service record by the Departmental Promotion Committee. <sup>In this case</sup> The applicant has, after the imposition of the penalty, been promoted. The only point to be seen is whether the withholding <sup>3/ proper orders for</sup> of the promotion of the applicant when he was asked to look after the work of Addl. Chief Conservator of Forests on 30.8.1985 can be sustained on the grounds that disciplinary proceedings had been initiated against the applicant and, therefore, he could not be promoted till they were finalised. Normally if a person is found guilty and awarded a minor penalty he is



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<sup>3/</sup> after consideration by the next DPC and  
to be promoted in his turn. But if he was issued a charge-sheet for major penalty and is awarded a major penalty his case is to be considered only after the major penalty is over. This is because promotion should not be accorded to a person against whom disciplinary proceedings for the imposition of a major penalty have been initiated or are proposed to be initiated till the finalisation of the proceedings against him. In the case of major penalty he cannot be considered for promotion till the penalty is over. But in the case of minor penalty classification if the officer is otherwise <sup>& declared</sup> suitable, he is promoted. Therefore, a person can be considered for promotion pending disciplinary proceedings, if he was not under suspension or if the disciplinary proceedings were not for major penalty & the penalty had not been imposed. 3/

3/ 5. In the applicant's case his promotion as Addl. Chief Conservator of Forests came in April, 1985, when the Departmental Promotion Committee considered him and kept the recommendations under sealed cover. He was issued a charge-sheet only in August, 1985 while the Departmental Promotion Committee had met in April, 1985. It cannot, therefore, be said that the disciplinary proceedings had been initiated against the applicant at the time when his consideration for promotion came before the Departmental Promotion Committee in April, 1985. The initiation of proceedings starts and an officer can be said to be 'under investigation' only when a charge-sheet is filed or a charge memo is issued to the officer. This was done in August, 1985, but in spite of the issue of the charge-sheet the applicant was asked to look after the current duties of Addl. Chief Conservator of Forests, Garhwal on 30.8.1985. The question <sup>which</sup> therefore, remains to



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<sup>3/</sup>answered  
is whether the applicant's prayer for considering him promoted with effect from 1.9.1985 is based on sound grounds. The culmination of disciplinary proceedings <sup>3/</sup>ultimately <sup>2/</sup>cannot result only in imposition of a penalty of censure which does not deny promotion. It is a minor penalty and when a minor penalty is imposed the delinquent is likely to be considered for promotion from his due date<sup>3/</sup> after his case is considered by DPC. The applicant was in any case asked to look after the duties and has been doing so since then firstly under orders of the Government and later on by the stay granted in his case. Therefore, for all practical purposes he has been working as Addl. Chief Conservator of Forests with effect from 1.9.1985. There is also no doubt that some of his juniors have since been promoted and since the final penalty of censure does not affect his promotion or seniority and he was <sup>W abo</sup> considered fit by the <sup>2/</sup>Second Departmental Promotion Committee who <sup>3/</sup>kept the recommendations under sealed cover<sup>and</sup>. It can <sup>3/</sup>also not be said that the applicant had been superseded because he was not found fit. In our view, therefore, the applicant has a case for being considered for promotion on his turn with effect from 1.9.1985 and not with effect from 29.8.1987, as ordered by respondent no.1 in the order which has been since issued.

3/ 6. In the memorandum No.22011/1/79-Estt.(A), dated 30.1.1982 the Government of India had given detailed instructions in regard to the promotion of officers whose conduct was under investigation. According to this memorandum cases of officers against whom disciplinary proceedings are pending or a decision has been taken by the competent authority to initiate proceedings are considered for promotion by the Departmental Promotion



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Committee at the appropriate time but the findings are kept in a sealed cover. If on the conclusion of the departmental proceedings officer concerned is exonerated the sealed cover is opened and the recommendations are acted upon and if he could have been promoted earlier he is so promoted. On his promotion he gets the benefit of seniority and fixation of pay on a notional basis with reference to the date on which he would have been promoted in the normal course. He is not allowed arrears in respect to the period prior to the date of actual promotion. If any penalty is imposed as a result of the proceedings and if he is found guilty the findings in the sealed cover are not acted upon. The officer's case for promotion is then considered in the usual manner by the next Departmental Promotion Committee which meets in the normal course after conclusion of the proceedings. If, as a result of the proceedings, some blame attaches to the officer then the penalty of censure at least is imposed. Therefore, where the Departmental Promotion Committee ends with an imposition of a minor penalty, viz. censure, recovery of loss, withholding of increment or withholding of promotion, the recommendation of the Departmental Promotion Committee, which was kept in the sealed cover, is not acted upon but the case of the employee is considered by the next Departmental Promotion Committee when it meets after the conclusion of the proceedings and if the findings of the Departmental Promotion Committee are in favour of the employee, he is promoted in his turn if the penalty is that of censure. In the case of employees, who are awarded penalty of withholding of increment or promotion, promotion is made only after expiry of the penalty.



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7. The above position makes it clear that even with the imposition of a penalty of censure the case of the officer has to be considered by the next Departmental Departmental Promotion Committee which meets under the normal programme and if the officer is declared fit for promotion he is thereafter promoted. The applicant was subjected to the Departmental Promotion Committee in 1986 and his recommendation was kept under sealed cover. It is this recommendation which has been acted upon by the respondents in promoting him from 29.8.1987. No fresh Departmental Promotion Committee was held after the punishment was imposed on him.

8. The question that arises is that the matter for which the applicant has been taken up arose in 1981 and according to the facts of the case the applicant was promoted in 1984<sup>38 as Conservator of Forests</sup> and was also given selection grade from a back date. The learned counsel for the applicant had submitted that since he was considered for promotion<sup>39 in 1979 and again in 1984</sup> the facts of cases pending against him must have been taken into consideration and such cases come to an end with the promotion which is given to an employee. Thus, firstly, there was no <sup>39 action</sup> ~~occasion~~ pending on the incident of the purchase of angle iron in 1981 and, secondly, even if something was pending the same should be deemed to have concluded and, therefore, the action of the respondents to issue a show-cause notice and a memorandum in 1985 on an incident which had taken place in 1981 was extraneous and not in keeping with the norms laid down for the purpose. It was further contended that even in the enquiry which was held for the incident of 1981 in 1985 the recommendation of the Enquiry Officer had exonerated the applicant and, therefore, the issue of the penalty



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of censure after disagreeing with the findings of the Enquiring Officer on <sup>at the</sup> point that no covering letter was sent along with the bank draft, which was not a charge in the memorandum issued to the applicant, thus introducing a new aspect which could not be introduced for imposing the penalty and thus the penalty of censure has been incorrectly imposed on the applicant. We have seen the findings of the Enquiring Officer and also the order of punishment imposing the penalty of censure on the applicant. It is also evident that in 1981 an explanation was asked for from the applicant. He had replied to the same and thereafter no action was taken by the respondent no.1 and as alleged by the applicant even the Conservator of Forests had suggested that no responsibility could be placed on him and the matter <sup>thereafter</sup> lay in the Secretariat of respondent no.1. In the case of P.F. George v. The State of Tamil Nadu and another ( 1980 (1) S.L.R. 569 ) a Division Bench of the Madras High Court had in para 5 observed thus :-

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"5. The petitioner's learned counsel refers to the decision of Ismail, J. in Athithyaraman v. Commissioner, H.R. and C.E. Dept (1) wherein it has been held that the failure to hold actual enquiry for a considerable number of years since the date of framing of the charges, in the absence of any acceptable explanation from the department, will result in the order of penalty being held invalid. In that case, also, after serving very many memo of charges against the delinquent officer and after getting his explanations therefor, no action was taken for nearly 3½ years. In the meanwhile the delinquent officer was promoted to higher post and it was only thereafter an order of reversion was passed. It was in those circumstances, the learned Judge expressed the view that the failure to hold enquiry and pass final



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orders on the charges framed against the delinquent officer and the promotion given to the delinquent Officer in the meanwhile, will lead to an inference that the delinquent's explanation was accepted and proceedings were dropped. In that view, the learned Judge quashed the order of reversion which was passed after the delinquent officer had been actually promoted. The Mysore High Court in *Andrews v. District Education Officer, Bangalore (2)* had also taken the same view. In that case, certain charges were framed against a Government servant in the year 1961 for which the Government servant sent his explanation. Thereafter in March, 1964 charges were again framed which were substantially the same as those originally framed. The Mysore High Court held that the charges having been framed earlier and the petitioner's explanation obtained in relation thereto, if no action had been taken in respect of the charges, the Government servant will be entitled to assume that the charges have been abandoned or given up and in those circumstances it is not possible to frame a fresh charge memo containing substantially the same charges."

3/ The applicant's case has also similar ingredients as in the cases cited in the Madras High Court judgment. Therefore, in the ratio of this judgment when no action was taken against the applicant till 1985 even after the receipt of his reply and the officer was subsequently promoted, inference has to be drawn that the charges shall be deemed to have been given up and abandoned. It was not correct for the respondent no.1 to rake up the issue of the purchase of angle iron in 1981 and again in 1985. Moreover even the charge on which the punishment of censure has been imposed did not form a part of the memorandum given to the applicant when the charge memo was



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issued to him. The vires of the punishment of censure, therefore, becomes questionable.

31/ 9. If an employee acts out of corrupt and dishonest motive, he has to be dealt with relentlessly, but this is not the case of the applicant or the respondents. The applicant has been held responsible only for not sending the bank draft with a covering letter. He had sent it with a covering chit which act has been admitted to be correct. In our opinion if anything is done to impair the confidence of an employee as far as he acts bona fide and with diligence in the discharge of his duties and if he is unjustly criticised, will be against normal norms of administration. Such an employee who is honest and acts bonafidely must be supported by superiors and flimsy ground should not be discovered to impose a punishment when one is not called for. The employee should not be allowed to develop cold feet when he is not found to be dishonest in the course of official duties. An act or omission contrary to the Conduct Rules would certainly be a mis-conduct but we do not find that in the applicant's case even this plea has been taken by the respondents. The applicant had to act promptly and he did so to ensure utilisation of funds in the financial year which was coming to a close within a couple of days. He has not been held responsible for the disappearance of the chit which was sent with the Bank Draft.

10. On the above considerations, therefore, we feel that even the punishment of censure imposed on the applicant is within <sup>31/</sup> ~~in~~ sufficient justification and, therefore, it cannot be taken into consideration to deny the applicant regularisation of his promotion from the date he was

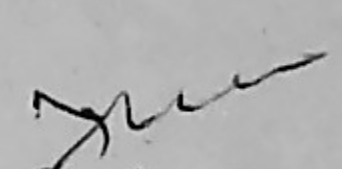


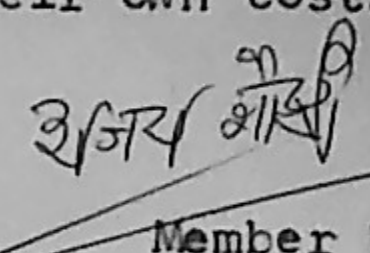
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allowed to look after the current duties of Addl. Chief Conservator of Forests, i.e. 1.9.1985 and ~~with~~ consequential benefits.

11. In conclusion, we allow the application in the above terms. Parties will bear their own costs.

  
Vice-Chairman.

  
Member (A).

Dated: January 5, 1988.

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