

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.171 of 1988

Date of decision: June 27, 1991.

Suresh Chandra Mohanty ... Applicant.

Versus

Union of India and others ... Respondents.

Manoranjan Rath ... Intervenor.

For the applicant ... Mr.G.A.R.Dora,
Advocate.

For the respondent No.1 ... Mr.A.B.Mishra,
Sr.Standing Counsel (Central)
Mr.T.Dalai,
Addl. Standing Counsel (C)

For the respondents 2 & 3 .. Mr.K.C.Mohanty,
Government Advocate (State)

For the respondents 4 & 6...M/s.K.Patnaik,
L.Pradhan, Advocates.

For the intervenor ... M/s.Aswni Kumar Misra,
S.K.Das, S.B.Jena, Advocate

C O R A M :

THE HONOURABLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HONOURABLE MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

J U D G M E N T

N.SENGUPTA, MEMBER (J), The applicant, an officer of the Indian Forest Service, Orissa Cadre has asked for quashing the panel of selection of Respondents 4 & 5 for the super time scale post of Conservator of Forests and to direct the

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respondents to consider his case and promote him to the supertime scale treating him as senior to Respondents 4 & 6.

The original respondent No.5 has been expunged vide order dated 18.10.1989.

In the meantime the applicant has been promoted as Conservator of Forests. Therefore, the relief is now confined to the question of seniority as amongst the applicant and Respondents 4 & 6.

2. Some of the facts which are not much in dispute may be stated at the outset. The applicant is a direct recruit who appeared at the competitive examination held in the year 1973 and after success in that examination he was appointed to the Indian Forest Service Cadre of Orissa and he joined the service on 2.4.1974. He passed the required training, passed the departmental examination and after completion of the period of probation was confirmed with effect from 1977. But the order of confirmation was passed in 1978. Respondents 4 & 6 who were in the State Forest Service were promoted and joined senior time scale post in the Orissa cadre of Indian Forest Service in October, 1978. In 1978, according to the applicant, he was promoted to the senior time scale post of Deputy Conservator of Forests, Rayagada with effect from 23.6.1978 but he actually joined the post on 7.7.1978. In 1979 another order vide Annexure-A/3 was passed stating that the applicant was promoted to the senior time scale post with effect from 2.4.1979.

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According to the applicant, this order was both redundant and was a result of mistaken impression about the length of service required for a direct recruit to be promoted to the senior time scale post and as such was invalid. The applicant has averred that he was promoted to the rank of Conservator of Forests and in 1987 a panel was prepared for promotion of Conservator of Forests to the Selection Grade and in that panel were included Respondents 4 & 6 but not he. That panel has been prepared taking the year of allotment of Respondents 4 & 6 as 1972 but 1972 cannot be the year of allotment of any of Respondents 4 to 6.

3. The case of the respondents 1 to 4, though separate counters have been filed, is that the applicant was really promoted to the senior time scale with effect from 2.4.1979 by which time Respondents 4 to 6 had been officiating against senior time scale post in the Orissa cadre of the Indian Forest Service. One Mr. P. R. Mohanty, a direct recruit of 1972, was the juniormost of the direct recruits who began to officiate in the senior time scale post prior to Respondents 4 & 6 and therefore, the year of allotment of Respondents 4 & 6 was 1972. The applicant was aware of the orders of his promotion with effect from 2.4.1979 and also of the order giving Respondents 4 & 6 1972 as the year of allotment much prior to the filing of the application, therefore, the application is barred by limitation.

4. Elaborate arguments have been addressed by learned Counsel for the parties. A petition for intervention was filed by one Mr. Manoranjan Rath, no specific order on that petition for intervention need be passed as the questions

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raised by Mr.Rath in his intervention petition are being covered by a discussion of the cases of the applicant and Respondents 1 to 4. However, it may^{be} indicated that Mr.Rath in his intervention petition has averred that he had filed a writ in the High Court of Orissa concerning the seniority and his writ was allowed. The High Court by its order in that writ petition directed the revision of the gradation list of the Officers belonging to the Orissa Forest Service. Mr.Rath has annexed the revised seniority list of Orissa Forest Service Officers as Annexure-A to his application and from that document it would be found that the name of Respondent No.4 is at Serial No.18, of Respondent No.5 at serial No.10 and that of Respondent No.6 at Serial No.17 whereas his (Mr.Rath's) name is at serial No.28. So, Mr.Rath on his own showing is junior to Respondents 4 & 6, the applicant has sought relief to declare him senior to Respondents 4 & 6. So there is a very remote possibility of the interests of the intervenor being affected.

5. On behalf of the State Government it has been urged By Mr.K.C.Mohanty, learned Government Advocate (State) that in November, 1982 the Government of India in the Ministry of Home Affairs, Department of Personnel and Administrative Reforms considered the question of the year of allotment of Respondents 4 to 6 and they in their letter No.18014/4 dated 17.11.1982 informed the State Government that Respondents 4 to 6 were placed below Shri R.R.Mohanty and above Shri S.C.Mohanty (the applicant). Mr.K.C.Mohanty, has further contended that copy of this decision was

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communicated to the applicant on 23.12.1982. Mr.Dora has urged that the applicant had no knowledge of this letter, as there appeared to be some dispute we requested learned Government Advocate (State) to produce the relevant document in support of the contention that the applicant was made aware of the decision of the Government of India conveyed to the State Government by their abovesaid letter dated 17.11.1982 and Mr.K.C.Mohanty, produced the document of which xerox copies have been substituted. Mr.K.C.Mohanty has referred us to the Issue Register of the Forest Department of the State Government, particularly to serial No.35663 but it contains no details. So, it is not of much help to us. Mr.Mohanty, learned Government Advocate (State) for the State Government and Mr.K.Patnaik, learned counsel for the Respondent No.4 have drawn our attention to a civil list of the Indian Forest Service as on 1.1.1983 and have contended that in that civil list the applicant was shown junior to Respondent No.4 and in that civil list the year of allotment of Respondent No.4 was shown as 1972. Mr. Dora, learned counsel for the applicant has contended that ~~xx~~ no civil list was supplied to the applicant. Therefore, ~~he~~ is not expected to know what was written in that civil list. This argument of Mr.Dora is little bit difficult to accept. Because it is common knowledge that civil lists are supplied to different Offices and interested persons referred to them, however ~~xx~~ there is a note in the first page of that civil list which runs thus :

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" The contents of this list should not be deemed to convey sanction or authority in the matter of seniority, pay and allowances. "

Showing of Respondent No.4 as senior to the applicant may not be of much consequences with regard to the question of limitation. But the applicant has himself produced three Disposition lists of the All India Service, O.A.S. (S) and O.A.S. (I) Officers in Orissa of the years 1985, 1986 and 1987. Mr. Dora, learned counsel for the applicant has contended that as would be found from these disposition lists, inter se seniority of Respondents 4 to 6 and their years of allotment had not been fixed. Therefore, no question of any limitation could arise as no determination of seniority or the year of allotment of Respondents 4 to 6 was made till 1987 and the application was filed in 1988. What that note says is that inter se seniority of Respondents 4 to 6 had not been determined but these notes did not touch the question of seniority of those respondents over the applicant who has been shown as junior to the respondents. Mr. Patnaik, learned counsel for the Respondent No.4, has cited some decisions with regard to not disturbing a seniority which stood for a long time. He has referred us to the decisions in the case of K.R. Mudgal and others v. R.P. Singh and others reported in AIR 1986 SC 2086, R.S. Makashi and others versus I.M. Memon and others, reported in AIR 1982 SC 101. In both the cases the challenges were made more than a decade after the seniority list and the rules came into force. In the instant case, the present application has been filed within about 5 years from the date of the civil list of 1983. Therefore, those two decisions cannot be of much help to Mr. Patnaik.

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6. From what has been stated above, it would appear that the real grievance of the applicant is that since he had begun officiating in a senior time scale post prior to the promotion of Respondents 4 to 6, to the Indian Forest Service cadre, Respondents 4 to 6 could not have been given the year of allotment prior to his (applicant's). For a consideration of this aspect of the case it is necessary to examine the implications of Annexures-A/2 and A/3. For convenience the relevant portions of Annexures A/2 and A/3.

" No. IF(A)-48/78 (Pt.) 16013/FFAH. Sri Suresh Chandra Mohanty, IFS (Probationer) at present Assistant Conservator of Forests, Development Circle, Cuttack is transferred and appointed to hold charge of the post of Deputy Conservator of Forests, Rayagada Division with headquarters at Rayagada on a purely temporary basis vide Sri Sudhanshu Sekhan Padhi, I.F.S. transferred. "

(There has been a mistyping i.e. ' posted ' in place of 'appointed' in the 4th line of Annexure-A/2 and the quoted portion is ^{as} corrected).

" No. 17650/Gen. Shri Suresh Chandra Mohanty, IFS is promoted to senior time scale of the Indian Forest Service with effect from 2nd April, 1979. "

We have underlined the portion to bring out what the nature of the appointment ^{under An-A/1} was. Whatever may be the case with regard to the civil list and the disposition lists, there can be no denying of the fact that the applicant knew that an order of his promotion to the senior time scale with effect from 2.4.1979 was passed on 13.7.1979. The capacity of the State Government to pass an order of promotion cannot be doubted because that is provided under the relevant Rules relating to the Indian Forest Service. i.e. the Indian Forest Service (Recruitment) Rules, 1966. A distinction has ^{to be} been made between an order passed without

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jurisdiction and an order passed wrongly, in the former case the order does not exist in the eye of law whereas in the latter it holds the field till it is declared to be invalid. Therefore, so long as ~~the~~ order passed in Annexure-A/3 was not declared invalid, it ^{remained} ~~may be~~ ~~valid~~ and that was the order ~~against~~ which the grievance of the applicant practically is. This order, Annexure-A/3 was undoubtedly passed much prior to 1.11.1982 and therefore, this Tribunal has no jurisdiction to deal with the grievance of the applicant. In this connection, reference to the case of V.K.Mehra versus The Secretary, Ministry of Information and Broad-Casting, New Delhi reported in ATR 1986(1)CAT 203 may be made.

7. We have quoted the relevant portions of Annexures-A/2 and A/3. In Annexure-A/2 what has been mentioned is that the applicant was appointed to hold charge of the post of Deputy Conservator of Forests on a purely temporary basis whereas in Annexure-A/3 it was clearly mentioned that he was promoted to the senior time scale with effect from 2.4.1979. Annexure-A/2 is really a reproduction of the notifications No.16013 dated 23.6.1978 by the Forests, Fisheries and Animal Husbandry Department of Government of Orissa. On that date orders of transfers of ^a number of persons belonging to the Indian Forest Service, and Orissa Firest Service were ^{passed} ~~made~~. From Notification No.16013 it would be found that the applicant was appointed to hold charge of the post of Deputy Conservator of Forests, Rayagada on a purely temporary basis and Shri S.D.Padhi, I.F.S. was transferred. In the order of transfer of Shri S.S.Padhi and all others whose transfers were made

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by notifications issued on that date there was no mention of anybody appointed to hold charge or of being appointed on a purely temporary basis. During the course of arguments it has come to be undisputed that between 23.6.1978 and 2.4.1979 the applicant did not draw pay in the senior time scale but he was drawing a pay of an Assistant Conservator of Forests i.e. in the junior time scale. Almost a similar case came up before the Hon'ble ^{- Supreme -} Court for consideration, in Ramakant Shripad Sinai Advalpalkar, versus Union of India and others, reported in AIR 1991 SC 1145, wherein it was observed that when ^{an} officer substantively holds a lower post merely because he is required to discharge the duties of higher post, he cannot be treated to have been promoted and ~~in~~ exigencies of public service may necessitate situations for such appointments and consideration of seniority does not enter into it. Of course in that case case before Their Lordships of the Supreme Court there was a specific mention that the person who was asked to discharge the duties of a higher post was to get a charge allowance besides the pay of his substantive post but that does not make much difference. In view of this position we would say that as there is no case of any of the parties that there was any other direct recruit between Shri P.R. Mohanty and the applicant, the respondents 4 to 6 were bound to be placed in between Shri P.R. Mohanty and the applicant.

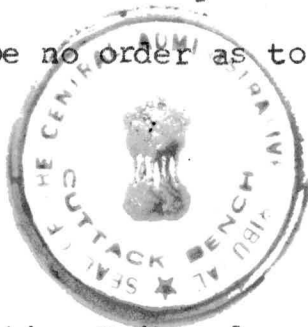
8. To sum up, our conclusions are that on a comparison of Annexures-A/2 and A/3 it would be evident that by Annexure-A/2 the applicant was not promoted to the

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senior time scale under Rule 6A of the I.F.S. (Recruitment) Rules, 1966 but he was asked to hold charge of the post of Deputy Conservator of Forests, the application is barred by limitation as the order which gave rise to the grievance of the applicant was passed in the year 1979, and as the applicant was asked to hold charge of a post it cannot be said that he officiated in a senior time scale post so as to ^{- attract the -} ask ratio of decision of AIR 1984 SC 1527 (G.P. Doval and others v. The Chief Secretary, Govt. of U.P. and others).

9. The applicant cannot get the reliefs, he has prayed for. There shall be no order as to costs.

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 Vice-Chairman



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 Member (Judicial)

Central Administrative Tribunal,
 Cuttack Bench, Cuttack.
 June 27, 1991/Saranghi.