

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No. 485 of 1989.

Date of decision : November 20, 1990.

Rabindranath Mohanty ... Applicant.

Versus

State of Orissa and others ... Respondents.

For the applicant ;; M/s. Bijan Ray,
Ashok Mohanty,
B. Mohanty, B. K. Bal,
Sanjiv Das, Advocates.

For the Respondent No. 1 : Mr. K. C. Mohanty,
Government Advocate (State)

For the Respondent No. 2 : None.

For the Respondent No. 3 : Mr. A. K. Misra, Advocate.

For the Respondent No. 4 : Mr. A. B. Mishra,
Sr. Standing Counsel (Central)

C O R A M :

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

A N D

THE HONOURABLE MISS USHA SAVARA, MEMBER (ADMN.)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? Yes.
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 and Respondent No. 3 belong to the Orissa Cadre of Indian Forest Service. Respondent No. 2 was the Minister of State, Forests, Orissa at the time of filing of the application. The applicant has prayed for expunction of the adverse remarks in his

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confidential roll for the year 1988-89 and for setting aside the appointment of Respondent No.3 as Principal Chief Conservator of Forests (Principal C.C.F.), Orissa.

2. The facts alleged by the applicant are that he was appointed to the Indian Forest Service (I.F.S.) directly in the senior time scale with effect from 1.10.1966 and he was allotted the year 1961. In due course he was promoted to the rank of Additional Chief Conservator of Forests in July, 1985. One post of Principal C.C.F. and three other posts of C.C.Fs. were created in October, 1987 by the Central Government, one was for Kendu Leaves and the other, Director, Social Forestry. In January, 1985 guidelines for consideration of the eligibility to be promoted to the rank of C.C.Fs. were laid down and it has been provided that a person who has completed 16 years of service with reference to his year of allotment could be considered for the post of Chief Conservator of Forests. He (the applicant) after revision of the Orissa cadre of Indian Forest Service was the seniormost Additional Chief Conservator of Forests and in ordinary course would have been appointed as Chief Conservator of Forests. But Respondents 1 and 2 placed one Shri L.K. Patnaik, four places junior to him, to function in the rank of Chief Conservator of Forests i.e. Director of Social Forestry which post he was holding before cadre revision. The post of Chief Conservator of Forests which was to be filled up within a period of six months according to the service Rules was made to be kept

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vacant for a considerable time simply to put him at a disadvantage for being considered for the post of Principal Chief Conservator of Forests which was to fall vacant on 31.3.1989 on the retirement of Shri S.C.Padhi and had he (the applicant) been placed in the rank of Chief Conservator of Forests in time, he would have ranked equal with Respondent No.3. Respondent No.2 due to reasons of personal vendetta and malice, as Minister in charge of Forests and accepting authority, made adverse entries in his (applicant's) confidential roll for the year 1986-87. Against this he made a representation ^{the} but as ^{the} representation did not meet with favour, he filed an original application bearing ^{number} O.A.No.258 of 1988 in this Tribunal to expunge those adverse remarks. This Tribunal by its judgment dated 26.5.1989 ordered expunction of the adverse remarks. After the pronouncement of that judgment, Respondent No.1 delayed implementing the judgment on some pretext or the other. Respondent No.2 in order to nullify the effect of the judgment of this Tribunal in O.A.258 of 1988 which, as stated earlier, was delivered on 26.5.1989, again passed adverse remarks for the year 1988-89 which was communicated to him by Government of Orissa in General Administration (S.E.) Department D.O. letter No.7906 dated 19.9.1989 (vide Annexure-5). As the adverse remarks are the result of the ill-will ^{and} that the Respondent No.2 bore against him (the applicant), for extraneous reasons, such remarks should be expunged from his confidential roll for the

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year 1988-89. The applicant has stated some facts in the application alleging that from those facts inference of malice on the part of Respondent No.2 may be drawn but they need not be set out here.

With regard to his prayer for declaring the appointment of Respondent No.3 as Principal C.C.F. as invalid, the applicant has averred that for being promoted to the supertime scale of the I.F.S. in which the post of Chief Conservator of Forests is included, vigilance clearance is essential. But against Respondent No.3 there were allegations and no vigilance clearance was obtained before promoting him as Principal C.C.F. He has further averred that he has been given to understand that when Respondent No.3 was in the Orissa Forest Corporation Limited, the Chairman of that Corporation, Mr.C.Venkataramani submitted a number of reports against Respondent No.3 to Respondent No.1 and to the Director General of Vigilance. Not only were there allegations against Respondent No.3's conduct but he (Respondent No.3) was professionally inferior at all stages and had undergone bypass surgery of heart rendering him physically unfit to hold the post of Principal C.C.F. There are other averments in the application but it is not necessary to state them in detail in this judgment except referring to them whenever necessary while dealing with the contentions advanced by learned counsel for the parties.

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3. Respondent No.1's case is that the application is liable to be dismissed since the applicant before approaching this Tribunal had not exhausted all the remedies available to him under the All India Services (Discipline & Appeal) Rules, 1969. Respondent No.1's case, without referring to the details, may be stated as follows. Promotion to the post of Principal Chief Conservator of Forests is to be considered according to the seniority of the Officer and as Respondent No.3 was the seniormost Officer in the Orissa Cadre of Indian Forest Service on 31.8.1989; he was promoted as Principal Chief Conservator of Forests and the applicant cannot have any grievance. According to the Rules of procedure for recording entries in the confidential rolls of Additional Chief Conservator of Forests, the reporting authorities are the Secretary and the Additional Development Commissioner, countersigning authority is the Chief Secretary or the Additional Chief Secretary and the accepting authority is the Deputy Minister or the Minister in charge of the Department, therefore, the allegation of the applicant that Respondent No.2 exceeded his authority and power to make adverse entries in the annual confidential roll of the applicant for the year 1986-87 is unjustified. The representation of the applicant dated 19.1.1988 as per the provisions of Rule 10 of the All India Services (CR) Rules, 1970 was to be sent to the concerned authorities and accordingly it was sent to Respondent No.2 for his comments under General Administration Department letter dated 8.9.1988. Before the comments could be obtained

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from Respondent No.2, the applicant approached this Tribunal and nothing further remained to be done by the Government in that regard. There was really no delay in implementing the judgment of this Tribunal, whatever delay was there, was due to the fact that the Government wanted to examine the feasibility of preferring an appeal to the Supreme Court and in the process had to obtain the views of the Law Department and after receiving the opinion of the Law Department, the judgment was implemented and the applicant was informed of the position by letter No.4192 dated 3.7.1990. With regard to the impugned entry for the year 1988-89 the case of the Respondent No.1 is that the views of the accepting authority would prevail over those of the reporting and the reviewing authority, and whatever remains after scrutiny by the accepting authority would be the final remarks. That is also the reason why the adverse remarks recorded by Mr.C.Venkataramani in the confidential roll of Respondent No.3 were superseded by the remarks of the accepting authority. The accepting authority after close observation of the performance of the applicant recorded his views for the year 1988-89 and the remarks were communicated to the applicant. No vigilance proceeding was pending against Respondent No.3 at the time he was promoted as the Principal Chief Conservator of Forests, however vigilance clearance against Respondent No.3 had really been asked for before his promotion to the rank of Principal Chief Conservator

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of Forests. In February, 1987 the Central Government amended the All India Services (CR) Rules, 1970 and according to those Rules and as finally modified, for persons working on deputations as Managing Director or General Manager of Corporations, Boards etc. the reporting authority would be the Chairman of the Corporation or the Board, as the case may be, the reviewing authority, the Development Commissioner and the accepting authority would be the Minister in charge of the Department. This three-tier system was resorted to for having a proper vigil on the performance of an ~~certain~~ officer and ~~the~~ Respondent No.2 was well within his limits in passing those remarks. They have also taken the ground that the applicant had not made any representation against the adverse remarks communicated to him under Annexure-5 and as such ought not to have approached this Tribunal. They have also taken the plea of non-joinder of parties i.e. non-joinder of Secretary to Government of Orissa in the Department of Forests, Fisheries and Animal Husbandry.

4. After the filing of the counter by Respondent No.1, the applicant has filed a rejoinder and in it, it has been stated that seniority alone is not the criterion for promotion to the post of Principal Chief Conservator of Forests and that the requirement of vigilance clearance being a condition precedent and that not having been obtained before promoting Respondent No.3, the appointment of Respondent No.3 as

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Principal Chief Conservator of Forests is not supportable in law. In the rejoinder reference is made to the fact ~~for~~ ^{of} expunction of the remarks for the year 1986-87 and also to the fact that the allegations which were made against the applicant about the death of elephants in the Forest in the previous adverse remarks were repeated in the impugned adverse remarks. The applicant has further averred in his rejoinder that infact he made a representation addressed to the Secretary to the Chief Minister of Orissa for redressal of his grievance with respect to the annual confidential roll entry for the year 1988-89 and has annexed a copy of the forwarding letter. He has also annexed a copy of the report of Respondent No.2 of May, 1988 to show that the remarks made by Respondent No.2 are contrary to the observations made in his inspection report.

5. The Respondent No.3 has filed a separate counter the substance of which is that after the initial appointment in 1955 as an Orissa Forest Service Class II Officer, in due course he was promoted to Orissa Forest Service (Class I) in 1959. Upon the creation of the Orissa cadre of Indian Forest Service he was inducted into the said cadre as an initial recruit and was allotted the year 1959 as the year of allotment. There were litigations concerning the initial constitution of the Indian Forest Service cadre and the matter was taken to the Supreme Court. Some Officers of the Orissa cadre of Indian Forest

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Service filed Original applications which were disposed of by this Tribunal on 9.2.1990 directing the Government of India to redetermine the seniority in accordance with the directions of the Hon'ble Supreme Court. Though one Special leave petition was filed in the Hon'ble Supreme Court against the judgment of this Tribunal, the Hon'ble Supreme Court refused leave. At the present moment he (the respondent No.3) being the seniormost officer in the Orissa cadre has been appointed as the Principal Chief Conservator of Forests. No guidelines have been issued by the Government of India with regard to the appointment of Principal Chief Conservator of Forests, even though the State Government asked the Central Government for such guidelines. There being no guidelines, the seniormost amongst the Chief Conservator of Forests which is a post at the supertime scale, is to be appointed as the Principal Chief Conservator of Forests. With regard to the applicant's allegations of adverse remarks against him (respondent No.3) by Shri C. Venkataramani, the case of Respondent No.3 is that he never received any such communication of adverse remarks. In short, his case is that he having received no communication of adverse remarks and he being the seniormost Chief Conservator of Forests at the time of his appointment as the Principal Chief Conservator of Forests, was to be appointed as such and he has denied all other material allegations against him made by the applicant.

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6. No counter has been filed by either Respondent No.2 or by Respondent No.4.

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7. We have heard Mr. Bijan Ray, learned counsel for the applicant, Mr. K. C. Mohanty, learned Government Advocate (State) for Respondent No. 1, Mr. A. K. Misra, learned counsel for Respondent No. 3 and though no counter has been filed by Respondent No. 4, Mr. A. B. Mishra, learned Senior Standing Counsel (Central) has addressed arguments on behalf of the Central Government. From the narrations of facts made above it may be stated that the applicant prays for really two reliefs, namely for expunction of the adverse remarks by Respondent No. 2 in his confidential roll for the year 1988-89 and by quashing the appointment of Respondent No. 3 as Principal Chief Conservator of Forests to direct the Respondent No. 1 to consider his (applicant's) case for being appointed as the Principal Chief Conservator of Forests. We would deal first with the expunction of adverse remarks as communicated to the applicant in the letter vide Annexure-5. There is no dispute that for recording of remarks a three tier system of reporting officer, reviewing officer and accepting officer has been provided for and that is being followed. It is also not disputed that unless there are strong and cogent grounds, the Tribunal cannot sit in judgment over the views expressed by any of those authorities in recording their own views or remarks. But only when a person aggrieved is able to show that the remarks was the result of malice or was based on extraneous consideration can the Tribunal interfere. Learned Advocates appearing for the parties have not disputed the allegation of the applicant that Respondent No. 2 had passed adverse remarks

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in the confidential roll of the applicant for the year 1986-87 which was the subject matter of challenge in an earlier original application filed by the applicant for expunction and this Tribunal directed expunction of those adverse remarks from the relevant confidential roll of the applicant.

8. Before proceeding further to examine the question of malice or extraneous consideration on the part of the Respondent No.2 in giving his remarks in the Annual Confidential roll of the applicant for the year 1988-89, it would be worth-while to notice a contention advanced by Mr. K.C. Mohanty, learned Government Advocate (State) about the preliminary objection. The objection is that under the Departmental Rules a person has a right of representation against any adverse entry made in his confidential roll and the applicant had not made any such representation before approaching this Tribunal. His argument, put in otherwords, is that the present application is barred under section 20 of the Administrative Tribunals Act, 1985 (hereinafter to be referred to as the Act). This contention of Mr. K.C. Mohanty needs a careful examination. It has been contended on behalf of the applicant that infact a representation was made and that was received by the appropriate authority but no reply to that representation was given to him. In support of this contention a copy of the letter addressed by the applicant to the Secretary to the Chief Minister, Orissa dated 23.11.1989 has been filed. Mr. K.C. Mohanty has contended that that was no compliance with the requirement of the

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Rules because to the Chief Minister or to the Governor only a memorial after disposal of the representation could lie. The receipt of this letter was at one time disputed, But from a copy of the endorsement on that application it is found that the letter with a sealed cover was acknowledged to have been received from the applicant on 24.11.1989. On going through the copy of the letter it is found that to that letter was annexed a representation which the applicant requested to be placed before the Hon'ble Chief Minister, Orissa. In paragraph 2 of that letter a specific reference was made to a representation and also ^{to} some of the paragraphs of that representation dealing ^{with} on the question of the adverse remarks given by Respondent No.2 in the character roll of the applicant. What the Rules enjoin is that a representation should be made against the adverse entry within 45 days of receipt of the communication of the adverse remarks. The communication is dated 19.9.1989 which, it is alleged by the applicant, was received by him on 23.9.1989. Ofcourse the representation was made a little beyond 45 days from the date of receipt of the communication but that need not be taken serious notice of in the circumstances of the case. We have also found that infact while considering the case of the applicant for promotion, it was observed that the adverse entries in the character roll of the applicant for the year 1988-89 ^{were} _{was} under review which would suggest that the Government had taken notice of the

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representation and decided to consider the representation on its own merits. In the face of these facts we are unable to accept the preliminary objection of Mr.K.C. Mohanty that the application is not entertainable by the Tribunal being hit by Section 20 of the Act.

9. Now, reverting back to the question under consideration, namely whether ~~had~~ the applicant been able to show any malice on the part of ~~the~~ Respondent No.2 in giving adverse remarks. We have already referred to the fact that for the adverse remarks in the character roll for the year 1986-87 the applicant approached this Tribunal for expunction and those adverse remarks were expunged. Malice is an inference from proved facts. Because malice being a state of the mind, seldom can be proved by direct evidence. For the remarks for the year 1986-87 Respondent No.2 as the accepting authority referred to the negligence of the applicant as Chief Wildlife Warden for the death of two elephants, one at Nandan Kanan and the other at Sitalbasa. In the impugned document, Annexure-5 once again that was one of the items for the adverse remark. Character rolls are for particular years, the previous character rolls are relevant only to the extent of judging whether the officer against whom adverse remark was previously made improved or not but ^{not failing} no previous ~~feeling~~ can form the basis of a character roll for a year in which it did not occur. Apart from that, nearly four months prior to the communication in Annexure-5, judgment in the previous case i.e. O.A.258 of 1988, expunging the remarks for the year 1986-87, was delivered. Therefore, there is much substance in the contention of the

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applicant's counsel that there was a repetition of the self-same remark in Annexure-5 which was unjust. In the communication it was stated that not a single commercial plantation with institutional finance had been grounded in the State and this was inspite of a mandate to undertake commercial plantation. With regard to this ~~the~~ allegation the applicant has produced a copy of the ^{two} notes of Respondent No.2 dated 25.5.1988 which is Annexure-16. At that time the applicant was the Managing Director of Orissa Plantation Development Corporation (O.P.D.C.). Respondent No.2 paid a visit to Jamadarpalli in the district of Sambalpur and observed that the condition of the plants was good and needed watch. He visited O.P.D.C., Rourkela on 16.5.1988 and he found the condition of the plants to be quite healthy and the people's involvement was encouraging and the Central Nuesery in Panposh Circuit House compound was maintained well. On 19.5.1988 he paid a visit to O.P.D.C., Keonjhar at Tikara and he advised adequate watch and ward to maintain the growth. From these remarks by Respondent No.2 himself it would be apparent that the applicant infact has taken steps or interests for the plantation. Therefore, we have no difficulty in saying that that part of the adverse remarks which relates to not undertaking the plantations and lack of initiative on the part of the applicant ~~are~~ unfounded. Respondent No.2 made vague and general allegations against the integrity of the applicant without referring to any specific instance. These are sufficient to infer that Respondent No.2 was ~~having~~ have some extraneous considerations while writing the

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remarks. Respondent No.2 made a reference to a memorandum to the Chief Minister by 25 Members of Legislative Assembly against the conduct of the applicant but he was conspicuously silent about the result of the memorandum. For our satisfaction we have referred to the remarks of the Reporting Officer and the Reviewing Officer for the year in question (copy produced by the State Government for our perusal). The Reporting Officer had no doubt about the integrity of the applicant and the reviewing Officer i.e. the Chief Secretary to the State Government agreed with the remarks of the Reporting Officer. Respondent No.2 in Annexure-5 has not indicated, as already stated above, any specific instance nor has he given any indication as to why he doubted the integrity of the applicant. Thus, it can be found that the adverse remarks by Respondent No.2, who though noticed has not cared to appear and support his remarks, are not sustainable.

A submission has been made on behalf of the respondents on the strength of decision of the Hon'ble Supreme Court reported in AIR 1972 SC 2118 (Rajendra Sareen v. State of Haryana) that a direction may be issued for the Government to forward the representation, if any filed, by the applicant to the Governor for consideration and disposal. That direction was given by the Hon'ble Supreme Court in the peculiar facts and circumstances of the case before Their Lordships; a writ had been filed in the Delhi High Court for quashing certain adverse remarks made against the applicant before the High Court and the Delhi High Court dismissed the

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writ petition, holding that the allegations of malafides did not appear in connection with the adverse remarks which were contained in Annexure-1 to the writ petition and secondly the appellant had come to the Court without making any representation against the adverse remarks which he was entitled to do under the Rules. Their Lordships found it unnecessary to consider some of the aspects of the allegations made by the appellant before them and in these circumstances, they were of the opinion that the ends of justice could be amply met with if the representations that the appellant had to make against the adverse remarks made against him were considered by the highest executive of the State namely, the Governor. Their Lordships further observed that they were expressing no opinion as to whether the appellant would be able to make out the allegations of malafides made against the Minister concerned. The facts of the instant case differ from those of the report^{ed} one in material particulars namely the applicant has not only averred about instances suggesting malafides on the part of Respondent No.2 but he has filed some documents in support of his allegations. The Governor is the highest Executive of the State and in our opinion, unless the circumstances are so compelling, a representation filed by an aggrieved officer need not be forwarded to him for consideration, of course where Rules provide for a memorial that is another matter. For these reasons we are unable to accede to the prayer of the respondents for recommending consideration of the representation made by the applicant on 23/24.11.1989 by the Governor. Accordingly, we direct quashing of the

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adverse remarks vide Annexure-5.

10. With regard to the other prayer i.e. the one relating to setting aside the appointment of Respondent No.3 as Principal Chief Conservator of Forests and to consider his (applicant's) case for promotion to the rank of Principal Chief Conservator of Forests, it has been urged on behalf of the respondents that the prayer cannot be entertained on several grounds such as, plurality of remedies sought for, locus standi of the applicant to challenge the appointment of Respondent No.3 as the Principal C.C.F. etc. On behalf of the applicant it has been urged that as a vigilance enquiry was pending against Respondent No.3 on the date of the order of his promotion to the rank of Principal Chief Conservator of Forests, he could not be promoted and further that as there was no Departmental Promotion Committee properly constituted for considering the fitness of Respondent No.3, the promotion of Respondent No.3 to the rank of Principal C.C.F. is illegal. With regard to the Departmental Promotion Committee it has been urged on behalf of Respondents 1 and 3 that for promotion to the rank of Principal Chief Conservator of Forests no Departmental Promotion Committee is provided for under any Rule or Circular. Mr. Kswini Kumar Misra has referred to Annexure-2 to the application. This annexure is a Government of India instruction providing guidelines for selecting persons for appointment to Senior time scale/ Selection grade and Super time scale posts of the Indian Forest Service. Mr. Misra has urged

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that no doubt a selection or a screening committee is to be constituted for promotion to the senior time scale or to the selection grade or to the supertime scale of the Indian Forest Service, But the post of Principal Chief Conservator of Forests is one which carries a pay scale above the supertime scale and in this connection, Mr. Misra has invited our attention to the Disposition list as on 1.11.1989. The applicant does not dispute the position that the posts of Chief Conservators of Forests are in the supertime scale and the post of Principal C.C.F. is above supertime scale. But the contention of Mr. Bijan Ray is based on Rule 3(3) of the Indian Forest Service (Pay) Rules, 1969 which reads as follows:

"Appointment to the Selection Grade and to posts carrying pay above the time-scale of pay in the Indian Forest Service shall be made by selection on merit with due regard to seniority:"

We have underlined this portion as ^{the} argument of

Mr. Ray is really based on it. Mr. Ray has contended that the post of Principal Chief Conservator of Forests is definitely one which is a post carrying pay above the time scale of pay in the Indian Forest Service. Therefore, the appointment to that post has to be made by selection on merit with due regard to seniority. Mr. A. K. Misra's contention is that as a general rule appointment to the post of Principal Chief Conservator of Forests has to be made considering the ^{of} fitness of the person having due regard to seniority.

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For this contention Mr. Misra seeks reliance on paragraph I of Annexure-2. In this paragraph the selection/screening Committees for promotion to the posts in the senior time scale, Selection Grade and Supertime scale have been

provided for. But there is no mention of any screening or selection committee for a post above the supertime scale. Mr. Misra has contended that the absence of a provision of a selection/screening committee for appointment to the post of Principal Chief Conservator of Forests, ~~was~~ ^{is} a necessary corollary to the constitution of the Selection/Screening Committee which would include the Principal Chief Conservator of Forests wherever it exists. It is ^a well settled principle that provision in any rule is presumed not to be redundant nor is an interpretation which makes the provision ~~of~~ ^{is} favoured. Reference has already been made to Rule 3(3) of the Indian Forest Service (Pay) Rules, 1968 which speaks of consideration of merit in giving promotion to an Officer of that cadre to a post above the time scale, when the question of merit arises, it presupposes an agency to judge the merit of a person. On another ground also we are unable to accept this argument of Mr. A. K. Mishra because Annexure-2 is a guideline issued by the Ministry of Environment & Forests, Government of India whereas Rule 3(3) of the Indian Forest Service (Pay) Rules, is a statutory provision. Therefore, that must prevail over the instructions or guidelines. In developing his argument when Mr. Misra has contended that ^{the} selection or the screening committee is to include the Principal Chief Conservator of Forests, the said person i.e. the Principal Chief Conservator of Forests cannot be the Judge of his own merit, with great respect we would say that Mr. Misra has not noticed the fallacy of his argument.

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If a person has already been posted as Principal Chief Conservator of Forests, no question of such a person to be promoted to that rank would arise. What the guidelines really mean is, ^{that} in selecting a person from amongst the Chief Conservators of Forests, to be promoted as Principal Chief Conservator of Forests, the outgoing person who till then continues to hold the post of Principal C.C.F., would be a member of the Committee. For these reasons we are of the opinion that for the post of Principal Chief Conservator of Forests, a selection/screening committee is to be constituted. Since we have come to this conclusion and as the applicant has alleged that no proper selection was made, at our request the file relating to the promotion to the post of Principal Chief Conservator of Forests has been produced by learned Government Advocate (State). The State Government, as indicated in ^{an} earlier part of this judgment, have asked the Union of India for informing them of the guidelines for promotion to the post of Principal Chief Conservator of Forests and no reply has been received from the Government of India. On a perusal of the file it appears that the Secretary to the Government of Orissa in the Department of Forest and the Chief Secretary referred to the Character rolls of 8 persons including Respondent No.3 and thereafter Respondent No.3 was promoted to the rank of Principal Chief Conservator of Forests. Ofcourse the outgoing Principal C.C.F. was not consulted in thematter of promotion of Respondent No.3 to the rank of Principal Chief Conservator of Forests but that does not matter much. Because as may be found from the seniority

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list, and that is the position accepted by the applicant, Respondent No.3 is senior to applicant and infact on the date of his promotion as Principal Chief Conservator of Forests he was the seniormost Chief Conservator of Forests and also the seniormost Officer in the Orissa Cadre of Indian Forest Service. We are conscious of the fact that when a circular or instruction provides for doing of a particular act in a certain way deviation should not be encouraged, ^{where,} but here is a case, possibly wrongly, the State Government were under the impression that no guidelines had been prescribed and accordingly they followed ~~the~~ procedure which by no means could be said to be unjust. Here it may be stated that from the file we find that infact the case of the applicant at the time of promotion of Respondent No.3 to the rank of Principal Chief Conservator of Forests came up for consideration.

11. The applicant has challenged the selection of Respondent No.3 for the post of Principal Chief Conservator of Forests on account of a Vigilance enquiry pending against him (Respondent No.3) on the date of his promotion. No doubt some allegations were made against Respondent No.3 and those allegations were referred to the Inspector General of Vigilance for enquiry but before Respondent No.3 was promoted as Principal Chief Conservator of Forests, a preliminary report from the Vigilance Department had been obtained and a note ^{to} ~~which~~ has been made ^{that} with the preliminary report was to the effect that some of the allegations were unfounded and some of the other allegations were violations of certain departmental rules but were

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not of serious nature. In order to satisfy ourselves we looked into the preliminary report and from the report it is found that 11 of the allegations could not be substantiated and infact two of those allegations which related to not following the Rules or procedure were wholly baseless. One of the allegations amounted to a technical defect, one was incapable of any verification and three other items of allegations were mere infringements of some of the Rules. It would be profitable to refer to general instructions of the Government of India with regard to sealed cover procedure communicated in Department of Personnel & Training, Office Memorandum No.22011/2/86 dated 12.1.1988. These instructions are to be read in order to understand the real meaning of ^{m of An-2, r} paragraph III(iii), Under that Office Memorandum dated 12.1.1988 sealed cover procedure is to be followed in four contingencies namely: (i) when a Government servant is under suspension, (ii) when against a Government servant a disciplinary proceeding is pending or a decision has been taken to initiate a disciplinary proceeding; (iii) when a Government servant is involved in a criminal case or sanction for prosecuting the Government servant has been issued or sanction has been decided to be accorded and the last one may be quoted. Because that is very relevant in the context of the facts of the present case.

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"(v) Government servants against whom an investigation on serious allegations of corruption, bribery or similar grave misconduct is in progress either by the CBI or any other agency, departmental or otherwise!"

We have underlined the portion to emphasise the fact that no^t other investigation by an agency would require the

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following of a sealed cover procedure but only those investigations which are of allegations of corruption, bribery or similar grave misconduct. The mere infringement of a rule cannot possibly come within the ambit of serious allegations of corruption, bribery or a grave misconduct. We are, therefore, unable to accept the contention of Mr. Bijan Ray that as the final report by the Vigilance Department with regard to Respondent No.3 had not been submitted he could not be promoted to the rank of Principal Chief Conservator of Forests. With regard to the contention of Mr. Ray about disqualification of Respondent No.3 for promotion, Mr. A. K. Misra has cited three decisions, two of the Andhra Pradesh High Court and the third of High Court of Orissa. In the two cases of High Court of Andhra Pradesh i.e. one reported in 1980 (2) SLR 662 (The Director of Postal Services (Andhra) and another v. C. Muneshwara Rao) and the other, 1979 (1) SLR 50 (K. Somaiah v. The Zonal Manager, Food Corporation of India, Madras), almost the same question was decided. The decision in 1980 (2) SLR 662 is a Division Bench decision and one of the Hon'ble Judges constituting that Bench was also the Hon'ble Judge who decided the case of K. Somaiah. In those two cases it was held that withholding of promotion during pendency of an enquiry or in contemplation of initiation of disciplinary proceeding offends Article 311 of the Constitution of India. What was really decided in those two cases was that where merely because a disciplinary proceeding ~~was~~ pending or contemplated, ^{it} should not ^{cause} ~~cause~~ ^{being} the Government servant ^{to} be considered for promotion

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~~and that was answered in the negative.~~ This position would be apparent on reading paragraph 7 of the judgment in K.Somaiah's case where it was observed that when disciplinary proceedings were initiated and when they had not been completed there was no knowing whether the petitioner could be found to be guilty of the charges that might be framed against him and he cannot before then be punished either withholding of his promotion or by non-consideration of his case for promotion. As we have indicated above, these two decisions do not have any application as in fact cases of all eligible persons were considered. The case of Prafulla Chandra Behera v. Chairman, Board of Directors & Managing Director of Dena Bank & others reported in 70(1990)CLT 116 is distinguishable on facts. In that case Their Lordships relied on paragraph 12 of a Bi-partrite settlement between the Management and the employees and Their Lordships decided that an enquiry cannot be said to be pending unless the charges are served on the employee concerned. No such question arises in the present case as the circular dated 12.1.1988 of the Government of India, Ministry of Personnel & Training provides for following sealed cover procedure in a case where vigilance enquiry is pending.

12. It has been contended on behalf of the State Government as well as on behalf of Respondent No.3 that the application is not maintainable on account of plurality of remedies asked for. They have cited in support of this contention of theirs, a decision of the Jabalpur Bench of this Tribunal reported in 1987(1) S.L.J.(CAT)156

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(Ram Pati Yadav ^{vs} General Manager, Gun Carriage Factory and others). There is no doubt that seeking of plural remedies is barred under Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 but the bar would not be there if more than one relief flow from the same cause of action and are consequential to one another. On reading the facts of R.P.Yadav's case it would be found that the causes of action for the reliefs asked by the applicant therein were distinct and separate and were not interrelated to one another but in the instant case, reliefs are interrelated. Unless adverse remarks given by Respondent No.2 are expunged, the applicant cannot be considered for promotion to the rank of Principal Chief Conservator of Forests and unless Respondent No.3's appointment as Principal Chief Conservator of Forests is quashed, no question of the applicant being considered for promotion to the post of Principal Chief Conservator of Forests would arise. These reliefs bear some analogy to the reliefs one is required to ask as consequential reliefs in a suit in Civil Court under section 34 of the Specific Relief Act.

13. To sum up our conclusions, adverse remarks given by Respondent No.2 in the character roll of the applicant for the year 1983-89 are to be expunged and accordingly they are quashed and there is no justification, in the circumstances, for quashing the appointment of Respondent No.3 as Principal Chief Conservator of Forests, more so when the case of the applicant also came up for

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consideration before promotion of Respondent No.3
as Principal Conservator of Forests.

14. The case is accordingly disposed of . No costs.

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Member (Administrative)

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20.11.90
Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
November 20 ,1990/S.Sarangi.