

35-

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 44 OF 1990  
Cuttack, this the 20th day of February, 2002

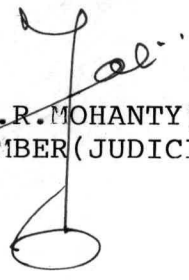
Janardan Diwakar Sharma ..... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? ND
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NB

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(S.A.T. RIZVI)  
MEMBER (ADMINISTRATIVE)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 44 OF 1990  
Cuttack, this the 20th day of February, 2002

CORAM:

HON'BLE MR.S.A.T.RIZVI, MEMBER(ADMINISTRATIVE)  
AND  
HON'BLE MR.M.R.MOHANTY, MEMBER(JUDICIAL)  
.....

Shri Janardan Diwakar Sharma,  
son of Shri Balak Ram, Working Plans Officer,  
Bhanjanagar, Orissa .... Applicant

Advocates for applicant - M/s R.K.Mohapatra  
B.Routray  
K.B.Kar  
U.K.Samal, R.K.Dash

Vrs.

1. Union of India, represented through the Secretary,  
Ministry of Environment & Forests, C.G.O.Complex,  
Lodhi Road, New Delhi.
2. State of Orissa, represented through the Secretary,  
General Administration Department, Government of  
Orissa, Secretariat Buildings, Bhubaneswar.
3. State of Orissa, represented through the Secretary,  
Forests, Fisheries & Animal Husbandry Department,  
Government of Orissa, Secretariat Buildings,  
Bhubaneswar.
4. Sri Ambika Prasad Tripathy, I.F.S., son of late  
Bhagirathi Tripathy, at present working as Assistant  
Chief Conservator of Forests, Office of the  
Principal Chief Conservator of Forests, Orissa, 90/91  
Satya Nayar, Bhubaneswar, Dist. Puri, Orissa

..... Respondents

Advocates for respondents - Mr.K.C.Mohanty,  
Government Advocate  
for R 2 & 3  
&  
Mr.S.B.Jena, ACGSC  
for R-1.

O R D E R  
(ORAL)

MR.S.A.T.RIZVI, MEMBER(ADMINISTRATIVE)

Sri J.D.Sharma, an Indian Forest Service  
officer of 1978 batch, who is a direct recruit, wants to  
be placed in the Senior Time Scale of the I.F.S. with

effect from 1.11.1981, which is the date from which, according to him, substantive posts became available in the Senior Time Scale (for short, "S.T.S."). He could be so considered, as per his claim, during the entire period from November 1981 to March 1982. Alternatively, he wants to be placed in the S.T.S. with effect from 6.3.1982, on which date he completed four years of service. By an office order, issued on 27.5.1985 (Annexure 8), the State Government of Orissa, respondent no.2 herein, has placed him, along with four others of his batch, in the S.T.S. of the I.F.S. with effect from 24.8.1983. By another office order, issued by the same official respondent on 24.9.1987, one Sri K.C.Das, IFS, who is junior to the applicant by one batch and who accordingly belongs to the 1979 batch of the I.F.S., has been placed in the S.T.S. with effect from 2.8.1983. The others also belonging to the 1979 batch have been placed in the S.T.S. by the same order of 24th September, 1987 on different dates from 29.8.1983 to 11.9.1983. This way, the aforesaid Sri K.C.Das, a junior to the applicant, has been placed in the S.T.S. from an earlier date. His grievances have arisen accordingly, and that is why this O.A. A series of representations filed by him have not yielded the desired result, despite his case having been recommended by the Principal Chief Conservator of Forests in his letter dated 25.5.1989 addressed to the Secretary to the Government of Orissa, Forests, etc., Department. From the record placed on file, it appears that the applicant started making representations in the matter right from

19.8.1982. In support of his claim, the applicant has placed reliance on Rule 9(1) of the Indian Forest Service (Cadre) Rules, 1966, which provides that a cadre post in a State shall not be filled by a person who is not a cadre officer. He also places reliance on Rule 6(A)(2) of the Indian Forest Service (Recruitment) Rules, 1966, which provides that a directly recruited I.F.S. officer shall be appointed to a post in the S.T.S. if, having regard to his length of service and experience, the State Government is satisfied that he is suitable for appointment to a post in the S.T.S. The contention raised is that the aforesaid provision does not lay down any time period before which a directly recruited IFS officer like him, cannot be promoted to the S.T.S. All that is required under the aforesaid Rule is that such an officer should be found suitable for appointment in the S.T.S. Such promotions are to be made by the respective State Governments. The applicant was confirmed in the service with effect from 6.3.1981 by the notification issued by the Government of India on 7.4.1984 (Annexure 1). In this view of the matter and having regard to the experience, which the applicant had acquired, he was fit to be promoted to the S.T.S. Instead, the State Government went about promoting non-cadre officers to the S.T.S. thereby flouting the rule position.

2. We have considered the submissions made by the learned counsel appearing on behalf of the applicant and the various pleas advanced by him in the

O.A. <sup>win</sup> in the light of the submissions made by the learned counsel appearing on behalf of the official respondents and the counter reply filed on their behalf, on a proper and careful consideration of the matter, we find no merit in the O.A. which, according to us, deserves to be dismissed.

3. The applicant, though appointed to the I.F.S. with effect from 6.3.1978, took time to clear his departmental examinations, and the examination in respect of Oriya language was cleared by him belatedly on 5.6.1983. Rule 6(A)(3) of the Indian Forest Service (Recruitment) Rules, 1966, provides that the State Government may withhold the appointment of an officer to a post in the S.T.S. till he passes the prescribed departmental examinations. A determination of suitability of an officer, envisaged in Rule 6(A)(2) relied upon by the applicant, would depend inter alia on the clearance of all the departmental examinations by him. In this background, it will be difficult to find fault with the State Government of Orissa for not having found him suitable for appointment in the S.T.S. before 5.6.1983. Further, a proper and careful determination of suitability of an officer for appointment in the S.T.S. is bound to be a time consuming exercise. Determination of suitability on an overall basis is a responsible act. For this purpose, the State Government is required to collect necessary information regarding the work and conduct of the officer. In view of this, we do not find anything wrong, if the State Government has,

2

after a careful consideration of the matter, as required, finally placed the applicant in the S.T.S. with effect from 24.8.1983 by an order passed by them on 27.5.1985 (Annexure 8). A perusal of the aforesaid order does not reveal any discrimination, in so far as the officers of the 1978 batch are concerned. All of them have been placed in the S.T.S. with effect from the same date, namely, 24.8.1983. At one place in the counter reply filed on behalf of the official respondents, it has been stated that the applicant could have been placed in the S.T.S. a few months earlier. But since one of his seniors in the same batch could not have been promoted from a date earlier than 24.8.1983, in the interest of fairplay and justice, the State Government decided to place both of them in the S.T.S. with effect from the same date, namely, 24.8.1983.

4. The learned counsel appearing on behalf of the respondents has also placed reliance on the circulars issued by the Department of Personnel & Administrative Reforms on 29.6.1975 (Annexure 10) and 23.8.1982 (Annexure 11), both of which lay down that the officers of the I.F.S. should be placed in the S.T.S. only after serving the State Government for a definite period of time. The period prescribed for this purpose used to be five years, which has been reduced to four years by the aforesaid circular of 23rd August, 1982. The earlier circular of 29th June 1975 makes it clear that the time limit of five years, prescribed by the same Department's circular of 24th September, 1973,

41  
should continue to be adhered to, <sup>but</sup> an officer could be considered for being placed in the S.T.S. even before the completion of five years of service, if such an officer is found suitable for being so promoted by the State Government. We have already seen that due to the applicant clearing the Oriya language examination belatedly on 5.6.1983, he was not found suitable for promotion to the S.T.S. The applicant cannot, in the circumstances, derive any benefit from the aforesaid provision made in the circular of 29th June, 1975.

5. The applicant has challenged the vires of the aforesaid circulars laying down specific periods of time before which officers of the I.F.S. cannot be placed in the S.T.S. He has done so in order to justify his claim for promotion with effect from November 1981. For this purpose, he has relied on Rule 6(A)(2) of the Indian Forest Service (Recruitment) Rules, 1966, which he has read in isolation without caring to read, at the same time, the provisions made in Rule 6(A)(3) of the same Rules. Moreover, he has taken his suitability for granted. We have just seen in an earlier paragraph that the State Government of Orissa was within its rights to withhold the applicant's appointment in the S.T.S. before 5.6.1983, which is the date on which he cleared the Oriya language examination. Furthermore, we must observe that the aforesaid circulars dated 29.6.1975 and 23.8.1982 are entirely in order and that the Union Government has issued the same in exercise of the executive powers vested in the Government under the relevant constitutional provision.

2 The constitutional position is clear that the executive

power of the Union extends to all matters with respect to which the Parliament has the power to legislate. That being so, issuance of the aforesaid circulars is constitutionally well founded and cannot be challenged. These circulars are in the nature of executive/administrative instructions issued to supplement the rule position. The aforesaid Rule 6(A)(2) has not laid down any specific period of time. The same has accordingly been laid down by the aforesaid circulars. There is no inconsistency involved in this matter. The instructions providing for a time limit are in consonance with the rule position. We cannot, in the circumstances, find any fault with the aforesaid circulars. The corresponding plea, raised on behalf of the applicant, accordingly fails and is rejected. *In view of this & it is not necessary to discuss the plea regarding appointment of non-cadre officers.*

6. A word is necessary about the possibility of the applicant being placed in the S.T.S. on a date earlier than 24.8.1983. The State Government of Orissa may have considered it proper to promote the applicant from the same date from which his senior in the same batch was to be promoted. We will not question the judgment of the State Government in this matter. However, we would like to observe that if that plea is raised herein, the applicant will be required to implead the others of his own batch, who will thereby have a possible grievance. The applicant has not impleaded any of them. There could be no possibility, therefore, of the applicant being promoted to S.T.S. from a date earlier than 24.8.1983. *d*



7. In the background of the above discussion and for all the reasons outlined in the preceding paragraphs, the O.A. is found to be wholly devoid of merit and is dismissed. There shall be no order as to costs.

  
(M.R. MOHANTY) 20/02/2002

MEMBER (JUDICIAL)



(S.A.T. RIZVI)

MEMBER (ADMINISTRATIVE)

AN/PS