

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 399 of 1990

Date of Decision: 16.2.1994

## Versus

Union of India & Others Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? Ye
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not ? ND

**MEMBER (ADMINISTRATIVE)**

16 FEB 94

**VICE-CHAIRMAN**

for 16.2.94

6  
191  
CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH CUTTACK

Original Application No. 399 of 1990

Date of Decision: 16.2.1994

Achyutananda Nath

Applicant

Versus

Union of India & Others

Respondents

For the applicant

M/s.A.K.Mishra  
S.K.Das  
S.B.Jena,  
Advocates

For the respondent 1

Mr.U.B.Mohapatra,  
Addl.Standing Counsel  
(Central)

For the respondents 2 and 3

Mr.K.C.Mohanty,  
Govt.Advocate(Orissa)

C O R A M:

THE HONOURABLE MR.K.P. ACHARYA, VICE-CHAIRMAN

AND

THE HONOURABLE MR.H.RAJENDRA PRASAD, MEMBER (ADMN)

JUDGMENT

MR.K.P.ACHARYA, VICE-CHAIRMAN: In this application under Section 19 of the Administrative Tribunals Act, 1985, the petitioner prays to quash the order of promotion vide Notification No.28014 dated 10th October, 1990 promoting OP No.4 to the <sup>post of</sup> Additional Chief Conservator of Forests; and further-more to direct the opposite parties to consider the case of the petitioner for promotion retrospectively with effect from 1.12.89 when Shri N.C.Pradhan retired on superannuation; and it is further prayed that promotions given in favour of OP Nos. 5 and 6 contained in Annexure - 5 be quashed.

2. Shortly stated the case of the petitioner is that he had been promoted to the cadre of I.F.S. and served the

State of Orissa in different capacities and ultimately retired on superannuation on 31st October, 1992. Grievance of the petitioner is that OP Nos., 4, 5, and 6, who were juniors to the petitioner had been given promotion to higher posts(s) whereas such benefit was denied to the petitioner and hence this application has been filed with the aforesaid prayer.

3. The State of Orissa has filed its counter in which it is maintained that a circular issued by the Ministry of Environment was strictly followed, because the date on which the DPC had met, i.e. 20th August, 1990, a vigilance enquiry was pending against the petitioner, and therefore, the DPC had rightly and correctly adopted the sealed cover procedure. Hence no illegality having been committed by the Government in regard to the service benefits of the petitioner, the case is devoid of merit and hence liable to be dismissed.

4. We have heard Mr. A. K. Mishra, learned counsel for the petitioner and Mr. K. C. Mohanty, learned Government Advocate appearing for the State of Orissa (OP Nos. 2 and 3) and we have also heard Mr. U. B. Mohapatra, learned Additional Standing Counsel appearing for OP No. 1, i.e. the Secretary, Ministry of Environment and Forests.

5. The admitted facts are as follows :

i) The petitioner has retired on superannuation with effect from 31st October, 1992 after serving in the cadre of Indian Forest Service.

ii) On the due date of promotion i.e. 20.10.90 the case of the petitioner though considered yet his case was kept in a sealed cover following a circular issued by the Govt. of India, Ministry of Environment & Forests.

b/n

iii) Next admitted position is that charge-sheet was issued against the petitioner on 11.12.90.

We say so taking notice of Annexure-R/2 which is an office order issued by the Government of Orissa in the Forests and Environment Department vide Notification No.8624 dated 1st May, 1991. Therein it is stated as follows :

" Government after careful consideration have been pleased to drop the article of charges together with the statement of repetition of mis-conduct levelled against Shri A.Nath, I.F.S. in the defunct Forest, Fisheries and Animal Husbandry Department Office Order No.29576 dated 11.12.1990" matter

From the above quoted/it is crystal clear that chargesheet was issued to the petitioner on 11.12.90. Though the learned Government Advocate seriously contended before us that the correct and right step has been taken by the Government of Orissa basing on the circular issued by the Ministry of Environment, we are unable to accept the aforesaid submission of the learned Government Advocate, because the view of the Hon'ble Supreme Court would admittedly supersede every other view in the country including the circulars issued by the Government of India. In the case of Union of India vs. K.V.Janakiraman reported in AIR 1991 SC 2010 Their Lordships will confirming the Full Bench view in the case of K.Ch. Venkata Reddy and others reported in Full Bench Judgments (CAT) 1986-89 (158) laid down that the date of issue of charge-sheet is the deemed date of initiation of a disciplinary proceeding. Any action taken against a Government servant prior to issue of the charge sheet would amount to taking into consideration an

extraneous circumstance, which is not permitted under the law. Charge-sheet having been issued on 11.12.1990, the following view laid down in the case of K.V.Janakiraman (Supra) there was absolutely no proceeding initiated or pending against the petitioner on 20.10.1990. Therefore, we would hold that principles laid down in the case of K.V.Janakiraman apply in full force to the facts of the present case; and we would direct that case of the petitioner be reconsidered for promotion to the post of Additional Chief Conservator of Forests with effect from the date on which his juniors were promoted. In case the petitioner is found to be suitable, an appointment order should be issued in favour of the petitioner giving him promotion to the post of Additional Chief Conservator of Forests. This process should be finalised within 60 days from the date of receipt of a copy of the Judgment. Incidentally it may be mentioned that notional promotion has been given to the petitioner with effect from 14.12.90. In the case of K.V.Janakiraman it has been observed as follows :

" There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the latest, he should not be deprived of any benefits including the salary of the promotional post (emphasis is ours). It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R.17(1) of the Fundamental Rules and Supplementary Rules which read as follows :

XX XX XX XX

It was further contended on their behalf that the normal rule is "no work no pay". Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule

that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings, are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clear bill, he has to be restored to all the benefits from which he was kept away unjustly.

We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of "no work no pay" is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R.17(1) will also be inapplicable to such cases.

We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings."

In view of the aforesaid observations of Their Lordships since the petitioner was not kept out of job out of his own volition, the principles laid down by Their Lordships in the case of Janakiraman applies in full force to the facts of the present case. Therefore, we would direct that arrear salary of the petitioner be calculated with effect from the due date of promotion (from the date when the juniors

of the petitioner got promotion) and after calculation the amount to which the petitioner is entitled be paid to the petitioner within 160 days from the date of issue of notification for promotion if any. Thus the application stands allowed leaving the parties to bear their own costs.

MEMBER (ADMINISTRATIVE)

*h.s.d* 16.12.92  
VICE-CHAIRMAN

Central Administrative Tribunal

Cuttack Bench Cuttack  
dated the 16.2.1994/ B.K. Sahoo