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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACKBENCH.

Original Application No. 176 of 1991.

DATE OF DECISION: July 15, 1993.

Pitabas Mohapatra ...

Applicant.

versus

Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

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

— *1341* —
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

15.7.93

K. P. Acharya 15.7.93
(K. P. ACHARYA)
VICE-CHAIRMAN.

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CUTTACKBENCH: CUTTACK.**

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Date of decision: July 15, 1993.

Pitabas ~~H~~ehapatra ... Applicant.

Versus

Union of India and others ... Respondents.

For the applicant... M/s. Devanand Misra,
Deepak Misra,
A. Deo, E.S. Tripathy,
P. Panda, Advocates.

For Respondent No.1 Mr. Akhyay Kumar Misra,
Addl. Standing Counsel (Central)

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

For respondent No.4 Mr. C. A. Rao.
Advocate.

For Respondent No.5 .. M/s.S.K.Pattnayak,
P.Pradhan, Advocates.

C O R A M :

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

A N D

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

JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash the select list contained in Annexure-2 and to pass appropriate orders directing that the applicant is entitled to be promoted and to be retained in Indian Forest Service cadre.

2. Shortly stated, the case of the applicant is that

initially the applicant was appointed to the Orissa Forest Service and in course of time the applicant was selected for promotion to the Indian Forest Service cadre in December, 1987. Subsequently, on the basis of an order passed by the Hon'ble Supreme Court in a special leave petition the initial recruitment was quashed and thereafter as per the direction of the Hon'ble Supreme Court when different incumbents coming within the consideration zone were considered for promotion to the Indian Forest Service cadre the applicant was excluded as he did not come within consideration zone. Hence, this application has been filed with the aforesaid prayer.

3. In their counter, both the State Government, Central Government and the Union Public Service Commission maintained that rightly Annexure-R/1 was passed demoting the applicant to the cadre of Orissa Forest Service because the applicant did not come within consideration zone and hence rightly his case was not considered and therefore, there was no other option left for the Government but to order demotion of the applicant to the cadre of Orissa Forest Service. Hence, according to the respondents, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant ~~xxx~~, Mr. K. C. Mohanty, learned Government Advocate (State) appearing for the State of Orissa, Mr. C. A. Rao, learned counsel appearing for the Union Public Service Commission and Mr. Akhyay Kumar Misra, learned

Additional Standing Counsel(Central) appearing for the Central Government. At the outset Mr. Deepak Misra, submitted that this case has become infructuous because the applicant has since retired on superannuation with effect from 30.6.1991. In such a situation we are in complete agreement with Mr. Deepak Misra that in view of the fact that the applicant has retired on superannuation with effect from 30.6.1991 the Bench cannot be called upon to express its ^{not} opinion regarding the merit or otherwise in/bringing the applicant within the consideration zone and ordering demotion of the applicant to the cadre of Orissa Forest Service.

5. Mr. Deepak Misra, learned counsel for the applicant submitted that the applicant's pensionary benefits should be calculated according to last pay drawn by him in the cadre of Indian Forest Service on 30.6.1991 and accordingly a direction should be given to the State Government to calculate and fix the pensionary benefits of the applicant. This submission of Mr. Deepak Misra was stiffly opposed by Mr. K. C. Mohanty, learned Government Advocate (State), Mr. C. R. Rao and Mr. A. K. Misra. Mr. Mohanty contended that Annexure-R/1 is dated 22.6.1991 on the basis of which the applicant is deemed to have been reverted to the cadre of Orissa Forest Service and therefore, in no circumstances his pension should be calculated on the basis of the fact that the applicant was a member of the Indian

Forest Service on 30.6.1991.

6. We have given our anxious consideration to the arguments advanced at the Bar on this issue. Before we express our opinion on this issue it is worthwhile to mention that on 20.6.1991 this Bench passed the following order:

" Heard Mr. Deepak Mishra, learned counsel for the applicant. In the application, prayer has been made for orders quashing the select list in annexure-2, and to direct the respondents to promote the applicant to the IFS on regular basis. Nobody has appeared on behalf of the respondents. Put up this case on 27th June, 1991. Till then the applicant should not be disturbed from his present post. Notice the respondents. "

By ordering that 'till then the applicant should not be disturbed from his present ^{post} eventually means the applicant should not be disturbed from the cadre of Indian Forest Service. On 27.6.1991 the stay matter again came up before the Division Bench for consideration and the Division Bench passed the following order.

" Heard Mr. Deepak Mishra, learned counsel for the applicant, Mr. K.C. Monanty for the State Govt., Mr. A.K. Mishra for the Central Govt., and Mr. P. Pradhan for the respondent No. 5. Mr. Mohanty says that he has instructions that in the meantime orders relating to posting etc. have been passed but he is unable to give full details. On a perusal of the application and the annexures and hearing the learned counsel for the applicant it appears that a revision of the seniority list on which the applicant had been promoted is under challenge. It requires a fuller hearing, so the interim order passed on 20.6.1991 directing the respondents not to disturb the applicant from his present post is to continue till 3.7.1991. Put up on date fixed."

On 3.7.1991 the Bench ordered that there is no need to extend the order of stay since the applicant has retired on 30.6.1991. The moot question that needs

determination is as to whether the applicant was in the Indian Forest Service cadre on 30.6.1991 or was serving as a member of the Orissa Forest Service.

Mr. Mohanty, learned Government Advocate (State) contended that the State of Orissa had no notice of the stay order passed and therefore once Annexure-R/1 has been passed it is deemed that the applicant has been demoted to the Orissa Forest Service. We are unable to accept this submission of Mr. Mohanty because at least on 27.6.1991 the State Government had notice that the demotion order has been stayed on the principle that notice to lawyer is notice to party. That apart, lack of communication of the order of the State Government may work out in favour of the State Government where there is question of wilful disobedience of the orders passed by the court but once the stay order has been passed ~~restraining the~~ ^{staying} ~~by~~ the operation of the impugned order, it is deemed that the impugned order is not in force. Therefore, ~~in~~ we are of opinion that the stay order having been passed on 20.6.1991, and on 27.6.1991 and having remained effective till 30.6.1991 the applicant was serving the Government as a member of the Indian Forest Service. Therefore, we would direct that the pensionary benefits of the applicant, ^{as a member of I.F.S.} be calculated according to Rules and be paid to him without any further delay.

7. Thus, this application is disposed of accordingly

Yours

leaving the parties to bear their own costs.

..... MEMBER (ADMINISTRATIVE)

15.7.93

VICE-CHAIRMAN.

15.7.93

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
July 15, 1993./Sarangi.

