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(17)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH CUTTACK

Original Application No. 390 of 1992

Date of Decision: 10.12.1993

Laxman Samal & Others

Applicant(s)

Versus

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? No.
2. Whether it be circulated to all the Benches of No.
the Central Administrative Tribunals or not ?

10/12/93
VICE-CHAIRMAN

[Signature]
MEMBER (ADMINISTRATIVE)

10 DEC 93

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(18)

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Respondents

For the applicants

M/s.A.S.Naidu
P.Mohanty
P.K.Mohapatra
A.K.Rath,
Advocates

For the respondent Nos.1 - 3

Mr.Ashok Mishra
Sr.Standing Counsel
(Central)

For the respondent Nos.4 - 8

Mr.C.A.Rao
S.K.Purohit
S.K.Behera
P.K.Sahoo
Advocates

C O R A M:

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

AND

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

...

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JUDGMENT

MR. H. RAJENDRA PRASAD, MEMBER (ADMN): In this application, S/Shri Laxman Samal, Sunakar Behera, Surendra Nayak and B.K. Sinha, Junior Armourers, Aviation Research Centre, Charbatia, have sought a direction to be issued to Respondents 1 to 3 to:

- i) order their promotion from the date on which Respondents 4 to 8, viz., Sarvashri P.C. Jena, S.K. Das, Umakant Das, A.C. Das and C. Naik who, the applicants claim, are all juniors to them, *were promoted to the rank of Naik.*
- ii) pay the resultant differences in emoluments; and
- iii) confer all other consequential service benefits.

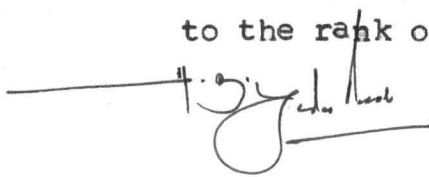
2. It is stated in the application that the petitioners and Respondents were selected for appointment as Constables and joined the posts as under:

<u>APPLICANTS</u>		<u>RESPONDENTS</u>	
<u>S/Shri</u>		<u>S/Shri</u>	
Surendra Nayak	09.12.1960	P.C. Jena	02.12.1970
Laxman Samal	16.11.1965	S.K. Das	25.08.1970
Sunakar Behera	05.12.1966	Umakant Das	03.05.1970
		Alekh Ch. Das	16.11.1965
B.K. Sinha	01.05.1967	C. Naik	16.11.1965

3. On certain vacancies of Naiks (which is a promotional rank for constables) having arisen during 1971-72, the respondents named above were promoted as shown below :

<u>S/Shri</u>	
P.C. Jena	1. 8. 1971
Umakant Das	1. 4. 1972
C. Naik	1. 4. 1972
A.C. Das	1. 6. 1972

Besides, Shri S.K. Das was directly promoted to the rank of Havildar on 1.10. 1975.



The applicants are stated to have represented to the authorities against these promotions ignoring their own seniority in the matter, but were said to have been informed by the Respondents - (no documentary proof has been produced to corroborate this) - that these promotions were purely adhoc and that the interests of the applicants would be duly protected at the time of regularising promotions.

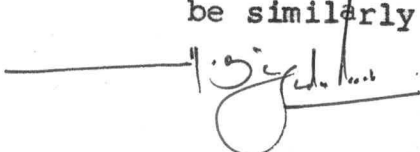
4. While this position continued for a little over three years more, - during which time the applicants continued as constables, -the above-named respondents were promoted once again as Havildars as indicated below :

S/Shri

P.C. Jena	1. 10. 1975
S.K.Das	-do-
Umakant Das	-do-
A.C.Das	-do-
C.Naik	1. 01. 1973

Simultaneously the nomenclature of the posts underwent a change and the Constable, Naik and Havildar came to be re-designated as Field Assistant, Junior Armourer and Senior Armourer, respectively.

5. In the meanwhile, one Shri J.K.Bhattacharjee was promoted to Inspector's rank, against which certain officials approached the Orissa High Court. The case was transferred to this Tribunal (T.A.Nos.12/87,15/87,35/87,36/87,42/87, 56/87). In allowing these applications the Tribunal directed that all officials senior to the said Shri Bhattacharjee should be similarly promoted and placed above him. The authorities



approached the Supreme Court against this order but their SLP was dismissed. The respondents thereupon initiated action to comply with orders passed by this Tribunal and ordered promotion of eleven persons to the rank of Sub-Inspector. And this action again benefited the same Respondents whose names figure in the preceding paras, and they were promoted in the resultant vacancies.

6. Aggrieved by the continued promotions conferred on the respondents, and the recurring neglect of their own interests in the matter, the applicants represented to the authorities setting forth their grievance. After a long silence, their plea was turned down by the concerned authorities.

Hence this application.

7. The applicants submit that, according to the seniority list of the cadre of constables issued by the authorities themselves, the Respondents who have been promoted on atleast three separate occasions over the years are junior to them. And yet the pleas of the seniors have been consistently ignored to the detriment of their interests. The promotions are arbitrary, violate natural justice and equity and amount to a colourable exercise of power by the authorities. The direct promotion of Shri C. Nayak, Respondent 5, from constable to Havildar is also objected to as arbitrary, partisan and indefensible. And finally, they allege that the rejection of their representation shows a singular non-application of mind and that the same is based on surmises and conjectures.

8. In reply to the various issues raised in the application, the Respondents explain the position thus :

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- i) Whatever their respective dates of entry into the cadre of constables, the applicants and the respondents concerned were appointed in separate cadres. They cannot, therefore, be lumped together in a common seniority. Some of these officials, by virtue of their initial recruitment in a particular cadre, are eligible for certain promotional posts which are not available or open to others.
- ii) Elaborating the point further, the respondents maintain that constables recruited in Central Stores Depot cadre came to be promoted to Naik, firstly, by virtue of the fact that the officials of these cadre are specially entitled to the promotions granted to them and, secondly, owing to the work-experience gained by them, and lastly, due to their higher qualifications.
- iii) The so-called cadre seniority list produced by the applicants was issued for a limited purpose and was in the nature of a provisional document which was modified later.
- iv) When Respondents 4 - 8 were appointed constables in CSD cadre, Applicant No.1 was working in a different technical wing and unit. He was not in line of promotion to Naik in CSD cadre, as per rules.
- v) Recruitment rules which extended the scope of promotion from, inter alia, constable to Naik, came into force after Respondents 4-8 had already been regularly promoted to Naik in their own turn and as per eligibility. Hence, the applicants, who secured their promotion after coming into force of these rules, naturally found a place below them.
- vi) The subsequent promotion of the Respondents concerned from Naik and Havildar was also based on their seniority. Shri C.Naik was directly promoted to the rank of Havildar on account of his experience and higher qualifications.
- vii) All persons senior to Shri J.K.Bhattacharjee were promoted retrospectively, in compliance of the directions of the Tribunal, by creating an equal number of supernumerary posts from 1st December, 1976. Respondents 4-8, being senior, qualified, eligible and covered by the orders of the Tribunal, were thus among those so promoted, whereas the applicants

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were junior and not covered by the decision of the Tribunal. Hence they could not be given any benefit of promotion.

9. In a rejoinder to the counter-affidavit, the applicants insist that the Respondents, who were irregularly and unlawfully promoted on successive occasions, were in fact junior to them at the point of entry into service as constables, and reiterate their earlier assertion that undue favours were shown to them by the authorities who acted in a partisan manner in the whole affair to advance the interests of those respondents on the one hand, and also, at the same time, disregarding the applicants' legitimate claims. They also vehemently refute the claim advanced in the counter-affidavit that there are different cadres in the class of constables. There certainly was no separate CSD cadre of constables nor is there one now. On this ground alone, the statement made in the counter that "the post of Naik is not in line of promotion of constable" (para 4) is untenable if only because it also clashes with the other statement to the effect that "the applicants were considered for appointment to the grade of Naik with effect from 1st September, 1973."

10. We have closely followed and carefully noted the arguments of the contending parties. When it came up for hearing, Shri Ashok Mishra, Senior Standing Counsel (Central) questioned the admissibility of the petitioners' claims and forcefully advanced the plea that the application is grossly barred by limitation and attracts the prohibition(s) in Section 21 (1) (a) and (2) (a) of the Administrative Tribunals Act. His contention was that

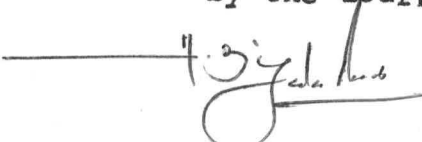
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the cause of action, if any, in this case arose as long ago as 1971/72, - during which years Respondents 4-8 were first promoted, - or at best in 1975, when they were promoted again. He added that the unexplained laches of the applicants across the intervening years of silence and inaction render their pleas ineffective and their claims inadmissible.

Before we turn to the substantive issues of this case, we shall therefore have to address the question of limitation - or lack of it.

11. In matters relating to service, the aggrieved officials at times prefer feeble representations of repetitive kind to their superiors. Such appeals regarding perceived injustices are quite probably attempts to save limitation. On the other hand there are also representations, numerically larger, which are relatively well backed by sound reasoning. The representations submitted to the higher authorities in this case fall into second category. They were submitted the first time when the applicants were denied promotion and their juniors promoted. These were reported to have been turned down. They sent up further representations only when they lost promotions a second time.

12. The aforementioned facts satisfy the provisions of Section 20 (1) and (2)(a). It cannot be said that the representations the applicants made to the higher authorities were repetitive in nature sent merely to save limitation. For this reason, it would be iniquitous to concede the plea of limitation invoked by the learned Senior Standing Counsel. We are supported



in our view by the pronouncement of the Principal Bench of the Tribunal in O.A.No.194/86, extracted below:

"... We have no hesitation in holding that in the absence of a specific rule, a representation made by a Government servant to the competent authority for redressal of his grievance is to be treated as covered within the ambit of Section 20 of the Act."..

13. Allied to the above aspect is the fact that, while disposing of the representations submitted by the applicants in 1992, Director, ARC, did not reject their claims on the grounds of laches but did so entirely on merits, as may be seen from his orders communicated in Letter No.VII/165/87-Vol.II-7190 dated 8.4.1992 by Assistant Director (Admn.), ARC, Charbatia, which has been annexed to the application. The Principal Bench in their judgment cited above, have the following observations on a situation precisely as this :

"...while it is true that limitation is to run from the date of rejection of a representation, the same will not hold good where the Department concerned chooses to entertain a further representation and considers the same on merits before disposing of the same. Since it is, in any case, open to the Department concerned to consider a matter at any stage and to redress the grievance or grant relief, even though earlier representations have been rejected, it would be inequitable and unfair to dismiss an application on the ground of limitation with reference to the date of earlier rejection where the concerned Department has itself chosen, may be at a higher level, to entertain and examine the matter afresh on merits and rejected it."..

14. This view stands further strengthened by an earlier judgment of the Hon'ble Supreme Court in Civil Appeal No.52 of 1974 (Sualal Yadav vs.State of

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Rajasthan: SLR 1977(2) SC 698). Disapproving an earlier decision of Rajasthan High Court in dismissing an appeal before them on grounds of laches on the part of the appellants, Their Lordships observed as under:

" A preliminary objection was taken by the State in the High Court that the application merited dismissal because of undue laches and delay on the part of the appellant. The High Court found that the review application was made to the Governor after a lapse of about two years which was unreasonable delay according to the High Court. That is the main reason why the High Court accepted the preliminary objection and dismissed the writ application. We are unable to hold that the High Court's approach in this matter was correct. Since the Governor had not dismissed the review application on the ground of delay and having entertained the same held it to be a case not fit for review, we take the view that the Governor dismissed the review application on merits. That being the position, it was not open to the High Court to resurrect the ground of delay in the review application at a remote stage and make it a ground for dismissing the writ application."

15. The judicial view governing a circumstance such as the one under discussion has been stated unambiguously by the Hon'ble Supreme Court in the case of S.S.Rathore vs.State of Madhya Pradesh (AIR 1990 SC 10) in the following manner:

"In the case of a service dispute the cause of action must be taken to arise not from the date of the original adverse order but on the date when the order of the higher authority where a statutory remedy is provided entertaining the appeal or representation is made."

16. In order, nevertheless, to remove the last lingering doubts, if any, on the question of limitation in this case, we should also add that, where adequate merit exists, independent of any hint or suggestion

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of possible laches, it is indubitably merit which deserves predominant consideration, the exclusion of all other incidental or ancillary considerations. The under-quoted views of Hon'ble Supreme Court reported in AIR 1987 SC 1353 (Collector, Land Acquisition, Anantnag and another vs. Mst. Katiji and others) constitute the final word to-date on this subject;

"It is a common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court ... on principle ... that : -

- . Ordinarily a litigant does not stand to benefit by lodging an appeal late
- . Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties ...
- . When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in justice being done because of a non-deliberate delay.
- . There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk..."

The above quoted points are some of the grounds on which the Hon'ble Supreme Court held that the end in view is always to do even handed justice on merits in preference to the approach which scuttles a decision on merits.

17. Having disposed of the question of limitation raised on behalf of Respondents 1-3, we now turn to the basic questions involved in the instant case. These are discussed under three broad heads for convenience of analysis:

- A - Seniority
- B - Promotion
- C - Cadres

We believe that if the facts of this case are examined

under the above heads, certain clear facts would emerge which would, in their turn, lead automatically on to a final judicious view of the whole matter.

A. SENIORITY:

18. The dates of applicants' first appointment (as also of Respondents 4 to 8) in the initial feeder-cadre of Constables, as given by the petitioners, has not been disputed by the Respondents; they merely state that the applicants were junior to the said respondents. This statement, however, flies straight in the face of facts on record, which reveal that -

- a) Applicant Shri Laxman Samal and Respondents Shri Alekha Ch.Das and C.Nayak were appointed on the same date, 16th November, 1965;
- b) Applicant Shri Surendra Nayak was the earliest entrant, his date of appointment being 9th December, 1960, whereas two of the earliest entrants among the respondents, viz. S/Shri Alekh Chandra Das and Chakradhar Nayak, were recruited on 16.11.1965;
- c) Out of the remaining applicants S/Shri Sunakar Behera (5.12.1966) and B.K.Sinha (1.4.1967) were appointed years before respondents Shri P.C.Jena (2.12.1970) and Shri S.K.Das (25.8.1970).

Thus, both individually, and generally, as a group, the applicants were not in any way junior to Respondents 4 to 8.

B. PROMOTION:

19. While the dates of initial appointment of the contestants are matters of record, - and therefore, beyond dispute or denial, - the matter of promotion of respondents 4 to 8, first as Naiks, and next as Havildars, are no better than inadequately - explained events. If, as brought out above, the applicants were senior to

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respondents 4 to 8, there is no plausible reason why they should have been promoted later. Mere seniority, suitability, fitness, a proper screening, ^{and} success at trade-tests or promotional examination, are some of the various accepted and established modes of promoting government servants. It would seem that respondents 4 to 8 were not subjected to any test or examination. They also do not appear to have faced any interview or screening prior to promotion. It was nowhere stated that merit alone was the sole consideration for promotion to Naik. If indeed it was, a recourse should have been had to scrutinising the Services Records/Confidential Character Rolls of all candidates within the eligibility zone for promotion. No averment has been made by the respondents that this method was adopted. It was ^{not} stated very clearly why applicants were in any way unfit for consideration to be promoted and if so, how precisely they were ^{adjudged} unfit.

C. CADRES:

20. That leaves only one yardstick, special qualification or experience, which would prompt an earlier promotion of the said respondents. We have looked closely at this aspect.

21. It has been stated on behalf of respondents 1 to 3 that the applicants were deployed in 'Technical Wings', which we take to mean that they were working in posts other than those in Central Store Depot. This clearly implies that Respondents 4 to 8 earned their accelerated promotion to Naik on account of the sole

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fact that they happened to be deployed in Central Store Depot at the crucial juncture of their out-of-turn promotion. The respondents, being in the Central Store Depot 'cadre', were held to be automatically eligible for promotion, whereas the applicants, not being similarly circumstanced at that point of time, were precluded from consideration for such promotion. The respondents garnered to their credit a measure of 'work experience' in course of their duties in the Central Store Depot which was naturally not available with the applicants.

22. The above statements warrant the following questions :-

- (d) When every one among the applicants as well as respondents no.4 to 8 were initially recruited as constables, only some of them were posted in Central Store Depot and others in technical wings. Why, and on what basis was this done ?
- (b) Was any special aptitude looked for, or did these respondents display any special aptitude or flair for a posting in C.S.D ? Conversely, ^{were} the applicants, as a result of a verifiable test or examination, found to be lacking in such aptitudes ?
- (c) Was any special training or course ^{of} orientation given to these respondent in the matter of guarding, storage, accounting, maintenance and repair of weapons and equipment in the Central Store Depot, before they were deployed in the C.S.D.? Conversely, was any similar training sought to be imparted to the applicants, and, if so, were they found wanting at the end of such training ?

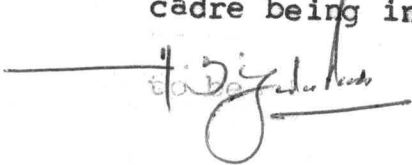
If the answers to above questions are in the negative, - and no clear answers were forthcoming, - it follows that the deployment of various officials for different tasks was merely in the nature of administrative distribution of available personnel among

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all the 'wings' and sections, and that no special aptitude or preferential suitability can be pleaded as the basis for deploying the respondents, and not the applicants, on C.S.D. duties.

23. In trying to explain the out-of-turn promotion given to the Respondents, the Senior Standing Counsel repeatedly mentioned that promotions were available exclusively to C.S.D. 'cadre' and not to others. Now, this expression, 'C.S.D. Cadre' raises some basic issues and takes us to a very pertinent question raised by the applicants in their rejoinder: Was there at all a separate 'cadre' for C.S.D. at the relevant time? Despite closest scanning of facts and equally liberal interpretation of the record before us, the existence of such ^{cadre} was not at all proved to our satisfaction. A cadre normally means a frame-work of closely-knit persons, a permanent establishment of a core-group or regiment which can be extended when necessity arises; a trained batch of homogenously constituted key-personnel who may assume direction and impart training to others; a nucleus of specially trained individuals around whom a whole or specialised organisation could be built and expanded; a prominent skeleton-group in a unit around which other rank-and-file can be equally grouped. We have absolutely nothing before us to prove that these respondents, who were recruited as constables, and later merely detailed to perform certain jobs at specified duty-points in the organisation, can be said to form any such elite or specially-trained group. The assertion about a C.S.D. cadre being in existence at that time has, therefore,



to be regarded as a near-myth. It follows therefrom that the applicants, for no fault of theirs, were deployed in some posts which were later arbitrarily held to be ineligible to lead them on to further promotion.

24. We are also unable to attach any credence to the statement^{per se} that only constables posted on C.S.D. duties were eligible for special consideration, or that the applicants were in any way ineligible for a similar consideration. Likewise, we find it hard to accept the bland statement, not supported or substantiated by any details, that Respondent Shri Chakradhar Nayak was promoted from constable to Havildar directly because of his higher educational qualifications. If he was so promoted for the reason stated, it is^{an} even more objectionable and thoroughly indefensible action.

25. In the same context of facts it would, in our view, be idle to claim any 'other working experience' for any of the respondents. If they gathered any special familiarity, it has to be viewed as being entirely incidental to the fact that they were posted in particular appointments, and exposed to a particular type of work, where they could not but acquire^{some familiarity and a measure of "experience"} owing to their exposure to that type of responsibility. If the applicants, on their part, did not gather a like experience, it was also entirely due to the fortuitous circumstance of their having been denied a similar opportunity. In any case, it has not been spelt out as to what exactly this 'special work experience' was which the said respondents

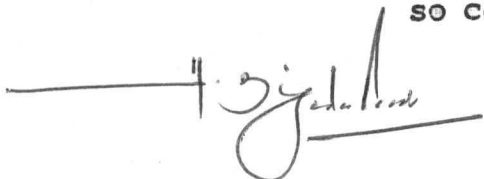
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came to possess eventually- and which was deficient in the applicants. The expression 'work experience', is very vague and evasive and cannot, therefore, be allowed to operate adversely against the deprived parties in this case.

26. Likewise, it has also been stated that Shri Sampurna Kumar Das was appointed directly to the rank of Havildar on the basis of higher qualifications and working experience without specifying the higher qualifications possessed by him and the extra working experience he had had in relation to others. Interestingly, it is also added that Shri Sampurna Kumar Das, on being promoted as Havildar, resigned his post of constable and the same was accepted. If this additional piece of information is advanced as a possible justification, we are not sure whether this invests the irregularity with any added legitimacy.

27. The preceding discussion leads us unerringly to the following conclusions:

- 1) While the applicants and respondents 4 to 8 were all initially recruited and appointed as Constables, the latter, for some unstated reason, were singled out for accelerated promotion.
- 2) The attempted distinction between 'technical', and 'other' wings is insidious and does not bear scrutiny.
- 3) The promotions given to respondents 4 to 8 were not shown to be based on any accepted method(s) of selection, and have also the appearance of arbitrariness.
- 4) There was no special or viably-constituted group of personnel comprising the so called C.S.D. Cadre.



- 5) The supposed superior working experience stated to have been possessed by the said respondents is illusory.

28. The counter-affidavit filed on behalf of the respondents 1 to 3 also attempts to relate the main issues of this case with the recruitment rules which were framed and gained effect from a later date. The point here is that the initial promotions ordered in respect of respondents 4 to 8 were much prior to that. It needs to be noted that no rule which came into effect at a later date can be interpreted or applied to confer retrospective advantage on the beneficiaries of an earlier promotion. Any reference to Recruitment Rules is, therefore, not relevant to the basic questions involved in the case.

29. Similarly, the assertion of the respondents in para 3(o) of their counter that the draft seniority list of constables submitted by the applicants (Annex.4 to the original application) was only a draft list, which was modified later is, again, an imprecise statement without the slightest indication of what exactly was wrong with this list and how exactly it was modified later, specially in relation to the interests of the applicants. In the absence of any clear statement on this aspect, we feel compelled to ignore this part of the counter.

30. In the clear light of what has been discussed at length in the preceding paras, we are convinced that the applicants are indeed fully entitled to the reliefs sought for by them. We accordingly direct that

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S/Shri Laxman Samal, Sunakar Behera, Surendera Nayak and Birendra Kumar Sinha be deemed to have been promoted to the rank of Naik from the date(s) on which S/Shri Prafulla Chandra Jena, Sampurna Kumar Das, Umakanta Das and Alekh Ch.Das were so promoted. Furthermore, we direct that the applicants be given all consequential benefits, including financial benefits in terms of scales of pay as well as further promotions, which would be due to them until the present. The above actions will be completed within a period of 120 days from the date of receipt of this judgment.

20. Thus the application is accordingly disposed of.

No costs.

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10.12.93.
VICE-CHAIRMAN

[Signature]
MEMBER (ADMINISTRATIVE)

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 1993/ B.K.Sahoo

10 DEC 93

