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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 629 OF 1992
Cuttack, this the 20th July, 1999

Hemanta Kumar Patnaik Applicant

Vrs.

State of Orissa and others Respondents

FOR INSTRUCTIONS

1. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? NO

(G.NARASIMHAM)
MEMBER(JUDICIAL)

SOMNATH SOM
VICE-CHAIRMAN

20.7.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 629 OF 1992

Cuttack, this the 20th day of July, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Hemanta Kumar Patnaik, aged 55 years, son of late Birakishore Patnaik of village Jimut, PO-Patrapali, District-Balangir, at present Joint Director, Social Forestry Project, Bhubaneswar, District-Puri Applicant

Advocates for applicant - M/s B.Panda
Devashis Panda

Vrs.

1. State of Orissa, represented by Secretary to Government, General Administration Department, At/PO/PS/Munsifi-Bhubaneswar, District-Puri.
2. Selection Committee represented by Chairman-cum-Chief Secretary to Government, At/PO/PS/Munsifi-Bhubaneswar, District-Puri.
3. Principal Chief Conservator of Forests, Orissa, At/PO/P.S/Munsifi-Bhubaneswar, District-Puri.
4. Sri Srikrishna Prasad, son of late Balabhadra Prasad, Conservator of Forests, SEC L Ltd. South Eastern Coalfield, Bhubaneswar), At/PO/PS/Munsifi-Bhubaneswar, District-Puri.
5. Secretary to Government, Department of Forest, At/PO/PS/Munsifi-Bhubaneswar, District-Puri.

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Respondents

Advocate for respondents - Mr.K.Ch.Mohanty
for Respondents 1
to 3 and 5.

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the recommendation of the Selection Committee and the notification promoting Shri Srikrishna Prasad (respondent no.4) to the post of Additional Chief Conservator of Forests. He has also prayed for a declaration that the applicant's case is entitled for consideration for promotion to the rank of Additional Chief Conservator of Forests. The last prayer is for a direction to the departmental respondents to promote the applicant to the post of Additional Chief Conservator of Forests.

2. The facts of this case, according to the applicant, are that he is a member of Indian Forest Service and at the relevant time was seniormost Conservator of Forests and was eligible for being considered for promotion to the post of Additional Chief Conservator of Forests. According to him, he has unblemished record of service and under the rules appointment to the post of Additional Chief Conservator of Forests is to be made by selection on merit with due regard to seniority. Guidelines also provide for constitution of a Selection Committee consisting of Chief Secretary, Secretary in charge of Forest Department and the Principal Chief Conservator of Forests. The applicant has stated that the Selection Committee met on 11.11.1992 and though he was eligible for consideration his case was not considered and recommended. He has further stated that he came to know that his case was not recommended because a departmental proceeding was allegedly pending against him. It has been submitted by the applicant that in the departmental proceeding the Inquiring Officer in his letter dated

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29.10.1992 has recommended for dropping of the proceeding against the applicant due to lack of material against him to conduct an enquiry. It is further stated that though the applicant was named as an accused in the FIR lodged in Berhampur P.S. Case No.8/87 under Section 5(2) read with Section 5(1)(c)(d) of Prevention of Corruption Act pending before the Special Judge, Vigilance, Berhampur, in the chargesheet submitted on 31.12.1990 he has not been cited as an accused and no cognizance has been taken against him. The applicant has stated that in view of the fact that he has unblemished record of service, the departmental proceedings have been recommended to be dropped and no cognizance has been taken against him in the criminal case, the Selection Committee should have considered his case and should not have ignored his case for promotion to the rank of Additional Chief Conservator of Forests. Instead of that the Selection Committee have recommended respondent no.4, an officer admittedly junior to him and in pursuance of that recommendation, respondent no.4 has already been appointed as Additional Chief Conservator of Forests in the order dated 5.12.1992 at Annexure-1. In the context of the above, the applicant has come up with the prayers referred to earlier.

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3. State of Orissa (respondent no.1) have filed counter. The petitioner has styled the Selection Committee represented by its Chairman-cum-Chief Secretary as respondent no.2, Principal Chief Conservator of Forests as respondent no.3 and Secretary to Government in Forest Department as respondent no.5. Sri Srikrishna Prasad has been arraigned as respondent no.4. No counter has been filed by respondents 2 to 5 in spite of notice.

4. State of Orissa in their counter have contested the averment of the applicant that he has

unblemished record of service. They have pointed out that the applicant's representation for expunging the adverse entries for the period 1.4.1974 to 28.7.1974 and for the year 1975-76 was rejected. Adverse entries for the year 1978-79 were partly expunged. Adverse entries for the periods from 1.4.1979 to 10.7.1979, for the year 1983-84, from 3.9.1984 to 31.3.1985 and for the year 1986-87 have been partly expunged on his representations. State of Orissa in their counter have also stated that the averment of the applicant that in the criminal case under Prevention of Corruption Act no chargesheet has been filed against him is incorrect. As a matter of fact, Government of India have already sanctioned prosecution of the applicant in their order dated 18.9.1992 which is at Annexure-R-1/2 under a different provision of the Prevention of Corruption Act. As regards the averment of the applicant that the departmental proceedings have been recommended to be dropped, the State of Orissa in their counter have stated that the enquiry report submitted by the Inquiring Officer after conducting full enquiry is now under consideration of Government in Forest & Environment Department. As regards the main contention of the applicant that his case was not considered by the Selection Committee, the State of Orissa in their counter have stated that the case of the applicant along with others including respondent no.4 was considered by the Selection Committee in their meeting held on 11.11.1992. The State of Orissa have extracted the observation of the Selection Committee with regard to the case of the applicant. The Selection Committee have observed that while considering the case of the applicant it was found that the CCRs of the applicant for the years 1990-91 and 1991-92 were not available. The Committee held that in the absence of the above CCRs it was difficult for the Committee to come to a decision regarding

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applicant's suitability for promotion to the rank of Additional Chief Conservator of Forests. It was further observed that even on receipt of the CCRs for the above two years the findings of the Committee on the applicant's suitability for promotion will have to be kept in sealed cover in view of the sanction of prosecution by the Government of India against the applicant. In view of this, the Committee decided to consider the case of the applicant on receipt of the CCRs for the years 1990-91 and 1991-92. State of Orissa have further stated in their counter that respondent no.4, the person next to the applicant in seniority was found suitable by the Selection Committee and was recommended for promotion to the rank of Additional Chief Conservator of Forests and accordingly in the notification dated 5.12.1992 respondent no.4 was promoted. State of Orissa in paragraph 11 of their counter have made the following averment:

"The case of the applicant will be reconsidered by the Screening Committee after receipt of his wanting CCRs for the years 1990-91 and 1991-92."

On the above grounds, the State of Orissa have opposed the prayers of the applicant.

5. We have heard the learned counsels for both sides and have perused the records.

6. From the counter of the State Government it is clear that the case of the applicant was placed before the Selection Committee. It is however noticed that the Selection Committee in their meeting held on 11.11.1992 did not come to a finding with regard to suitability or otherwise of the applicant for promotion to the rank of Additional Chief Conservator of Forests. It was the job of the Department to collect the CCRs for the relevant years 1990-91

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and 1991-92 and place the same before the Selection Committee more so when the last date of writing of CCRs for both these years had been long over by the date the Selection Committee met. In case the CCRs for these two years had not been written, then a certificate indicating that the CCRs for the relevant years have not been maintained should have been given and placed before the Selection Committee. Whatever it may be, State of Orissa in their counter have mentioned and this part has been extracted by us above that on receipt of the CCRs the case of the applicant will be reconsidered by the Screening Committee. This counter has been filed in May 1993. After that six years have already passed. The CCRs of the applicant for the two years 1990-91 and 1991-92 must have been obtained during this period. In view of this and in view of the averment of the State of Orissa that the case of the applicant would be reconsidered by the Selection Committee on receipt of his CCRs for those two years, we direct respondent nos. 1, 2, 3 and 5 to consider the case of the applicant for promotion to the rank of Additional Chief Conservator of Forests from the date his junior has been promoted on the basis of his CCRs, if such consideration has not been done already. We also note that a departmental proceeding was pending against the applicant when the Selection Committee met. In their counter filed in May 1993 the State of Orissa have stated that the report of the Inquiring Officer has been received and the same is under consideration. We hope and trust that during the last six years final order must have been passed in the departmental proceeding. As regards the criminal proceeding, in case the same is pending, then the recommendation of the Selection Committee has to be kept in sealed cover and after the criminal case is over, State of Orissa should open the sealed cover and act according to the

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recommendation of the Selection Committee. In case the criminal proceeding is already over, then the Selection Committee should take note of the final decisions in the departmental proceedings and the criminal case while reconsidering the case of the applicant for promotion. The above exercise should be completed within 120 (one hundred twenty) days from the date of receipt of copy of this order.

7. In the result, the Original Application is disposed of in terms of the observation and direction above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

(SOMNATH SOM)

20.7.99
VICE-CHAIRMAN

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