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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

Original Application No. 357 of 1994.

Date of decision : December 1, 1994.

Bhagirathi Behera ...

Applicant.

Versus

Union of India and others ...

Respondents.

(FOR INSTRUCTIONS)

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

13/12/94
(H. RAJENDRA PRASAD)
MEMBER (ADMINISTRATIVE)

01 DEC 94

D.P.HIREMATH
(D.P. HIREMATH)
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

Original Application No. 357 of 1994.

Date of decision : December 1, 1994.

CORAM:

THE HON'BLE MR.JUSTICE D.P.HIREMATH, VICE-CHAIRMAN
A N D

THE HON'BLE MR.H.RAJENDRA PRASAD, MEMBER (ADMINISTRATIVE)

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Bhagirathi Behera, I.F.S.,
s/o Sri Mahendra Kumar Behera,
resident of village Musamari,
P.O. Debsol, Dist-Mayurbhanj.
now posted as Working Plan Officer,
Angul, Dist.Angul.

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Applicant.

By Advocates

... M/s. M.R.Panda,
D.K.Pani, S.K.Sahu,
M.M.Nayak,
Mrs. M.K.Das.

Versus

1. Union of India, represented through its Secretary, Home Department, New Delhi.
2. State of Orissa, represented through its Secretary, Forest Fisheries and Animal Husbandry Department At/P.O. Bhubaneswar, Dist-Khurda.
3. The Chief Conservator of Forests, Orissa, Cuttack Old Secretariat, At/P.O./Dist.Cuttack.

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Respondents.

By Advocates ...

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

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

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O R D E R

D.P.HIREMATH, V.C., Heard both the learned counsel.

2. The applicant herein hasprayed that the respondents consider his promotion from the date when his juniors were promoted with all consequential service benefits. He joined Indian Forest Service in the year 1978 and was allotted to the Orissa State. He served in different stations as Divisional Forest Officer. Certain departmental enquiry was initiated against him because of the hostile attitude of some of his superior Officers. In O.A.50 of 1988 the applicant challenged the initiation of these proceedings before this Tribunal and by its order dated 19.12.1988 the application was disposed of with a direction that the enquiry should be over within 4(four) months from the date of receipt of the order. Inspite of that the enquiry was not completed. However, by order dated 21.3.1989 the State Government appointed the Presenting Officer and the Enquiring Officer and the applicant approached the Enquiring Officer to complete the enquiry. He then made a representation that either the enquiry be dropped or the proceedings be closed, as nothing was done within the stipulated time given by the Tribunal. He then apprehended that because of the pendency of the enquiry he might not be considered for promotion. The applicant then approached this Tribunal in O.A.73 of 1991. Even though some progress was made by appointing a certain Mr.A.Rath as the Enquiring authority nothing came

out of this proceeding. Long thereafter Mr.M.Y.Rao was appointed to conduct the enquiry and the applicant raised a protest and challenged the legality of his continuing in the enquiry. Ultimately the State Government promoted Officers junior to him namely Stiphen Behera and S.S. Srivastava ignoring his seniority. O.A.73 of 1991 came to be disposed of by this Tribunal by its order dated 22.4.1994 and the applicant was assured that the proceedings would be completed within the time allowed by the Tribunal. In that judgment of 22.4.1994 this Tribunal gave the following directions:

" It is for both the Government to send copies of the judgment to UPSC and get the matter expedited if the matter is still pending with the UPSC. Therefore, under the circumstances stated above, we would direct that the proceeding must be finally disposed of within 90(ninety) days from the date of receipt of a copy of the judgment by O.P Nos.1 & 2 failing which the proceeding is deemed to have been quashed. This application is accordingly disposed of. No costs. "

It is the grievance of the applicant that in spite of the clear direction given by the Tribunal the enquiry was not completed, the proceedings must be deemed to have been quashed. As on today no proceedings are pending against him and therefore, he should be considered for promotion from the date his junior was promoted.

3. The State Government has made it clear that the case of promotion of the applicant would be taken up as per the Government of India's guidelines dated 5.10.1993 after conclusion of the disciplinary proceedings. The said guidelines have been annexed as Annexure-R-2/4. It is not

correct to say that the legitimate promotional prospects and benefits of the applicant are now ~~stalled~~ strolled. The promotion to his juniors has been given following the Rules but subject to result of this case as per the direction of this Tribunal. It is also stated inter alia that the State Government pursuant to the judgment of the Tribunal had complied with the formalities that were to be taken at its level and the matter is presently lying with the Government of India to obtain the advice of the Union Public Service Commission which is not a party to this proceeding. Thus, the State Government has taken a stand that whatever was required to be done at its level, has been done and unless it is cleared by the Government of India, they are not in a position to give promotion to the applicant.

4. It was made amply clear that both the Government of India as well as the State Government were parties to the earlier application that came to be decided on 22.4.1994.

A clear direction was given in the order that both the Government of India as well as the State Government shall take steps to see that the direction given by this Tribunal are obeyed within the time-frame fixed by the Tribunal.

Counter of the State Government was filed on 5.10.1994.

90 days fixed by the Tribunal for compliance with a direction given namely to complete the enquiry expired in the month of July, 1994. Thus, even after the expiry of 3 months of the time limit fixed by the Tribunal the State Government was rendered helpless to give promotion to the

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applicant for the reason that as the things did not move in the ~~matter~~ ^{manner they} ought to have moved in the Offices of the Government of India. It is also relevant to observe here that this direction given by the Tribunal is in force and was not interfered with either in appeal or in other proceedings. That being so, it was the duty of the Union Government to see that the direction given must be obeyed within time stipulated when it is the question of promotion of the applicant that was hanging in uncertainty. In our opinion, as the proceedings are deemed to have been quashed after the expiry of 90 days fixed by this Tribunal, it must be held that there is no disciplinary proceeding pending. That being so, the applicant is entitled to fpr promotion. With these observations, it is directed that the applicant shall be considered for promotion from the date his junior was promoted by opening the sealed cover and thereafter if he is promoted, he shall be entitled to all ^{the} his consequential benefits. No order as to costs.

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 (H. RAJENDRA PRASAD)
 MEMBER (ADMINISTRATIVE)

01 DEC 94

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 (D.P. HIREMATH)
 VICE-CHAIRMAN.

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