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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 97 OF 1995
Cuttack, this the 23rd day of February 2000

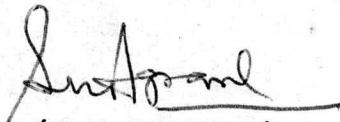
Sri S.D. Raiguru Applicant ✓

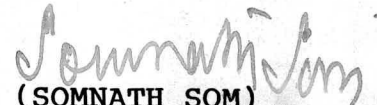
Vrs.

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 Tribunal or not? no.


(S.K. AGARWAL)
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 23.2.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
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ORIGINAL APPLICATION NO. 97 OF 1995

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGARWAL, MEMBER(JUDICIAL)
.....

Shri S.D.Raiguru, aged about 49 years, son of Pandit Dinabandhu Panigrahi at present working as A.I.G. of Police (Supply), Orissa, Cuttack, At-Office of the Director General of Police, Orissa, P.O-Buxi Bazar, District-Cuttack.

....Applicant

Advocates for applicant - M/s Ganeswar Rath
P.K.Mohapatra
S.N.Misra
R.C.Sahoo
P.K.Panda

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- S.Som.
1. Union of India, represented through its Secretary, Ministry of Home Affairs, Government of India, Union Secretariat, New Delhi.
 2. State of Orissa through its Chief Secretary, Government of Orissa, Secretariat Building, Bhubaneswar, District-Khurda.
 3. State of Orissa through its Principal Secretary, Home Department, Government of Orissa, Secretariat Building, Bhubaneswar
 4. State of Orissa through its Secretary, Commerce and Transport (Transport) Department, Secretariat Building, Bhubaneswar.
 5. State of Orissa through its Special Secretary to General Administration Department, Secretariat Building, Bhubaneswar.
 6. Chairman-cum-Managing Director, Rajya Paribahan Bhawan, OSRTC, Bhubaneswar.
 7. Director General and Inspector General of Police, Orissa, At/PO-Buxibazar, Cuttack Town, District-Cuttack.
 8. Special I.G. of Police (Administration), Orissa, At/PO-Buxibazar Cuttack

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Respondents

Advocates for respondents - Mr.U.B.Mohapatra
A.C.G.S.C. for
R-1.
&
Mr.K.C.Mohanty
Government
Advocate for
Rs.2 to 8

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to pay him annual increments in Indian Police Service (IPS) cadre's scale from 1.6.1989 till he reached the Junior Administrative Grade (J.A.Grade) on 1.1.1993. The second prayer is for fixing his pay at Rs.3750/- on 1.6.1989, Rs.3875/- on 1.6.1990, Rs.4000/- on 1.6.1991, Rs.4125/- on 1.6.1992, Rs.4200/- on 1.1.1993, Rs.4325/- on 1.1.1994 and Rs.4450/- on 1.1.1995 and pay him the arrears with interest at 12% per annum on the arrears as above. The third prayer is for a declaration that his allotment year in the IPS cadre is 1977-78 or in the alternative 1982 and to give a direction to the respondents to give him J.A.Grade in 1987 or in the alternatively in the year 1991 and accordingly fix his pay. The next prayer is to fix his pay in J.A.Grade on 1.6.1991 at Rs.4000/- and allow him periodical increments. The last prayer is for quashing the two orders dated 27.5.1995 at Annexures 26 and 27.

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2. The applicant's case is that he was a member of State Police Service and he was allowed officiating promotion to the rank of IPS in order dated 18.6.1982 (Annexure-1) and was posted as Additional Superintendent of Police (Rural), Cuttack. He joined the

above post on 23.6.1982 in the scale of Rs.1200-1700/-, the Senior Time Scale of IPS with usual DA as per All India Services (Dearness Allowance) Rules, 1972. The applicant accordingly drew his pay in the IPS cadre in the scale of Rs.1200-1700/- from 23.6.1982 onwards with DA and ADA admissible to IPS officers. But while he was working as Additional S.P., Chatrapur, central rate of DA and ADA was denied to him and Superintendent of Police, Ganjam, passed order of recovery of Central rate of DA and ADA from the applicant's pay and did not allow him the IPS rate of DA and ADA from October 1985. The applicant filed OJC No. 1532 of 1986 before the Hon'ble High Court, which was transferred to the Tribunal as TA No. 2 of 1988, disposed of on 31.3.1989. The Tribunal held that the applicant is entitled to IPS scale of pay from 23.6.1982 to 7.7.1988. The order of the Tribunal is at Annexure-5. While TA No.2/88 was pending, the pay scale of IPS was revised from Rs.1200-1700/- to Rs.3000-4500/- on 1.1.1986 and the applicant was due to get Rs. 3400/- as on 1.6.1986, Rs.3500/- on 1.6.1987 and Rs.3625/- as on 1.6.1988. The applicant was sent on deputation to Orissa Road Transport Corporation as Chief Vigilance & Enforcement Officer from 1.7.1988 to 8.3.1989 in Home Department notification dated 30.4.1988 (Annexure-3). His terms of deputation to ORTC were issued in order dated 27.10.1989 which provided that during the period of deputation he would draw his grade pay as admissible to him in the State Police service. The applicant has stated that even though IPS scale of pay was revised from 1.1.1986 because of the Fourth Pay Commission recommendation, he continued to get the pre-revised rate of scale of pay of Rs.1200 plus DA and ADA during the

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period of deputation. According to the applicant, he was due to get Rs.3625/- as on 1.6.1988. Before completion of his deputation period he returned to his parent Department on 8.3.1989 and joined as Additional Superintendent of Police, Puri, in the cadre post of IPS on 10.3.1989 on getting his promotion to IPS from 1.2.1989. It is stated that instead of paying the revised pay scale he was allowed to draw pre-revised scale of Rs.1200/- without annual increments from 23.6.1983 which fell due on return to his parent Department and thereafter. After the order of the Tribunal, dated 31.3.1989 in TA No.2/88, Government of India created a temporary post of Additional Superintendent of Police in the IPS Cadre in their order dated 10.7.1991 (Annexure-6) for the period from 23.6.1982 to 7.7.1988 and regularised the pay and allowances of the applicant in compliance of the order of the Tribunal, dated 31.3.1989 in TA No. 2/88. Accordingly on 1.6.1988 under orders of the State Government, Director General of Police fixed his pay at Rs.3625/- in the revised scale of pay of IPS. These orders are at Annexures 8,9 and 10. According to the applicant, three posts in the IPS cadre were in existence in 1989 consequent upon cadre revision. But the applicant was not confirmed in the IPS cadre and was allowed to continue in IPS on officiating basis. He filed OA No. 97 of 1989 before the Tribunal and the Tribunal in their order dated 19.3.1990 (Annexure-11) held that the applicant be deemed to have been promoted to IPS cadre with effect from 1.2.1989. The applicant has stated that Government have not allowed him to draw the increment

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in the IPS cadre from 1.6.1989 till date and the applicant was drawing Rs.3625/- from 1.6.1988 onwards till date. It is furtherstated that he has no grievance regarding arrear scale of pay from 1.1.1986 till 7.7.1988. The applicant has been promoted on officiating basis to J.A. Grade with effect from 18.6.1991 as per circular of Government of India at Annexures 13, 13/1 and 13/2. The scale of pay of J.A. Grade is Rs.3700-5000/-. At Annexures 12, 12/1 and 12/2 are three tabular statements showing the amount due to be paid to the applicant if he is allowed J.A. Grade from 1.6.1987, 1.6.1991 and 1.1.1993. It is stated that without considering the period of officiating promotion from 23.6.1982 and the relevant circulars, the respondents in their order dated 10.8.1994 and 14.9.1994 gave him promotion to the J.A. Grade with effect from 1.1.1993 and fixed his pay at Rs.3825/- as on 1.1.1993. These two orders are at Annexures-14 and 15. The applicant has stated that his year of allotment was fixed as 1984 instead of 1982, the day on which he was promoted on officiating basis to IPS cadre. It is also submitted that fixation of his pay in J.A. Grade on 1.1.1993 at Rs.3850/- and at Rs.3950/- on 1.1.1994 is illegal because no increment was given to the applicant from 1.6.1988 to 1.1.1993. If increments could have been allowed, then his pay would have been fixed at Rs.4200/- as on 1.1.1993 instead of Rs.3825/-. The applicant has furtherstated that he should have been given J.A. Grade with effect from 1.1.1991 as he has completed nine years of service in IPS cadre in that year. It is further stated by the applicant that the respondents have committed illegality in not

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allowing him annual increment in IPS cadre from 1.6.1988, the day they have fixed his pay at Rs.3625/- till the J.A.Grade of IPS was sanctioned in his favour with effect from 1.1.1993. It is further stated that the respondents committed illegality in not fixing his pay in accordance law in J.A.Grade and by not taking into account his annual increments which fell due in his favour from 1.6.1989 till 1.1.1993. It is stated that the difference of pay amounts to Rs.22,000/-till the filing of this OA and this should be paid with interet at 12%. The applicant has further stated that his pay should have been fixed at Rs.4200/- on 1.1.1993 and Rs.4325/- on 1.1.1994 instead of Rs.3825/- and Rs.3950/-. As regards his year of allotment in the IPS the applicant hasstated that OA No. 146 of 1986 filed by him was disposed of in order dated 6.8.1993 bythe Tribunal and he was declared senior to B.N.Jena, B.B.Khatua, D.P.Das and Md.Z.Ahamed. This order is at Annexure 16. The year of allotment and seniority of the applicant in the IPS cadre should have been fixed in 1978 as in the case of those officers and therefore he should have been given yeasr of allotment as 1977-78. In this connection the applicant filed another OA No.533 of 1991 which was disposed of in the light of the decision in OA No.146 of 1986 pending adjudication of the matter in the Hon'ble Supreme Court. It is furtherstated that the Hon'ble Supreme Court have laid down that continuous officiating period of an officer in the IPS will be taken into consideration as rendering service in the cadre and for the purpose of fixing seniority. It isstated that in case his year of allotment is taken as 1977-78 then he willbe

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entitled to be promoted to J.A. Grade from 1.6.1987. In the context of the above facts the applicant has come up with the prayers referred to earlier.

3. In the counter filed by State of Orissa through Principal Secretary, Home Department, Director General of Police and Special I.G. of Police (administration), the prayers of the applicant have been opposed. It is submitted that the application is barred by limitation as the cause of action arose much prior to filing of this application in 1995. The respondents have stated that the petitioner was not promoted to IPS with effect from 23.6.1982. He was allowed to officiate against a cadre post of IPS under Rule 9 of IPS (Cadre) Rules, 1954 for a period not exceeding three months and posted as Additional Superintendent of Police, Cuttack (Rural), in Home Department order at Annexure-1. He joined the post on 23.6.1982. His pay was fixed in the Senior Time Scale of IPS with effect from that date and he was allowed to draw the pay. Under Rule 9 of the IPS (Cadre) Rules a cadre post in the State can be filled up by a person who is not a cadre officer if the State Government is satisfied that the vacancy is not likely to last for more than three months or that there is no suitable cadre officer available for filling up of the vacancy. For allowing officiation to non-cadre officers beyond a period of three months, concurrence of Government of India is necessary. It is stated that the petitioner was allowed officiation against a cadre post of IPS for a period of three months only. After the expiry of the period he ought to have been reverted to his parent post of Orissa Police Service cadre, but this was not done in time. However, in

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the absence of concurrence of Government of India the petitioner continued to function inadvertently against a cadre post of IPS and he continued as Additional Superintendent of Police in IPS cadre for a period not exceeding three months in different spells in orders dated 22.7.1983, 5.7.1985 and 16.5.1987. These orders of officiation were not continuous and did not have also the concurrence of the Central Government. The respondents have stated that such officiation does not mean appointment by promotion to the IPS cadre because appointment of State Police officers to IPS is made by the Central Government under Regulation 9(1) of IPS (Appointment by Promotion) Regulations, 1955. After expiry of his period of officiation steps were taken to regularise his appointment in OPS Cadre. The respondents have stated that as no order from Government of India regarding continuation of his officiation in a cadre post beyond three months was there his officiating appointment beyond the period of three months gets automatically cancelled and he was to be adjusted against a post in the parent cadre of OPS, Class-I. It is further stated that Government of India instructions under Rule 4 of IPS (Pay) Rules, 1954 lay down that in cases where the requirements of Rule 9 of the Cadre Rules have not been fulfilled, the non-cadre officer shall be remunerated the pay which he would have drawn in the State Service had he not been appointed to a cadre post. Because of this the petitioner was not entitled to draw pay, DA and ADA beyond the period of three months and therefore it was directed to recover from him the excess pay drawn by him in the Senior Time Scale of IPS beyond the period of three months. The

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petitioner challenged this in OJC No.1532 of 1986 which was disposed of on 31.3.1989 as TA No.2/88. The Tribunal in their above order directed that as he had discharged the duties and responsibilities of the cadre post of Additional Superintendent of Police, he should be given pay and allowances attached to the post for the period from 23.6.1982 to 7.7.1988. Accordingly he was paid the pay and allowances as admissible in IPS scale till 7.7.1988. After that his pay was fixed with effect from 8.7.1988 in the OPS Class-I cadre. From the above it is clear that the applicant was entitled to get the scale of pay in the IPS from 23.6.1982 to 7.7.1988 but not thereafter. The petitioner filed OA No.97 of 1989 claiming promotion to the IPS and the Tribunal in their order dated 19.3.1990 allowed the applicant to get promotion to IPS from 1.2.1989. Against this order of the Tribunal declaring him to be promoted to IPS with effect from 1.2.1989, the applicant hadnot filed any appeal and therefore this judgment is binding on him and there cannot be two decisions on the same matter regarding his date of promotion. In pursuance of the above order Government of India also issued the Presidential notification dated 18.1.1991 (Annexure-R-3/3) appointing the applicant to IPS with effect from 1.2.1989 by way of promotion. The respondents have stated that from the above it is clear that the petitioner was not in the IPS cadre on promotion from 8.7.1988 to 31.1.1989 but he was in the OPS cadre during this period. On 10.3.1989 the applicant was posted as Additional Superintendent of Police in the OPS Class (Senior Branch) and worked as such till 31.1.1991. But subsequently as a result of the notification dated 18.1.1991 he was allowed promotion to IPS with effect from

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1.2.1989 and the period of service rendered from 1.2.1989 to 31.3.1991 in the OPS cadre was counted as his service in the IPS cadre. It is further stated that in accordance with the judgment in TA No.2/88 a temporary post of Additional S.P. in the IPS cadre was created from 23.6.1982 to 7.7.1988 after obtaining concurrence of Government of India and pay and allowances for the above period were paid to the applicant in accordance with the order of the Tribunal. It is further stated that as the applicant worked in the OPS cadre from 8.7.1988 to 31.1.1989, the scale of pay admissible to officers in the rank of Additional Superintendent of Police of OPS was allowed to him and therefore he cannot claim increments in the IPS scale from 1.6.1989. It is further stated that he was allowed regular promotion to IPS with effect from 1.2.1989 and his year of allotment has been fixed as 1984 in IPS by Government of India. As his year of allotment is 1984 and he completed nine years of service in 1993 he was allowed appointment to J.A.Grade with effect from 1.1.1993 in order dated 10.8.1994. The respondents have stated that the applicant's pay in J.A.Grade was fixed at Rs.3825/- with effect from 1.1.1993 pending orders of Government to regularise his service in OPS from 8.7.1988 to 31.1.1989. He was also allowed annual increment in J.A.Grade raising his pay to Rs.3950/- on 1.1.1994 and Rs.4075/- on 1.1.1995. After regularisation of the pay of the petitioner for the period from 8.7.1988 to 31.1.1989, his pay in the J.A.Grade was fixed at Rs.3700/- on 1.1.1993 and Rs.3825/- on 1.1.1994 and Rs.3950/- on 1.1.1995 in the order at Annexure-R-3/4 of the counter and Annexure-27 of the O.A. The respondents have stated that during the period from 23.6.1982 to 7.7.1988 he had been paid all his

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annual increments according to Senior Time Scale of I.P.S. He came back to OPS cadre on 8.7.1988. The monthly emoluments which he was drawing during the period from 23.6.1982 to 7.7.1988 according to the Senior Time Scale of pay were more than the emoluments of the O.P.S. scale which he was due to draw from 8.7.1988 to 31.1.1989 till his promotion to the IPS. Therefore, his contention claiming arrear of Rs.22,000/- and interest thereon amounting to Rs.16,500/- is without any basis and no illegality has been committed by the Government. It is further stated that against the judgment of the Tribunal in OA No.146/86 SLP has been filed before the Hon'ble Supreme Court and therefore fixation of his seniority and year of allotment has not been done by Government of India. The respondents have also pointed out that the applicant's contention that his year of allotment should be fixed from July 1982 as per the judgment of the Tribunal in TA No.2/88 is incorrect because the Tribunal had simply allowed the petitioner pay and allowances in Senior Time Scale of IPS for the period from 23.6.1982 to 7.7.1988 but had not directed that his service should count towards fixation of his seniority. His year of allotment has been rightly fixed as 1984 by Government of India basing on the order of the Tribunal in OA No. 97 of 1989. On the above grounds, the respondents have opposed the prayers of the applicant.

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4. The applicant in his rejoinder has stated that the right of correct fixation of pay cannot be barred by question of limitation because it is a continuing wrong. It is further stated that he was allowed officiating promotion to the cadre of IPS when he was a candidate in the select list for the year 1982. The order

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at Annexure-1 does not indicate that such officiation was for any fixed period. It is stated that he officiated in the cadre post of IPS uninterruptedly in pursuance of Annexure-1. It is also stated that the Tribunal in their orders in TA No.2/88 as also OA 146/86 had held that since 23.6.1982 he had officiated continuously in a cadre post. It is further stated that even during the period of his deputation from 8.7.1988 to 31.1.1989 he had received Senior Time Scale of IPS. It is stated that both during his period of deputation to ORTC and after his repatriation from deputation he was drawing pre-revised IPS scale of pay. The term of deputation was made known to him only after his repatriation. He has stated that the Tribunal in TA No.2/88 had held that he is entitled to IPS scale of pay till 7.7.1988. The Tribunal never held that the applicant is not entitled to IPS scale of pay thereafter. It has been further stated that the Tribunal declared the applicant to be demed IPS from 1.2.1989 pending finalisation of OA No.146/86 and TA No.90/87 decided by the Tribunal and therefore the applicant is entitled to the benefit of scale of pay of IPS both during the period of deputation as also the usual increments thereafter. On the above grounds the applicant has reiterated his prayers in his rejoinder.

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5. In an additional rejoinder the applicant has stated that he had filed OA No.197 of 1992 claiming interest and periodical increments. The Tribunal in their order dated 24.6.1994(Annexure-18 of the O.A.) allowed interest at 12% and directed the respondents to consider the aspect of granting him increments as per rules if the petitioner is entitled to the same. Against the order in

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OA No.197/92 SLP filed before the Hon'ble Supreme Court was dismissed.

6. Respondent no.3 has filed a counter to the rejoinder and additional rejoinder in which the averments made in the counter have been reiterated. The only new point made here is that the orders of the Tribunal in OA Nos. 146/86 and TA No. 90/87 are subject to interlocutory orders dated 16.3.1989 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Nos. 15459 and 15460 of 1988. There the Hon'ble Supreme Court observed that pending notice status as of today regarding service position of the petitioners will be maintained. It is stated that the Hon'ble Supreme Court have further ordered on 20.8.1990 that special leave granted and status quo will continue. It is stated that till the interlocutory orders passed by the Hon'ble Supreme Court are withdrawn or vacated or varied the applicant cannot get any benefit out of the orders of the Tribunal in OA No.146/86. It is furtherstated that the Tribunal in paragraph 12 of their order in OA No. 146/86 have stated that their findings are subject to the observation of the Hon'ble Supreme Court, dated 16.3.1989 that status quo as of today regarding service position of the petitioner will be maintained. The other averments made in the counter are repetition of the averments in the counter filed by the respondents and it is not necessary to cover the same once again. On the above grounds, respondent no.3 has opposed the prayers of the applicant.

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7. We have heard Shri G.Rath, the learned counsel for the petitioner, Shri K.C.Mohanty, the learned Government Advocate appearing for Respondent nos. 2 to 8, and Shri U.B.Mohapatra, the learned Addl.Standing Counsel for respondent no.1 and have also perused the records.

The learned counsel for the petitioner has filed written note of arguments with copy to the other side which has also been taken note of.

8. The first point made by the learned counsel for the petitioner is that the petitioner continued in officiating promotion in IPS from 23.6.1982 to 1.7.1988 in accordance with rules. It is stated that in their order dated 31.3.1989 in TA No. 2/88 the Tribunal held that the applicant was entitled to IPS scale of pay with DA and ADA for the period from 23.6.1982 to 7.7.1988. The SLP filed by the State Government against this decision was also dismissed and thereafter the order of the Tribunal was implemented by creating a post by way of temporary addition to IPS cadre and the pay and allowances for this period, according to the IPS pay scale were allowed to the petitioner. The Tribunal also held that during this period he went on doing work of a cadre post in IPS and was therefore entitled to the pay of the post. It is further submitted by the learned counsel for the petitioner that his period of continuous officiation in an IPS post from 23.6.1982 should have been taken into account for fixing his seniority in IPS. In support of his contention the learned counsel for the petitioner has relied on the case of Syed Khalid Rizvi and others etc. v. Union of India and others, 1993 (1) SLR 89. For the purpose of the present application it is not necessary to go into facts of this case. Here the Hon'ble Supreme Court noted that it is settled law that a promotee officer appointed temporarily to a cadre post does not get his continuous officiation towards seniority. Seniority would be counted only from the date on which he was brought

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into the select list by the Selection Committee. It is further submitted by the learned counsel for the petitioner that for continuous officiation in a cadre post prior concurrence of Government of India is not necessary and in determining the year of allotment promotees cannot be deprived of continuous officiation in the cadre post. The next decision referred to is Union of India v. G.N.Tiwari and others, AIR 1986 SC 348. In this decision also it was held that non-cadre officer cannot be denied the benefit of continuous officiation in a senior post and the period of continuous officiation would count only from the date of inclusion of the name of the officer in the select list. In the case of Harjeet Singh, etc. v. Union of India and others, AIR 1980 SC 1275, relied upon by the learned counsel for the petitioner it has also been held that continuous officiation will count from the date of inclusion of the officer in the select list. Relying on this decision it has been argued that as the applicant had worked in a cadre post continuously from 23.6.1982 his seniority in IPS should be fixed by taking into account the period of his continuous officiation. The entire gamut of this argument is based on the premise that from 23.6.1982 till his appointment to IPS on 1.2.1989 in pursuance of the order of the Tribunal in OA No.97 of 1989 the applicant has continuously officiated in a cadre post of IPS. On this basis in OA No.146/86 seniority was also allowed to the applicant over certain other IPS officers. But the decision of the Tribunal in OA No.146/86 was challenged before the Hon'ble Supreme Court and the Hon'ble Supreme Court in their judgment dated 18.9.1998 in Civil Appeal Nos. 4318-19 of 1990 set aside the order of

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the Tribunal. The relevant observation of the Hon'ble Supreme Court, in this connection, is quoted below:

"In the light of these facts it is not possible to hold that prior to his deemed date of promotion on 1.2.1989 he was continuously officiating in a senior post in the IPS cadre or that such officiation was at a time when his name was on the Select List because unless such officiation is during the period when the name of the officer is on the Select List it will not count for seniority under Explanation 1 to Rule 3(3)(b). This not being the case here, the respondent-Raiguru cannot be given the benefit of the so called continuous officiation for his seniority."

From the above it is clear that the Hon'ble Supreme Court has held that taking into account the facts and different orders issued from time to time with regard to the applicant that he did not officiate continuously in a senior post in the IPS from the date of initial officiating promotion, i.e., 23.6.1982 till his deemed date of appointment to IPS on 1.2.1989. In view of this finding of the Hon'ble Supreme Court, it is not necessary to go further into the matter.

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9. The next point urged by the learned counsel for the petitioner is that the Tribunal in their order in TA No.2 of 1988 had allowed him IPS scale of pay from 23.6.1982 till 7.7.1988. From 1.7.1988 he was on deputation to the Orissa Road Transport Corporation as Chief Vigilance Officer. It is submitted by the learned counsel for the petitioner that as part of the deputation from 1.7.1988 till 7.7.1988 was in the IPS scale of pay he should be deemed to have been continuing in his officiation against an IPS cadre post even during his deputation to ORTC. In support of this contention the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of

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R.L.Gupta and another v. Union of India and others, AIR 1988 SC 968, State of Mysore v. M.H.Bellary, AIR 1965 SC 868, referred to by the Hon'ble Supreme Court in the earlier case, and State of Punjab and others v. Inder Singh and others, etc., AIR 1998 SC 7. These decisions turn upon the peculiar facts of each case and cannot be said to be applicable to the facts of this case. In the present case it has not been mentioned by the petitioner that the post of Chief Vigilance Officer, Orissa Road Transport Corporation is a cadre post in the Orissa Cadre of IPS and therefore it cannot be held that during his period of deputation as Chief Vigilance Officer of ORTC he continued to officiate in a cadre post of IPS. Moreover, the orders sanctioning deputation enclosed by the petitioner himself at Annexure-4 to his OA clearly provided that during the period of deputation he would draw his grade pay as admissible to him in the State Police Service. In view of this, it cannot be held that during his period of deputation to ORTC he continued to officiate in a cadre post of IPS.

10. The third submission of the learned counsel for the petitioner is that taking into account his continuous officiation in the cadre post from 23.6.1982 his year of allotment should have been fixed as 1977-78 and not as 1984. This contention is plainly without any merit because the Tribunal in their order dated 19.3.1990 in OA No.97/89 held that the applicant would be deemed to be promoted to IPS with effect from 1.2.1989. Accordingly, Government of India issued Presidential notification dated 18.1.1991 appointing the applicant to IPS with effect from 1.2.1989 by way of promotion. The Tribunal's order


declaring his deemed date of promotion to IPS from 1.2.1989 is binding on the applicant because he has not challenged this decision in appeal. Accordingly, taking into account his year of appointment to IPS as 1989 his year of allotment has been rightly fixed as 1984. The next contention of the learned counsel for the petitioner that he should have been allowed Junior Administrative Grade in in IPS after 9 years of service in IPS, taking his year of allotment as 1977-78 also fails because as we have held his year of allotment has been rightly fixed as 1984 and therefore he has been rightly promoted to the J.A. Grade after nine years from 1.1.1993. No illegality is involved in this and the petitioner can have no grievance in this regard. His claim for getting the differential of pay on the basis of his promotion to Junior Administrative Grade from an earlier date prior to 1.1.1993 is also held to be without any merit.

11. The next prayer of the applicant is regarding fixation of his pay correctly in IPS scale of pay after he was appointed to IPS by promotion and after he was promoted to Junior Administrative Grade. These claims are based on the premise that during this period of deputation to ORTC he continued to hold a cadre post in IPS and therefore he should have been allowed increments in IPS scale of pay. It is to be noted in this connection that in accordance with the order of the Tribunal in TA No. 2/88 the applicant was allowed the scale of pay and allowances in IPS during his period of officiation from 23.6.1982 to 7.7.1988. The applicant has also stated in paragraph 4.13 of his OA that he has no grievance with regard to the scale of pay given to him till 7.7.1988.


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After that during his period of deputation to ORTC he was on deputation from OPS cadre and was not holding a cadre post of IPS and therefore he cannot get the increments in IPS scale of pay. Vide order at Annexure-27 his pay has been correctly fixed in IPS including his pay in the J.A. Grade. The learned counsel for the petitioner has stated that before fixation of his pay vide orders at Annexures 26 and 27 no opportunity was given to him to have his say and thus the principles of natural justice have been violated. We are not prepared to accept this proposition because for fixation of pay no notice is issued to the concerned officer to show cause about pay fixation and it is not necessary to give the concerned officer an opportunity before fixation of his pay. In the result with reference to this prayer we hold that his pay has been correctly fixed in IPS and therefore he is not entitled to any arrears. The question of payment of interest on the arrears also does not arise.

12. In the result, therefore, the Original Application is held to be without any merit and the same is rejected, but without any order as to costs.


(S.K. AGARWAL)

MEMBER (JUDICIAL)


(SOMNATH SOM)
23.2.2010
VICE-CHAIRMAN