

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 110 OF 1996  
Cuttack, this the 5<sup>th</sup> day of February, 2004.

BISWANARAYAN MOHANTY & ANOTHER. .... APPLICANTS.

: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 *Yes*  
the Central Administrative Tribunal or not?

*B. N. Som*  
(B. N. SOM)  
VICE-CHAIRMAN

*Manoranjan Mohanty*  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

*05/02/04*

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 110 OF 1996  
Cuttack, this the 5<sup>th</sup> day of February, 2004.

C O R A M:-

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN

AND

THE HON'BLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

....

1. BISWANARAYAN MOHANTY,  
Aged about 45 years,  
S/o. Rahas Bihary Mohanty,  
Mirzapur-Salipur,  
PS:Dharmasala, Dist. Cuttack  
at present D.F.O, KL, Jharsuguda.
2. LAXMIKANTA DASH,  
Aged about 43 years,  
S/o. Somanath Dash,  
Sankhamari,  
Baramba, Cuttack at  
present DFO, Chilika Wild Life  
Division, Balugaon, Puri.

..... APPLICANTS.

By legal practitioner: M/s. Aswini Ku. Mishra,  
B. B. Acharya,  
J. Sengupta,  
D. K. Panda,  
PR. J. Dash,  
Advocates.

: V e r s u s :

1. Union of India through Secretary,  
Ministry of Forest and Environment,  
CGO Complex, Lodhi Road, New Delhi.
2. Union Public Service Commission,  
through Secretary, Dholpur House,  
New Delhi.
3. State of Orissa through Special Secretary,  
to Government, G. A. Department, Bhubaneswar.

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4. State of Orissa through Secretary to Government, Forest and Environment Department, Bhubaneswar.

5. Sri Ainthi Sethi      | Both are members of OFS Class-I

6. Sri S.N. Jena      | C/o. Principal CCF, Orissa, BBSR.

7. Sri Raghunath Maharana, OFS-I Office of the Managing Director, Orissa Forest Development Corporation Limited, Bhubaneswar.

..... RESPONDENTS.

By legal practitioner : Mr. K.C. Mohanty, G.A.  
Mr. U.B. Mohapatra, ASC &  
Mr. A.K. Bose, SSC

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

In this Original Application under section 19 of the Administrative Tribunals Act, 1985, the two Applicants have prayed for the following reliefs:-

"Under the circumstances, it is humbly prayed that the Hon'ble Court may be pleased to issue direction directing the Opp. Parties that the Petitioners are eligible for consideration for promotion to the I.F.S. cadre (Appointment by Promotion Regulation) 1966 and be further pleased to direct that the OPs 5&6 cannot be included and they cannot be allowed to supersede and march over the petitioners;

And further the persons those who have crossed 54 years of age as on 1-1-1996 are not entitled to be considered for promotion/appointment to the cadre of IFS;

And further be pleased to direct that the Petitioners are entitled to be promoted retrospectively with all service/financial benefits".

2. For considering the grievance of the Applicants, a few facts of this Original Application need to be dealt into. Facts remain that the Applicants are the direct recruits of the year 1977-79 to Orissa Forest Service, Class-II and Opposite Parties 5&6 are direct recruits of the year 1978-80 to the said State Service. While continuing as such, in the rank of OFS-II, the Applicants were confirmed w.e.f. 20-07-1987 and 01-02-1983 and promoted to O.F.S. Class-I cadre on 21-03-1992 and 29-05-1992. Basing on various judicial pronouncements (with regard to the inter-se-seniority, between direct recruits and promotees) a gradation list of O.F.S. Class-II cadre was published under Annexure-1 dated 04-01-1989; wherein the name of Respondent No. 7 (Raghunath Moharana) appeared at Sl. Nos. 171, name of Respondent No. 6 was at Sl. No. 195, name of Respondent No. 5 was at Sl. No. 194 and that of the Applicants at Sl. Nos. 191 & 192 respectively. When names of the O.F.S. Officers were recommended for consideration to the I.F.S. as the Applicant No. 2's name was not sent alongwith other officers, he made a representation during the year 1992; which was also forwarded for consideration under Annexure-2 dated 03-01-1992. During 4  
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the year 1995 there was no selection committee meeting though scheduled to be held on 22-04-1995. At that relevant time, name of other officers were recommended for consideration (for being taken to I.F.S.) and since the name of the Applicants were not recommended, Applicant No.1 made a representation under Annexure-3 dated 22-01-1995. For necessary consideration (for promotion to the I.F.S. for the year 1996-97) a letter was addressed under Annexure-4 dated 18-01-1996; wherein the names of 35 officers (including the names of Res. Nos. 5&6) of State Forest Service, Class-I were found place; but the name of the Applicants did not figure in the said list. Applicant No.2 made a representation on 03-01-1995 claiming seniority in the OFS-I cadre (over the Opposite Party Nos. 5& 6) which was also forwarded under Annexure-5 dated 22-01-1996. It is alleged that **both** the Applicants made representation to the Principal Secretary on 22-1-1996 reiterating their grievances. Even though promotion regulation provides that a candidate should not be more than 54 years (at the time of consideration for IFS), many such persons were considered, even though they had crossed the age of 54 years. It has been alleged that law never provides that the seniority has to be taken into consideration in the OFS Class-I cadre only and even though the Respondents 5 and 6 are members of SC, they have no right to claim seniority by virtue of their earlier promotion to OFS-I cadre. It has been pointed out that the selection

committee was going to meet on 12-2-1996 and in case the Applicants are not included in the zone of consideration, they have to loose their rights for promotion to I.F.S. They have also disclosed the name of the officers (such as S/Shri R.N. Behera, U.K. Mohanty, M.S. Jena, S. Majhi, Yasin Khan and P.K. Nayak) of OFS-I who have crossed the age of 54 years, as on 1-1-1996. Applicant No.2 (Laxmikanta Dash) filed an O.A. No. 278/88 before the Orissa Administrative Tribunal claiming seniority in the grade of OFS-I; which was disposed of on 20-08-1997 by directing the State Respondents that Applicant No.2 should be placed above the Respondents 3 and 6 i.e. Sri Raghunath Moharana and Sri Sarat Ku. Mishra(B) in the gradation list and give him all consequential service and financial benefit from the date Respondent No.6 (Sarat Kumar Mishra-B) was given promotion to OFS, Class-I post. Accordingly, the Govt. of Orissa issued office order under Annexure-7 dated 11-03-1998 showing the Applicant No.2 above Sri Raghunath Moharana, OFS-I and Sri Sarat Kumar Mishra-B, OFS-I (Retd.). On 28-03-1998, the Applicant No.2 made a representation in the grievance Cell of the Principal Secretary of Forest and Environment Department claiming consequential benefits as per the direction of the O.A.T and consequent Notification under Annexure-7 dated 11-3-1998. It was requested by him that since Sri Raghunath Moharana has been considered in the Committee (for selection to I.F.S. cadre) meeting held during March, 1997, he should 7

also be considered (from that date/year) for being taken to I.F.S. cadre. The Forest Department, accordingly, under Annexure-9 dated 06-04-1998 recommended the case of the Applicant No.2 for promotion in view of re-fixation of his seniority. As the Applicant No.1 stands above the Applicant No.2 in the gradation list of O.F.S.-II, both of them have filed this Original Application before this Tribunal for a direction to the Respondents to consider their cases for promotion to I.F.S. retrospectively.

3. Respondents 3 & 4 have filed their counter. Though notices were issued to other Respondents, they did not file any counter. It has been disclosed by the Respondents 3 and 4 that for consideration to I.F.S., for the vacancies of the year 1994-95, though meeting was scheduled to be held on 24-2-1995 but (due to administrative reasons and interim orders passed by this Tribunal), the meeting of the selection Committee could not be held. As both the Applicants were promoted to O.F.S. Class-I on regular basis vide order dated 21-3-1992 and joined on 20-5-1992 (AN) and 15-6-1992 (AN), the gradation list published on 15.11.1996 in OFS Gr.I, their names did not figure; whereas the names of Respondents 5 and 6 figured at Sl. Nos. 116 and 117 of the said gradation list; both of them being regularly promoted vide order dt. 17.12.1988 and joined on 19.8.1987 and 9.10.1987. With regard to the allegation that officers who had attained 54 years, had been considered, it has been clarified by the Respondents that according to second proviso to Regulation 5(3) of the IFS (Appointment by

Promotion) Regulation, 1966 a member of the State Forest Service, who has not attained the age of 54 years on the first day of April of the year; in which the Committee meets, shall be considered by the Committee, if he is eligible for consideration on the 1st day of April of the year or any of the years immediately preceding the year in which such meeting is held but could not be considered as no meeting of the committee was held during such preceding year or years. The meeting of the selection committee for the previous year in question i.e. 1994-95 could not be held due to the stay order of the Tribunal. Hence, the SFS Officers who had not attained the age of 54 years, as on 1-4-1994 (but subsequently, had attained the age of 54 years on 1-4-1995) were considered for inclusion in the eligibility list as per the Rules. Before the meeting of the Selection Committee for promotion of SFS Officers to IFS, there were eight substantive vacancies including three anticipated retirement vacancies. According to regulation-5(1) of the Rules in question, the number of officers to be included in the select list in this case would be 8 plus 20% or 2 whichever is greater. Two being greater is added to 8 making the total ten. As per the Rule-5(2) its 3 times i.e. cases of 30 officers were taken. As per Rule-5(3) five more officers were also taken for consideration and, as per the seniority list, since the Applicants were not coming under the zone of consideration, their cases could not be taken for consideration. The meeting of the

Selection Committee was held on 14-03-1996 for the vacancies of the year 1995-96. In the additional counter it has also been pointed out that Regulation 1966 states that the Committee would not consider the case of the members of the SFS who have attained the age of 54 years. But as per the guidelines of the UPSC the crucial date for computing the age of 54 years was 1-4-1995. Since by the date the officers, whose names have been mentioned by the Applicant, have not completed 54 years, their cases were taken into consideration. It has been pointed out by them that since at the time of the meeting of the selection committee (i.e. on 14-3-1996) Shri Moharana was senior to Shri L.K.Dash, he was considered as per Regulation 5(2) of the I.F.S. (Appointment by Promotion) Regulation, 1966. It has also been pointed out that had the cases of the persons named by the Applicant been excluded, then also the cases of the Applicants could not have been considered as per the seniority position. Even though five officers have completed 54 years, yet, as per the second proviso to Regulation-5(3) of IFS (Appointment by Promotion) Regulations, 1966, their cases were taken into consideration over and above 30 officers for 10 vacancies. Lastly, in the reply to the rejoinder filed on 23.4.1999, it was submitted by the Respondents that the Forest and Environment Department requested to consider the case of the Applicant No.2 for promotion to I.F.S. retrospectively

vide its letter dated 06-04-1998. Accordingly, the General Administration Department asked (vide its letter dated 08-06-1998 addressed to the Forest & Environment Deptt.) to furnish informations as are required for considering his case for retrospective promotion to I.F.S. and, on receipt of the same, the case of the Applicant No.2 was to be examined for grant of retrospective promotion to I.F.S.

4. We have heard learned Counsel for the Parties and perused the materials placed on record. Learned Counsel for the Applicants during his oral submission, stated that since the Applicant No.2's seniority has been changed and the Applicant No.1 is admittedly, above the Applicant No.2, in the gradation list, both the cases deserve consideration for being promoted to IFS cadre; for the vacancies, in which the cases of Shri Moharana and others were considered for IFS. Learned Counsel for the Applicant highlighted/reiterated, during his submission, in support of his averments made in the O.A. , by showing the I.F.S. (Appointment by Promotion) Regulation, 1966 and the decisions of the Hon'ble Apex Court rendered in the case of Indra Sawhney v. Union of India and others (reported in AIR 1993 Supreme Court 477) and Union of India v. Virpal Singh: holding that reservation to promotion shall not be made effective after 15.11.1997 and candidate promoted earlier, by virtue of reservation roster, shall not be entitled to seniority over his seniority in the feeder category. By reiterating the

gements, learned Counsel for the Applicant submitted that, in view of the aforesaid laws, the Applicants are entitled to be considered or should have been considered for IFS; when Shri Moharana and Mishra were considered for IFS. Learned Counsel appearing for the Respondents, have submitted that there was nothing wrong in not taking into consideration the cases of these Applicants for the vacancies of the year 1994-95, in the meeting held on 14-3-1996: as at that time, as explained in the counter, they were not coming within the zone of consideration. Further it was submitted by them that cases relied upon by the Counsel for the Applicants is no more available, in view of the amendment ~~to~~ of the Constitution. As regards the consideration of the case of the Applicant No. 1 it was specifically submitted that since, till date his seniority position in the OFS-I cadre has not been revised, his case cannot be considered, even though he is above the Applicant No. 2, and, by stating so, it is submitted that if he wants to be above the Applicant No. 2 in the OFS-I, he should approach before the appropriate forum i.e. before the OAT and not before this Tribunal.

5. After having heard learned counsel for both sides, and giving our anxious thought to various submissions it is to be noted here that there was nothing wrong on the part of the Respondents in considering the cases of the persons who have attained the age of 54 years, by the time the meeting was held, ~~as~~ per the guidelines

of the UPSC that the crucial date for computing the age of 54 years was 1-4-1995; when the meeting of the selection committee could not be held due to intervention of the Court etc. and, therefore, the only question left for our consideration is as to whether, as per the revised gradation list under Annexure-7 dated 11-03-1998 the case of the Applicants could be considered retrospectively; when his juniors were considered. Since it has been admitted, candidly, by the Respondents that the matter is in process, the Respondents are hereby directed to consider the case of the Applicant No.2 for promotion to I.F.S.; when the cases of Shri Moharana and Shri S.K.Mishra-B were considered for promotion to IFS and that should be done within a period of sixty days from the date of receipt of a copy of this order and, in the event he is found suitable, he should be granted all consequential service and financial benefits retrospectively.

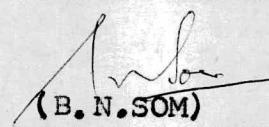
6. As regards Applicant No.1, it is seen that he is above the Applicant No.2 in the seniority list under Annexure-1. But fact remains that his gradation list/ position in the list has not been changed as yet in the grade of OFS-I. But his representation is still pending with the Government. Therefore, in view of the fact that his junior's position has already undergone change, in order to cut-short the matter, the Govt. is directed to consider the case of the Applicant No.1 with regard to his position in the OFS-I cadre and decide the matter.

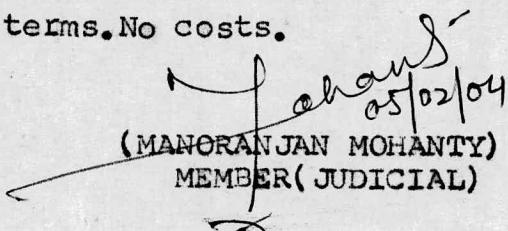
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according to law within the time stipulated herein above.

7. In the result, this Original Application is allowed in the aforesated terms. No costs.

  
(B.N. SOM)  
VICE-CHAIRMAN

  
Manoranjan Mohanty  
05/02/04  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)