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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH; CUTTACK.

ORIGINAL APPLICATION NO.365 OF 1996.

Cuttack this the 14th day of August, 1996.

RABINDRA NATH MOHANTY

...

APPLICANT

Versus.

UNION OF INDIA & OTHERS.

...

RESPONDENTS

(FOR INSTRUCTIONS)

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

N. SAHU
(N. SAHU)
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 365 OF 1996.

Cuttack this the 14th day of August, 1996

C O R A M:

THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

IN THE MATTER OF:

SHRI RABINDRANATH MOHANTY
INDIAN FOREST SERVICE (RETD.)
AT PRESENT AT N-2/28,
IRC VILLAGE, BHUBANESWAR-751 015.

...

APPLICANT

BY THE APPLICANT :- IN PERSON.

-Versus-

- 1) Secretary to Government of India,
Ministry of Environment & Forests,
Parivaran Bhawan, Ch.G.O. Complex,
New Delhi-110 053.
- 2) Secretary to Government of India,
Ministry of Personnel, Pension & Public
Grievances, North Block, New Delhi-1. ... RESPONDENTS.

By the Respondents : Mr. Akhaya Kumar Mishra, Additional Standing
Counsel (Central).

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O R D E R

MR. N. SAHU, MEMBER(ADMN.)

The only grievance in this

Application filed on 30th April, 1996 under Section 19
of the Administrative Tribunals Act, 1985 is to direct the
Secretary to Government of India, Ministry of Environment
and Forests (O.P. No.1) to refix the final order of merit
and order award of prizes and honours diploma - when the
applicant had taken training in the Indian Forest College,

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Dehradun. His grievance is that O.P. No.1 had not communicated the marks secured by the applicant in the Indian Forest College Dehradun inspite of repeated requests. His contention is that if the real marks secured by him were to be taken into consideration, then he would have ranked much higher and he could have secured prizes and honours diploma. His next grievance is that OP No.1 appointed Shri C.D. Pandey, the applicant's junior in his batch as Inspector General of Forests vide notification dated 26-6-1990 and Shri N.M. Prasad also junior to the applicant, in the same batch as Additional Inspector General of Forests, in higher scales of pay even without considering the case of the applicant for the said post. His Junior Shri S.S. Chana in his batch was appointed as Principal Chief Conservator of Forests vide notification dated 20-1-1989 overlooking the applicant's seniority. He challenges the rule laid down and applied while ordering the promotion to his juniors that I.F.S. Officers with two years service left will be eligible for consideration to the posts of Inspector General of Forests and Additional Inspector General of Forests. This resulted in debarring the applicant of consideration to the said posts. His grievance is that such practice was not followed in the past.

2. The applicant alongwith 35 other officers were trained in the Superior Forest Service Course of the 1955-58 batch at the Indian Forest College, Dehradun. The applicant retired from service on attaining the age of superannuation with effect from 30-11-1990. Obviously, this application is hopelessly barred by limitation. The applicant filed M.A. 486 of 1996 for condonation of delay under section 21(3) of the Administrative Tribunals Act on 12th July, 1996. He states that if he was considered in the DPC for the I.G. of Forests prior to his retirement, he would have got financial benefits by way of refixation of pay and higher pension and this constituted a continuing wrong and therefore, it is stated that this is not hit by the bar of limitation. He states that inspite of his best efforts, he could not secure the copies of the specific orders to be challenged which are now Annexures-1 and 2 to the application before the date of filing of this petition. The order of the Central Administrative Tribunal dated 16-10-1995, Annexure-14 came to his notice very recently and this educated him about his rights. In that case a serving I.F.S. Officer has been allowed retrospective pay benefit

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by the Government.

3. In this case, the DPC for I.G. of Forests was held in the year April, 1990. The applicant retired during November, 1990. He never filed any representation because he says he knew about his supersession and non-consideration after retirement. With regard to the second prayer, he says that he filed a representation on 14-11-1994 to the Cabinet Secretary, Annexure-II to which he could not secure a proper reply. In defence of his claim for condonation of delay, he refers to the following judgments:

1. WRIT PETITION NO. 17467-17474/84
(D.S.PATNAIK & OTHERS VS. UNION OF INDIA AND OTHERS) (AIR 1988 SC 353 (Para 37);
2. AIR 1987 SC 1353 (COLLECTOR, LAND ACQUISITION, ANANTANAG AND ANOTHER VRS. SMT. KARTIJI AND OTHERS).

He also referred to a recent judgment dated 04-04-1996 by the Hon'ble Orissa High Court in which the High Court condoned the delay in the case of M.K.C.G. Medical College Vrs. Smt. Bidulata Mohapatra, pages 643-651 reported in Vol. 81, 1996 CLT. He also refers to Swamy's Case Law Digest, 1995, Page 134. In all these cases a liberal view is suggested.

[Signature]

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4. I have carefully considered the submissions of the applicant. The question of directing the Dehradun Academy to re-examine and review the ranking in the merit list of the applicant on the basis of the honours mark obtained by the applicant is simply out of question. This does not need any further argument to negative the claim of the applicant. The question of re-opening the issue after four decades simply does not arise. Under Section 21(2) of the Central Administrative Tribunals Act, this Tribunal can not take cognizance of a grievance which arose prior to three years next preceding to the commencement of the Act which means that the Tribunal can not take cognizance of a grievance arising prior to 1-11-1982.

5. With regard to his grievance being overlooked for promotion as I.G. of Forests, the applicant's cause of action started when the DPC met and finalised the promotion in April, 1990. He states that he did not know that his case was not considered. That plea can not be accepted. In the first instance, he should have represented soon after the list of promoted officers were notified and the applicant found himself ignored or superseded. He had not done that. He retired in November, 1990 and clearly six years thereafter he makes a grievance of the DPC ignoring his case from consideration. A continuing wrong of financial loss will arise only when there is no dispute about the financial gain. When the applicant himself was not promoted and he did not

agitate against his alleged supersession and allowed the matter to settle ^{and} crystallize, he can not be now heard to say that he had a continuing financial loss. This plea has also no force. All the cases cited by him are of no assistance to him because in all these cases certain guidelines have been prescribed. These guidelines with regard to limitation, are:

- (1) Refusing to condone delay can result in a meritorious matter being thrown out at the very threshhold and cause of justice being defeated. Cause of substantial justice must be advanced.
- (2) There is no presumption that delay is occasioned deliberately or on account of culpable negligence.

These guidelines do not apply here. The applicant is supposed to be alert about his rights. There is no public interest involved in this case. There is no apparent wrong caused to him. It is not a case that he was debarred from substantial justice. In fact his deprivation in itself prima facie can not be questioned.

6. It is settled law that special provision regarding limitation in the CAT Act, 1985 will over-ride the general provisions of Limitation Act. In Ratam Chandra Samanta and others Vrs. The Union of India and others (Judgments Today 1993 (3) SC 418 SC 418) Their Lordships have been pleased to observe as follows:

".....A writ is issued by this Court

in favour of a person who has some right. And not for sake of roving enquiry leaving scope for manœuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation, a person who has lost his remedy by lapse of time loses his right as well".

The applicant did not take any step in regard to the present claim at the relevant time. He did not ever file a representation at the proper time. Annexure-11 is a representation to the Cabinet Secretary dated November 10, 1994. This itself is belated. In P.S. Sadasiva Swamy vs. State of Tamilnadu, 1975 (1) SCC 152, it was held that no one should be allowed to unsettle settled matters after the lapse of many years. In Dharampal's case - AIR 1990 SC 2059, the Hon'ble Supreme Court held as under:

"It is expected of a Government servant who has a legitimate claim to approach the Court for the relief he seeks within a reasonable period, assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set up after it has been functioning on a certain basis for years."

7. In view of the above, this application is clearly barred by limitation and is accordingly dismissed in limine. There would be no order as to costs.

Narasimha Rao
(N. SAHU) (4/8/96)
MEMBER (ADMINISTRATIVE)

KN Mohanty.