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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.  
ORIGINAL APPLICATION NO.512 OF 1996  
Cuttack, this the 2nd day of December, 1998

Sri Birupakhya Mishra and others .... Applicants

Vrs.

Government of Orissa 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.

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(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.512 OF 1996  
Cuttack, this the 2nd day of December, 1998

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

1. Sri Birupakhy Mishra, aged about 58 years, son of late Rama Chandra Mishra, Berambagarh, Dist.Cuttack.
2. Sri Bhaskar Chandra Mohapatra, aged about 55 years, son of Sri Bhagirathi Mohapatra, A/5, Saheednagar, Bhubaneswar, at present Director, Social Forestry Project, Government of Orissa, Near Rama Mandir, Bhubaneswar, District-Khurda.
3. Sri Harinarayan Sahoo, aged about 56 years, son of Sri Udayanath Sahu, Plot No.D.5, B.J.B.Nagar, at present Managing Director, OFDC Ltd. At/PO-Kharvelanagar, Unit-III, Bhubaneswar, Dist.Khurda.
4. Sri Nilamadhab Mishra, aged about 56 years, son of late Chandrasekhar Mishra, Kunjabihari Lane, Old Town, P.O/Dist.Nayagarh, at present Chief Conservator of Forests (KL), Government of Orissa, Bhubaneswar, Dist.Khurda.
5. Sri Pratap Kishore Patnaik, aged about 56 years, s/o late Digambar Patnaik, Village/PO-Bhusandpur, Dist.Khurda, at present Director (Plantation), OFDC Ltd., At/PO-Kharvelanagar, Unit-III, Bhubaneswar, District-Khurda.
6. Sri Satyanarayana Bohidar, aged 57 years, son of Durga Prasad Bohidar, C-6, Vanivihar, Bhubaneswar, at present Chief Conservator of Forests, Office of the P.C.C.F., Orissa, Saheed Nagar, Bhubaneswar, District-Khurda.....

....Applicants.

By the Advocates - M/s S.B.Jena, S.K.Das,  
P.K.Misra, A.P.Guru &  
J.Sengupta.

Vrs.

1. Government of Orissa, represented through its Secretary, Forest & Environments, Secretariat Building, Bhubaneswar, District-Khurda.

2. Chief Secretary, Government of Orissa,  
Secretariat, Bhubaneswar, Dist.Khurda.
3. Union of India, represented through its Secretary, Ministry  
of Forests & Environment, Department of Forest, New  
Delhi.....

.....Respondents.

By the Advocates - Mr.K.C.Mohanty, Government  
Advocate for respondents 1  
and 2;  
&  
Mr.Akhaya Ku. Mishra,  
Addl.C.G.S.C. for  
Respondent no.3.

### O R D E R

#### SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the six petitioners, who have been permitted to file the application jointly, have prayed for quashing the order dated 28.6.1996 (Annexure-7) of Chief Secretary, Government of Orissa (respondent no.2) and also for a direction to the respondents to extend the same benefits to the applicants, which have been allowed to Sri S.C.Bohidar in pursuance of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 3072 of 1980 disposed of on 10.12.1987 and the order of the Tribunal in O.A.No.439 of 1991 disposed of on 5.11.1993. All the arrear dues with interest have also been claimed.

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2. Facts of this case, according to the petitioners, are that they were selected by Orissa Public Service Commission <sup>on</sup> completion of two years Diploma Course in the Forest Research Institute and College, Dehradun during 1962-64, they were appointed to Orissa Forest Service, Class II cadre. In 1966, Indian Forest Service was constituted and Rules and Regulations were framed to govern the recruitment and conditions of service of Indian Forest Service officers under All India Services Act, 1951. Initially, recruitment was made to

Indian Forest Service cadre of different States from the State Forest Service under Rule 4(1) of Indian Forest Service (Recruitment) Rules, 1966. The applicants state that even though they along with others were entitled to be considered for such initial recruitment, they were not considered. The initial recruitment was challenged before the Hon'ble Supreme Court in Civil Appeal No. 3072 of 1980 (Sri K. Prasad and others v. The Union of India and others). According to the applicants, the ground taken there was that they were eligible for consideration under the relevant rules and regulations, but they were not considered erroneously. Secondly, it was urged that selections were made by considering eligible officers in order of seniority only to the extent necessary to recruit 42 persons and the Selection Board did not consider all the eligible officers. In their judgment dated 10.12.1987 the Hon'ble Supreme Court set aside the selection, and direction was given to redo the selection in the light of the principle set out in the judgment. The applicants have stated that even after delivery of judgment by the Hon'ble Supreme Court no step was taken by the Government to implement the direction of the Apex Court. A Civil Misc. Petition No. 16209/88 in Civil Appeal No. 17472 of 1984 (P.K. Patnaik v. Union of India) was filed before the Hon'ble Supreme Court to implement the direction in the aforesaid judgment. The Hon'ble Supreme Court directed the Union of India to give effect to their judgment by end of December, 1988. The applicants state that in spite of this, the direction was not implemented within the specified period. Ultimately, in order dated 3.2.1989 of Ministry of Environments and Forests, Government of India (Annexure-1) sixteen officers of the State Forest Service, which included the present six petitioners, were appointed to Indian Forest

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Service with effect from 1.10.1966 under sub-Rule (1) read with Sub-rule (3A) of Rule 4 of Indian Forest Service (Recruitment) Rules, 1966. In spite of the above notification at Annexure-1, consequential benefits were not given to the applicants for which representations were made. The applicants have stated that as the direction in the judgment of the Hon'ble Supreme Court was not complied with within the specified period and the applicants were not given consequential benefits, they are entitled to the same with effect from 1.10.1966 along with interest at current market rate from the due date, i.e., 1.10.1966. It has been further submitted that Under Secretary, Government of India, Ministry of Environment and Forests in his letter dated 7.11.1994 (Annexure-2) directed respondent no.1 to give all consequential benefits to the applicants and directed to allow the applicants Senior Time Scale on completion of five years of service from their year of allotment. But in spite of such a direction, the consequential financial benefits have not been paid to the petitioners. It is further stated that one Shri S.C. Bohidar, who is one of the batch-mates of the applicants, filed OA No. 439 of 1991 before the Tribunal seeking consequential benefits. The Tribunal in their order dated 5.11.1993 allowed the Original Application and directed the State Government to pay the amounts due to Shri S.C. Bohidar within a period of 90 days. The order of the Tribunal is at Annexure-3. Accordingly, in order dated 16.10.1995 (Annexure-4) Shri S.C. Bohidar was allowed to draw arrear financial benefits with effect from 1.10.1966 to 7.11.1994. The applicants had earlier filed O.A.No. 352 of 1996 for a direction to the respondents to pay their arrear financial benefits. The Tribunal in their order dated 16.5.1996 directed Chief Secretary, Government of Orissa (respondent no.1) to dispose of the representation within four weeks from the date of receipt of the order of the Tribunal. The order dated 16.5.1996 is at Annexure-6. The applicants have stated that

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respondent no.1 has arbitrarily rejected the representations submitted by the applicants in his order dated 28.5.1996 (Annexure-7) on the ground that the State Government had consulted Government of India on the question of admissibility of arrear financial benefits, but Government of India have advised the State Government not to pay the arrear salary and allowances. Respondent no.1 has also stated in the above order that Shri S.C.Bohidar was allowed to draw arrear financial benefits with effect from 1.10.1966 to 7.11.1994 in pursuance of the order dated 5.11.1993 in OA No439 of 1991. It is further stated/ that for the first time, the petitioners came to know from this order that on the advice of the Government of India they have not been paid the arrear financial benefits. It is further submitted that the State Government in their counter affidavit filed in OA No.439 of 1991 have mentioned that they are making serious attempts to clear up the dues of Shri S.C.Bohidar without delay and the claim of the applicants has not been contested by the State Government. The applicants state that as the arrear dues of Shri S.C.Bohidar have been allowed and as the applicants are similarly situated they should not be discriminated against and arrear financial benefits should be allowed to them also. It is further stated that the order dated 5.11.1993 of the Tribunal in OA No.439 of 1991 has become final as the State Government have not preferred any appeal against the decision of the Tribunal and this order being a judgment in rem , the respondents should have extended the benefits to the applicants. In view of the above, the applicants have come up with the prayers referred to earlier.

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3. Respondent no.1, i.e., Government of Orissa represented by Secretary, Forest & Environment Department in their counter have taken the stand that the applicants claim

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benefits arising out of judgment of the Hon'ble Supreme Court passed on 10.12.1987, but they have come up only in July 1996 and therefore, the application is grossly barred by limitation. It is further stated that the applicants should not have delayed the filing of the application and waited for the final order dated 5.11.1993 in OA No.439 of 1991. In view of this, they should not be permitted to bank on the benefits given to Shri S.C.Bohidar in OA No.439 of 1991. It is further submitted that OA No. 352 of 1996 was disposed of on 16.5.1996 ex parte without notice to the respondents. It is further submitted that the applicants' grievance is with regard to the non-payment of arrear financial benefits due to their retrospective promotion on the basis of the judgment of the Hon'ble Supreme Court passed on 10.12.1987. In other words, the pay and allowances to which the petitioners claim to be entitled were denied to their disadvantage. Such an action by the State Government is appealable under Rule 16(iii) of All India Services (Discipline & Appeal) Rules,1969, but the applicants have not filed any appeal before Government of India and therefore, the present application is not maintainable. It is further submitted that the State Government in their order dated 12.10.1995 (Annexure-R-2/1 to the counter filed by respondent no.2) have indicated that no arrear pay and allowances on account of such retrospective promotion of the present applicants are admissible till 7.11.1994. The arrears on account of such retrospective promotion will be paid to them for the period commencing from 8.11.1994 onwards. Respondent no.1 has stated that in this notification the petitioners' claims till 7.11.1994 were specifically denied, but the petitioners have not filed any appeal to Government of India against this order under Rule 16 of All India Services (Discipline and Appeal)Rules. The applicants being aware of the provision to

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file appeal have not availed of the statutory remedy but have filed a representation in January 1996 which is not a statutory remedy. According to respondent no.1, this representation has been filed in order to cover up their laches and delay. It is further stated that the petitioners filed OA No.352 of 1996 and obtained an ex parte order for disposal of representation by respondent no.2 which was done in order dated 28.6.1996. It is further submitted that as filing of the representation before respondent no.2 is not a statutory requirement, rejection of the representation by respondent no.2 will not cure the delay. It is further submitted that as a statutory remedy was available and has not been availed of, the present application is not maintainable. Respondent no.1 has further stated that Hon'ble Supreme Court in their order dated 10.12.1987 have not allowed any financial benefit to an officer on his selection and therefore, the question of payment of arrear financial benefits does not arise except for notional fixation of pay due to retrospective promotion. In other words, the applicants would be eligible for further promotion in various grades, but no arrear pay, allowances, etc., would be admissible to them. A copy of the judgment of the Hon'ble Supreme Court is at Annexure-R-1/1. It is further stated that Ministry of Forests & Environment, Government of India, in their order dated 3.2.1989 appointed sixteen State Forest Service officers to Indian Forest Service as initial recruits with effect from 1.10.1966 and the six petitioners were included amongst them. According to respondent no.1, in pursuance of the judgment dated 10.12.1987 of the Hon'ble Supreme Court, these sixteen officers were only eligible to get resultant benefits by way of promotion to the Senior Time Scale, Selection Grade, Conservator of Forests, Level-II, Conservator of Forests, Level-I and Additional Chief Conservator of Forests. Government of India, Ministry of Environment and Forests in their subsequent notification dated

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28.6.1990 determined the year of allotment of these sixteen officers. Thereafter, General Administration Department of the State Government in their letter dated 11.7.1990 directed the Forest Department to circulate the year of allotment to the sixteen officers and to furnish necessary proposal for allowing resultant benefits to the said officers. The Forest & Environment Department prepared tentative statement showing date of joining of the aforesaid officers in different grades vis-a-vis their seniors/juniors for making a proposal to the General Administration Department for allowing the resultant benefit to the said officers and referred the same to the concerned Heads of Department under its control to confirm the particulars mentioned in the statement. Respondent no.1 has contested the averment of the applicants that Government of India in their notification dated 7.11.1994 indicated that thirteen officers out of sixteen officers including the petitioners in the present case should be allowed Senior Time Scale on completion of five years to be counted from the year of allotment and consequently these officers should also be eligible for further promotion to various grades. It was also indicated by Government of India that no arrear of pay and allowances on account of such retrospective promotion would be admissible. It is further stated that Government of India have turned down the proposal of the State Government in General Administration Department for creation of supernumerary posts for allowing retrospective promotion and have indicated that the order of the Hon'ble Supreme Court has been implemented by appointing sixteen officers to Indian Forest Service as initial recruits in notification dated 3.2.1989 and by indicating their

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year of allotment in the order dated 25.6.1990. It is further stated that General Administration Department in their notification dated 12.10.1995 have appointed these fifteen IFS Officers, one having passed away in the meantime, to Selection Grade, Conservator of Forests and Additional Chief Conservator of Forests according to their entitlement and in the concluding part of this order it has been clearly mentioned that no arrear pay and allowances would be admissible till 7.11.1994. Accordingly, it has been urged that no arrears are admissible prior to 7.11.1994. It is further urged that accordingly these applicants have been given consequential benefits by way of promotion and financial benefits with effect from 8.11.1994 and the judgment of the Hon'ble Supreme Court has been fully complied with. Respondent no.1 have also stated that the applicants were aware from the order dated 12.10.1995 that no arrears of pay and allowance were being allowed to them and therefore, it is not correct that only from the order dated 28.5.1996 they came to know of it for the first time. It has been further stated that the averment of the petitioners that the State Government, Forest Department is taking serious attempts to clear up the dues is wholly incorrect inasmuch as no such statement has been made in the counter affidavit in OA No.439/91 to allow financial benefits to the applicants. Respondent no.1 has also stated that the averment of the applicants that against the order of the Tribunal in OA No.439 of 1991 no appeal was filed is incorrect. An SLP bearing No.4178/96 was filed, but the Hon'ble Supreme Court in their order dated 10.9.1996 dismissed the SLP on the

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ground of delay without going into merits of the case. Lastly, it is stated by respondent no.1 that the circumstances under which arrear financial benefits were allowed to Shri S.C. Bohidar have been narrated by respondent no.2 in paragraph 6 of his counter. On the above grounds, respondent no.1 has opposed the prayers of the applicants.

4. Respondent no.2 in his counter has taken the point of delay on the part of the applicants to agitate their claim. The averments made in the counter on this point are similar to the averments made in the counter of respondent no.1 and it is not necessary to repeat these averments. Respondent no.2 has also taken the point regarding the applicants not exhausting the alternative and statutory remedy against the order dated 28.5.1996 of respondent no.2 and against the order dated 12.10.1995 of the State Government in General Administration Department. It has also been stated that the applicants obtained an ex parte direction from the Tribunal in OA No.352 /96 for disposal of the representation by respondent no.2, which was done in order dated 28.6.1996. But this will not result in saving limitation, and the application is liable to be dismissed on the ground of limitation. Respondent no.2 has also made averment with regard to initial recruitment to Indian Forest Service, non-consideration of sixteen officers who challenged the same before the Hon'ble Supreme Court, and the judgment dated 12.10.1987 of the Hon'ble Supreme Court.

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It is stated that in accordance with the judgment of the Hon'ble Supreme Court, in order dated 3.2.1989 sixteen officers including these six petitioners were

appointed to Indian Forest Service as initial recruits with effect from 1.10.1966. Thereafter the State Government sent a proposal on 9.11.1989 for determination of year of allotment and Government of India, Ministry of Environment and Forests in their letter dated 25.6.1990 determined the year of allotment and requested the State Government to allow the resultant benefit to the sixteen officers. Accordingly, a proposal was sent to Government of India in letter dated 29.10.1993 for creation of posts in various grades for the retrospective periods. But Government of India in their letter dated 7.11.1994 directed that these initial recruits would be eligible for further promotion in various grades subject to the condition that no arrears of pay and allowances would be admissible and no supernumerary posts would be created. It is submitted by respondent no.2 that in view of the above decision of Government of India, it is not possible for the State Government to give the arrear financial benefits to the applicants. Government of India's order dated 7.11.1994 is at Annexure R.2/2. With regard to payment of arrear financial benefits from 1.10.1966 to 7.11.1994 to Shri S.C. Bohidar, it is stated that this was done in pursuance of the order of the Tribunal passed on 5.11.1993 in O.A.No. 439/91. It is further stated that in accordance with the order dated 16.5.1996 of the Tribunal, the applicants were heard in person by respondent no.2 on 24.6.1996 and their representations were rejected as it was not possible for the State Government to agree to give them arrear financial benefits since Government of India have clearly advised not to give the above benefits. It is also stated that the judgment dated 10.12.1987 of

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the Hon'ble Supreme Court has been already complied with and as the representations of the applicants have been rejected in order dated 28.6.1996 basing on the decision of Government of India, this order should not be quashed. On the above grounds, respondent no.2 has opposed the prayers of the applicants.

5. In this case no counter has been filed by Government of India. It is seen that when the matter was taken up on 26.2.1997 the learned Government Advocate appearing for the State Government and the learned Additional Standing Counsel Shri Akhaya Ku.Misra appearing for Union of India (respondent no.3) wanted time to file counters, which was opposed by the learned counsel for the petitioners <sup>stating</sup> that some of the petitioners have retired. In view of this, four weeks' time was allowed to respondents to file counters. By the next date (27.3.1997) counters were filed by respondent nos. 1 and 2 and it was submitted by the learned Additional Standing Counsel appearing for Government of India that he would file counter on behalf of respondent no.3 within three weeks. The matter was taken up on 21.4.1997, but even by that time counter by Government of India was not filed. It was submitted by the learned Additional Standing Counsel appearing for Government of India that the matter may be posted to 12.5.1997 for hearing and in the meantime, he would file counter. Thereafter one adjournment was given as the learned counsel for the petitioners was ill. On the next date, i.e., 15.5.1997 it was submitted by the learned counsel for the applicants that he would

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file rejoinder. The learned Government Advocate submitted that even though this is a Single Bench matter, because of its importance it should be heard by Division Bench. Even after that certain further adjournments were given. From this, it is seen that from 16.2.1997 till the date of hearing, in spite of several adjournments, no counter was filed by Government of India. We note this fact only because the State Government in their counter have amongst other things relied on the direction of Government of India for not giving any arrear financial benefits to the applicants.

6. We have heard Shri S.B.Jena, the learned counsel for the petitioners, Shri K.C.Mohanty, the learned Government Advocate appearing for respondents 1 and 2 and Shri Akhaya Kumar Mishra, the learned Additional Standing Counsel or respondent no.3, and have also perused the records. The learned Government Advocate has filed a date-chart and the learned counsel for the petitioners has submitted a list of citations which have also been taken note of.

7. It has been submitted by the learned counsel for the petitioner that the Hon'ble Supreme Court in the case of K.Prasad and others v. Union of India and others, AIR 1988 SC 535, have directed that selection of initial recruits to Indian Forest Service should be redone and the persons who are inducted as initial recruits as a result of this fresh exercise should be given consequential promotional and financial benefits. It is stated that this decision is binding on all concerned. In pursuance of this decision, Government of India in their order dated 3.2.1989 inducted sixteen officers including the present six petitioners as initial recruits to Indian Forest Service with effect from 1.10.1966. Year of allotment of these officers and the seniority were fixed in Ministry of Environment & Forests letter dated 25.6.1990 and the State Government were directed

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to allow the resultant benefit to the sixteen officers. As the State Government did not take any action, one of the officers, Shri S.C.Bohidar who is junior to all the applicants except applicant no.6, approached the Tribunal in O.A.No. 439 of 1991. In that O.A. the State Government in their counter submitted that they are going to pay the dues of Shri Bohidar shortly and Shri Bohidar's case of payment is being considered along with payment due to the others promoted in order dated 3.2.1989. Accordingly, the Tribunal in their order dated 5.11.1993 directed the State Government to pay the arrears to Shri S.C.Bohidar within a period of 90 days from the date of receipt of copy of the order. It is stated that accordingly, the State Government in their order dated 19.6.1996 (Annexure-5) have allowed the benefits to Shri S.C.Bohidar. It is submitted that the petitioners are similarly situated and same benefits should be allowed to them. But in order dated 28.6.1996 the representations of the applicants claiming the arrears were rejected by Chief Secretary(respondent no.2). It is stated that the order of the Tribunal in Shri S.C.Bohidar's case is judgment in rem and therefore, it is applicable equally in the case of the petitioners as well.

8. Learned Government Advocate appearing on behalf of respondent nos. 1 and 2, Shri K.C.Mohanty has urged the following points. Firstly, it is submitted that the judgment dtd. 10.12.1987 of the Hon'ble Supreme Court in **K.Prasad's case (supra)** did not direct payment of arrear financial benefits. The judgment has been fully implemented by inducting these six applicants as initial recruits from 1.10.1966 in order dated 3.2.1989, by assigning them their years of allotment in order dated 25.6.1990, and by giving them notional promotion to Senior Time Scale, Selection

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Grade, Conservator of Forests Level II, Conservator of Forests Level I and Additional Chief Conservator of Forests from different dates in order dated 12.10.1995 at Annexure-R2/1. Thus, it is submitted that the judgment of the Hon'ble Supreme Court has been fully complied with and on the basis of the order of the Hon'ble Supreme Court the petitioners cannot claim arrear financial benefits. The second argumentt is that Government of India in their order dated 7.11.1994 (Annexure-R.2/2) indicated to the State Government that these officers would be eligible for further promotion to various grades, but no arrear pay and allowances on account of such retrosective promotion would be admissible. Basing on this order, Government of Orissa in their order dated 12.10.1995, referred to earlier, promoted these officers to various higher grades and indicated in that order, which is at Annexure-R.2/1 that no arrear pay and allowances on account of such retrospective promotion is admissible till 7.11.1994. It was ordered that arrears on account of such retrospective promotion would be paid for the period commencing from 8.11.1994. It is submitted by the learned Government Advocate that the petitioners have not filed appeal against these two orders dated 7.11.1994 and 12.10.1995 even though the relevant rules provide for filing of appeal. Thus, the applicants not having exhausted the alternative remedy, the present application, according to the learned Government Advocate, is not maintainable. As a limb of the same argument, it is submitted that the applicants in the present petition have prayed for quashing the order dated 28.6.1996 passed by respondent no.2. Against this order also the applicants could have gone up in appeal to Government of India, but no appeal having been filed the application is not maintainable. The third point urged by the learned Government

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Advocate is that according to the applicants themselves, the Hon'ble Supreme Court in their judgment dated 10.12.1987 in **K.Prasad's case (supra)** allowed arrear financial benefits, but the applicants came up only in July 1996 in this present application which is, therefore, grossly barred by limitation. In this context, it is further submitted that even in Shri S.C.Bohidar's case, the order of the Tribunal was delivered on 5.11.1993. The applicants did not approach the Tribunal even after that. According to the learned Government Advocate, they waited to see what further action was taken by the Government and thereafter only they have approached the Tribunal in July 1996 after considerable delay reasons for which have not been explained. On this ground, it is submitted that the application is barred by limitation. The fourth and last point urged by the learned Government Advocate which actually flows from his first point is that arrear payments were made to Shri S.C.Bohidar only because of the order dated 5.11.1993 of the Tribunal in OA No.439/91. Against that order, the State Government went in SLP before the Hon'ble Supreme Court who rejected the SLP on the ground of delay without going into the merits of the matter. The learned Government Advocate has gone to the extent of submitting that payment of arrears to Shri S.C.Bohidar was wrongly made and that would not support the case of the applicants for similar payments in their cases.

10. Shri Akhaya Kumar Mishra, the learned Additional Standing Counsel for respondent no.3 submitted that this is a matter already covered by the decision of the Tribunal.

11. We have considered the submissions made by the learned counsels of both sides. The first and fourth submissions of the learned Government Advocate are taken up together as these two are related. It has been submitted by the learned Government Advocate that Hon'ble Supreme Court

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in their judgment dated 10.12.1987 in K.Prasad's case(supra) did not order payment of financial benefits to the persons to be inducted as initial recruits to Indian Forest Service in Orissa as a result of fresh selection ordered by their Lordships. The relevant portion of the judgment of the Hon'ble Supreme Court is quoted below:

"THE POSITION IN ORISSA

36. So far as Orissa is concerned, the position is very simple. It clearly emerges from our discussion above that all the 82 eligible officers had to be considered for initial recruitment. Though it has been alleged in the counter-affidavit that they had been so considered, the Government note referred to by counsel dated 2.6.1967 (at p.47 of the paper-book) indicates to the contrary. The S.S.B. merely selected 42 officers and made an omnibus observation that the others were found unsuitable. This, as explained in Chothia, is not proper compliance with the rules and so the selection has to be set aside with a direction that it should be redone properly.

37. It has been vehemently contended for the respondents that the writ petition should be dismissed on the ground of laches. It is true that the petitioners have come to court somewhat belatedly. Counsel urged that they had been under a bona fide impression that they had been considered and found ineligible. But this does not appear to be correct. There is on record (at p.44 of the paper book) a representation made by one of them on 20.4.67 from which it seems that he was even then aware that his name had not been considered at all because of an interpretation that the junior posts were limited to 19 only. Nevertheless, they did not take any steps. The Gujarat, Karnataka and Maharashtra judgments on which the petitioners rely had been rendered in 1978, Jan.1981 and August 1981 respectively but even after that the petitioners allowed time to lapse. There has therefore, been delay on the part of the petitioners in coming to Court. Nevertheless, having regard to the complicated nature of the issues involved, we do not think that the petitioners should be put out of court

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on the ground of laches. The position as it has now emerged is that all 82 eligible officers as on 1.10.1966 should be considered and not merely some of them. Their suitability should be adjudged. If they are not found suitable, reasons should be given which the U.P.S.C. should be able to consider. If they are found suitable a list of such officers should be drawn up with ranking given to them in the order of preference for the consideration of the U.P.S.C. Since this has not been done the recruitments have to be set aside and the matter remanded with directions that it should be finalised as per the Recruitment Rules and in the light of the above discussion.

xxx                   xxx                   xxx

39. We would make one more thing clear before we conclude. It is not our intention, nor can it be the result of our discussion, that the appointment of any of the officers recruited under rule 4(1) or 4(2) should be considered invalid. All the officers selected will have to be adjusted, if necessary, by amending the Cadre Regulations. The only result of our findings will be the readjustment of their seniority with necessary and consequential effect on their promotion in the Service."

From the above, it is clear that their Lordships of the Hon'ble Supreme Court directed that all the officers selected will have to be adjusted, if necessary, by amending the Cadre Regulations and the only result of their Lordships' findings would be the readjustment of their seniority with necessary and consequential effect on their promotion in the Service. It is submitted by the learned Government Advocate that the Hon'ble Supreme Court have not specifically said that consequential effect should include financial benefits. Their Lordships have only mentioned "consequential effect" on their promotions and such promotions to the applicants have been allowed in order dated 12.10.1995. Thus, the limited question which falls for consideration is whether their Lordships of the Hon'ble Supreme Court while speaking of consequential effect on their promotion in the Service had meant payment of

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arrear financial benefits. The words "consequential effect" would mean an effect which follows as a necessary consequence of the promotion of the applicants. Under FR 17(1) it is laid down that an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties. In this case, the applicants have been given notional and retrospective promotion from different dates and therefore, it is urged that <sup>as</sup> during the period of notional promotion they have not worked in those posts, they are not entitled to payment of financial benefits and this does not follow as a necessary consequence of their promotion. The Hon'ble Supreme Court in the case of Union of India v. K.V.Jankiraman, AIR 1991 SC 2010, have held that the normal rule of "no work no pay" is not applicable to such cases where the employee although he is willing to work is kept away from work by the authorities for no fault of his. In the instant case, the applicants were not appointed as initial recruits to Indian Forest Service from 1.10.1966 because of wrong method adopted by the Selection Committee. This was challenged before the Hon'ble Supreme Court and their Lordships in **K.Prasad's case (supra)** directed redoing of the selection process. After that was done, in order dated 3.2.1989 sixteen persons including these six applicants were appointed as initial recruits to Indian Forest Service, Orissa Cadre, from 1.10.66. Obviously, therefore, for their not working in the promotional posts the applicants themselves are not responsible as they were not given appointment as initial recruits to I.F.S. from 1.10.1966 and were not given subsequent promotions as per their entitlement. In view of this, following the law as laid down by the Hon'ble Supreme

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Court in **K.V.Jankiraman's case(supra)**, it is clear that the payment of financial benefits would follow as a necessary consequence of their initial recruitment to Indian Forest Service from 1.10.1966 and their subsequent promotions to different grades. This conclusion is supported by the averment of the respondents themselves in OA No.439/91 filed by Shri S.C.Bohidar where such arrear financial benefits were allowed. The Tribunal in paragraph 3 of their order dated 5.11.1993 have mentioned that in their counter the opposite parties did not dispute the claim of the petitioner regarding entitlement of his financial emoluments. But in the counter affidavit it is stated by the State of Orissa in Forest and Environment Department that serious attempts have been made to clear up the dues without any delay and it is hoped that the claim of the petitioner would be soon settled. From this, it appears that in so far as Shri S.C.Bohidar was concerned, his claim of arrear financial benefits was admitted by the State Government in OA No.439 of 1991. We have also referred to the counter filed by the State of Orissa in that case. Paragraph 5 of the counter of the State Government of Orissa in OA No. 439/91 is quoted below:

"5. That in reply to paragraph 5, it is submitted that as stated above Government is quite serious to decide about allowing the consequential benefits at the earliest possible time. The question of inaction does not arise in view of the facts stated above. Before allowing the consequential benefits to the officers necessary service particulars have to be obtained from the different quarters of the Government relating to the officers which had also been taken. But these processes are time consuming. The Government have no intention at all to deny the consequential benefits allowable to the applicant as well as other officers. The case of the applicant could not be taken in isolation of other officers who are likely to be entitled to. In these circumstances it is not correct for the applicant to allege that there has been inaction of the Government. Therefore, the question of

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payment of any penal interest also does not arise."

From the above submission made by the State of Orissa in OA No.439 of 1991 it is seen that the stand taken therein was that the State Government have no intention to deny consequential benefits to Shri S.C.Bohidar as well as other officers. It was further submitted that the case of Shri S.C.Bohidar cannot be taken up in isolation from other officers (presumably including the present six applicants) who are likely to be entitled to it. The learned Government Advocate has tried to explain this away by stating that what was meant in this paragraph was only allowing of consequent notional promotion. This contention is entirely unacceptable because the counter was filed in OA No.439/91 in the context of the claim made by the applicant in that OA for getting financial benefits along with interest at 18%. It is, therefore, obvious that in OA No.439 of 1991 the State of Orissa have admitted the claim of arrear financial benefits not only to Shri S.C.Bohidar but have mentioned that the other officers are also entitled to the same and the claim of Shri Bohidar cannot be allowed in isolation. It has also been stated in paragraph 5 of the counter of respondent no.2 that Government of Orissa sent a proposal to Government of India in letter dated 29.10.1993 for creation of temporary posts in various grades for retrospective periods. Obviously, creation of posts retrospectively would be required only for the purpose of payment of arrear financial benefits. It is also noted that this proposal was sent to Government of India on 29.10.1993 according to the counter of respondent no.2, which is prior to the date of final order in OA No.439 of 1991, i.e., 5.11.1993. From the above it is clear that Government of Orissa were also of the view that the officers inducted to Indian Forest Service as initial recruits later on in order dated 3.2.1989 would be entitled to arrear pay

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and allowances. The contention that on account of retrospective promotion, the applicants are not entitled for arrear financial benefits is also belied by the order dated 12.10.1995 issued by the State Government themselves. This order at Annexure-R.2/1 has been issued in pursuance of the order dated 7.11.1994 (Annexure-R.2/2) issued by Government of India. In this order, Government of India have mentioned that in consultation with Department of Personnel & Training it has been decided that thirteen out of 16 officers should be allowed Senior Time Scale on completion of five years of service from their initial year of allotment. It is further stated that consequently these officers would also be eligible for further promotion to various higher grades, but no arrear of pay and allowances on account of such retrospective promotion would be admissible and no supernumerary posts would require to be created on account of such retrospective promotion. In the order dated 12.10.1995, however, it has been mentioned by the State Government that no arrears of pay and allowances on account of such retrospective promotion would be paid till 7.11.1994 and such arrears would be paid for the period commencing from 8.11.1994. In other words, in this order dated 12.10.1995 arrear of pay and allowances has been allowed from 8.11.1994. Thus, the stand of the State Government that they have denied the arrears of pay and allowances because Government of India have not allowed the same cannot be accepted. We had enquired from the learned Government Advocate the logic of fixing 8.11.1994 as the date from which arrears would be paid. Apparently, this has been fixed because the order of Government of India denying payment of arrears on account of retrospective promotion has been issued on 7.11.1994. That is how the Government of Orissa in their order dated 12.10.1995 have disallowed payment of arrears till 7.11.1994, i.e., the date of issue of the Government of India order. This appears

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to us to be like picking of a date out of a hat as it were, a practice which has been deprecated by the Hon'ble Supreme Court in the case reported in A.I.R. 1967 S.C. 1301,

( D.R. Nim v. Union of India ) .

It is also to be noted that Government of Orissa themselves have allowed arrears from 8.11.1994 in their order issued about one year later on 12.10.1995. The other aspect of the matter is that even granting for argument's sake the stand of the State Government that the arrears are not payable prior to 8.11.1994, a careful reading of the order dated 12.10.1995 would bear out that this is insupportable and the stand of the State Government that arrears are not payable prior to 8.11.1994 is not even internally consistent. This has to be explained by taking an example of one of the officers mentioned in this order and who is also an applicant before us. The State Government in that order have allowed arrear of pay and allowances from 8.11.1994. This would mean that for the retrospective promotions granted to these officers mentioned in this order to Senior Time Scale, Selection Grade and Conservator of Forests Level-II, the pay of these officers will have to be notionally fixed at different grades and thereafter on the basis of revised pay so notionally fixed they are allowed the arrears from 8.11.1994. This position may be considered vis-a-vis the dates of notional promotion given to Shri Birupakhya Mishra (applicant no.1) in this order. Shri Mishra has been promoted to Senior Time Scale from 1.10.1970 to 18.11.1977, to Selection Grade from 13.10.1980 to 16.5.1984, and to Conservator of Forests Level II from 6.10.1985 to 4.9.1986. As promotion to Selection Grade in Indian Forest Service is from Senior Time Scale, the first gap period relating to Shri Misra in this order, i.e., from 19.11.1977 to 12.10.1980, must be relating to a period

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when he was already in the Senior Time Scale and that is how for this period no notional promotion has been given to him. He was given notional promotion to Selection Grade from 13.10.1980 to 16.5.1984 in this order and to Conservator of Forests Level II from 6.10.1985 to 4.9.1986. From this, it would appear that during the second gap, i.e., from 17.5.1984 to 5.10.1985 he must have been already in the Selection Grade for which no notional promotion was given to him for this period. If that be the case, then the situation arises that for the period from 19.11.1977 to 12.10.1980 when Shri Mishra was actually working in the Senior Time Scale and from 17.5.1985 to 5.10.1986 when Shri Mishra was actually working in the Selection Grade, by this Government order dated 12.10.1995 even though notional pay fixation will be done for him, actual drawal of pay has been disallowed. Obviously, when the officer has worked in Senior Time Scale and Selection Grade and if his pay is notionally fixed because of ante-dating his promotion, he would be entitled to his pay for the period he has worked. Therefore, there is no legal reason for saying that for these periods arrears will not be allowed to him. We must make it clear that we have given the example of one of the applicants only to bring out the internal inconsistency in the stand taken by the State Government and as reflected in this order dated 12.10.1995. We are not determining/giving a finding as such regarding Shri Birupakhya Mishra because all the facts are not before us. In case during the gap periods as mentioned above, Shri Mishra was on training abroad or was under suspension, naturally arrears will not be payable. We only make this point to bring out that denial of arrears even for the period when the officers worked in the higher posts on the basis of notional pay fixation is completely unheard of in service jurisprudence.

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12. We may also add that the example and logic given by us in respect of applicant no.1 apply equally to the other five applicants on the basis of the dates of their notional promotion to different grades mentioned in this order.

13. The last point urged by the learned Government Advocate in respect of these two submissions is that the payment made in case of Shri S.C.Bohidar was done wrongly and that cannot be relied upon as a precedent. We are indeed surprised that such a suggestion could at all be made when payment of arrear financial benefits has been made in compliance with the order dated 5.11.1993 of the Tribunal against which SLP filed by the State Government has been dismissed by the Apex Court of the Land. It has been submitted by the learned Government Advocate that against the order of the Tribunal in Shri S.C.Bohidar's case the State Government went in SLP to the Hon'ble Supreme Court which was dismissed on the ground of delay without going into the merits of the matter. We are unable to accept this contention because the order of the Hon'ble Supreme Court dismissing the SLP has not been produced. Only if their Lordships of the Hon'ble Supreme Court in their order had specifically mentioned that the SLP is being dismissed on the ground of delay, then a stand can be taken that the Hon'ble Supreme Court have not gone into the merits of the matter. Otherwise, it has to be taken that the Hon'ble Supreme Court have taken into consideration the merits of the SLP as also, may be, question of delay and dismissed the SLP. Whatever it may be, the SLP having been dismissed the order of the Tribunal in OA No. 439 of 1991 has become final and having implemented a lawful order, it is not open for the State Government to say that payment made to Shri S.C.Bohidar was a

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mistake. Moreover, it has to be noted that in Shri Bohidar's case the respondents in their counter specifically mentioned that they were prepared to pay the arrears not only to Shri Bohidar but to the other officers, which would include the present applicants. They have also stated that Shri Bohidar's case cannot be taken up in isolation of other officers who are likely to be entitled to the same benefits. At Annexure-R.1/1 to the counter in Shri S.C.Bohidar's case is a letter dated 11.7.1990 from Joint Secretary, General Administration Department to the Forest Department in which Government of India order dated 25.6.1990 fixing years of allotment of those sixteen officers including the applicants has been sent to Forest Department for communication to the concerned officers. In this letter the Forest Department has also been directed to send proposals for allowing resultant benefit to the officers. In the Government of India order dated 25.6.1990 in the third paragraph it has been mentioned by Under Secretary, Government of India, Ministry of Environment & Forests, to the Secretary, General Administration Department, Government of Orissa that years of allotment may be conveyed to the concerned officers and the resultant benefits allowed to the officers immediately. It further appears that Forest & Environment Department, Government of Orissa, in their letter dated 27.1.1992 at Annexure-R-1/2 in OA No.439 of 1991 tentatively worked out the dates of promotion of these officers to Senior Time Scale, Selection Grade, Conservator of Forests Level -II, Conservator of Forests Level-I and Additional Chief Conservator of Forests, and directed the Chief Conservator of Forests and other Heads of Departments under Forest Department to confirm the correctness of the dates. At Annexure-R-1/3 is a D.O.letter from the then Secretary, Forest Department to Heads of Departments under Forest

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Department in which it has been pointed out that the report called for has not been received and the General Administration Department are pressing hard in the matter. It is further stated that one of the officers, Shri S.C. Bohidar has filed an application before the Tribunal to give arrear financial benefits with interest in view of delay in implementing the Supreme Court decision and the matter is dragging on for last three years after issue of Government of India notification dated 3.2.1989. A combined reading of all these letters would also show that both Forest and General Administration Departments, Government of Orissa, were considering allowing arrear financial benefits to these officers at that stage. We have already dealt with and rejected the contentions of the learned Government Advocate that what the State Government were considering at that stage was only notional promotion and not arrear financial benefits. It is not necessary to go into that aspect further. In the light of the above discussions, the first two contentions of the learned Government Advocate are rejected and it is held that the applicants are entitled to arrear financial benefits, as claimed by them.

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14. The learned Government Advocate has raised two more important points which have to be considered before any final order can be passed on this O.A. His next point is that the applicants have not exhausted the alternative remedy and have approached the Tribunal, and as such the petition is not maintainable. This argument has two aspects. The first aspect is that it has been urged by the learned Government Advocate that in order dated 7.11.1994 Government of India clearly indicated that no arrear financial benefits would be allowed but the petitioners did not file any appeal against that order nor have they asked for quashing the above order.

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Similarly, it is stated that in order dated 12.10.1995 copy of which was sent to the concerned officers it was clearly mentioned by the State Government that arrear financial benefits till 7.11.1994 will not be allowed, but against this order no appeal was filed by the concerned officers to Government of India. The second aspect of this point is that the representations filed by the applicants before the Chief Secretary were rejected in order dated 28.6.1996 which has been sought to be quashed in this O.A. But against that order dated 28.6.1996 no appeal has been filed by the applicants. It is submitted by the learned Government Advocate that under Rule 16(iii)(a) of All India Services (Discipline and Appeal) Rules, 1969, a member of the Service may prefer an appeal to the Central Government against an order of the State Government which denies or varies to his disadvantage his pay, allowances and other conditions of service, as regulated by Rules applicable to him. It is urged that the applicants not having filed the appeal which is a statutory remedy against the orders referred to earlier, the application is not entertainable under sub-section (1) of Section 20 of Administrative Tribunals Act, 1985, which lays down that a Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. In support of his contention, the learned Government Advocate has relied on the decision of the Hon'ble Supreme Court in the case of S.S.Rathore v. State of Madhya Pradesh, AIR 1990 SC 10. It is submitted that in paragraph 16 of the above judgment their Lordships of the Hon'ble Supreme Court have observed that the purport of Section 20 of Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a

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condition precedent to maintaining of claims under the Administrative Tribunals Act. The learned counsel for the petitioners has, on the other hand, taken the stand that the objection regarding non-availing of alternative remedy not having been taken at the admission stage cannot be raised later. In support of his contention, he has relied on the decision of Guwahati Bench of the Tribunal in the case of Shri Shankar Baruah and others v. Union of India and others, 1991(1) SLJ (CAT) 322 and the decision of Bangalore Bench of the Tribunal in the case of M. Sankaranarayanan, IAS, v. The State of Karnataka and others, 1991(3) SLJ (CAT) 278. It is also submitted by the learned counsel for the petitioners that the order dated 7.11.1994 of Government of India being an order which is void ab initio and a nullity, appeal need not have been filed against that order. In support of this contention, the learned counsel for the petitioners has relied on the Full Bench decision of the Tribunal in the case of Shri Dhiru Mohan v. Union of India through General Manager, Western Railway, Bombay and another, (1991-93) ATFBJ 282.

15. We have considered the submissions made by the learned counsels of both sides. Under Rule 17 of All India Services Services (Discipline and Appeal) Rules, 1969, no appeal preferred shall be entertained unless the appeal is preferred within a period of 45 days from the date on which a copy of the order is delivered to the applicant. In this case, it is not clear from the pleadings of the parties that the order dated 7.11.1994 was served on the applicants. The respondents have not made any averment that this order of Government of India was served on the applicants. Therefore, the question of the applicants not filing appeal against that

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order does not arise. In any case, under Rule 16(iii)(a) of the All India Services (Discipline & Appeal) Rules, 1969, relied on by the learned Government Advocate, appeal will lie only against the order of the State Government. So the question of going on appeal against the order dated 7.11.1994 does not arise.

16. So far as the order dated 12.10.1995 is concerned, in the order itself in the first paragraph it is mentioned that this order has been issued basing on the order dated 7.11.1994 of Government of India. Therefore, this is not an independent order of the State Government in which arrears of pay and allowances have been denied and an appeal would lie to Government of India. On the other hand, the State Government have followed the order of Government of India in denying the arrears. As such, in the instant case **prima facie** an appeal does not seem to lie and on this ground the applicants cannot be put out of Court. Moreover, in the case of **Shri Shankar Baruah (supra)** and **M.Sankaranarayanan (supra)** the consistent view of the Tribunal has been that the objection of non-availing of alternative remedy if not taken at the stage of admission or at the first instance cannot be allowed to be raised at later stage. In **M.Sankaranarayanan's case (supra)**, this objection about non-exhaustion of alternative remedy was taken at the time of admission and the Tribunal overruled the same and admitted the application by a considered order. It was held that once an application is admitted, the bar contained in Section 20(1) of the Administrative Tribunals Act, 1985 in admitting the application loses relevance. We are in agreement with the above approach. Sub-section (1) of Section 20 of Administrative Tribunals Act, 1985 clearly lays down that the Tribunal shall not ordinarily admit an application unless it

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is satisfied that the applicant had availed of all the remedies available to him. If the Tribunal admits the application, then the plea of non-exhaustion of alternative remedy cannot be taken at a later stage. In this case, as earlier noted, the application was admitted on 14.8.1996. On 27.11.1996, i.e., more than three months later the learned Government Advocate and the learned Additional Standing Counsel for Government of India prayed for ~~leave~~ <sup>leave</sup> to file counter. At that time, this plea was also not taken. In view of this, this plea cannot be allowed to prevail at this stage with regard to the order dated 12.10.1995 which is in pursuance of the order dated 7.11.1994 of Government of India. This contention of the learned Government Advocate is accordingly rejected.

17. The second aspect of this argument is non-filing of appeal against the order dated 28.6.1996 (Annexure-7) of Chief Secretary, Government of Orissa. A reference to paragraphs 6 and 7 of that order makes it clear that the then Chief Secretary noted that the State Government had consulted Government of India on the question of admissibility of arrear financial benefits to these 16 initial recruits to Indian Forest Service and Government of India had clearly advised that no arrears of pay and allowances on account of such retrospective promotion would be admissible. The words of Government of India in the order have been quoted by the Chief Secretary. The Chief Secretary further noted that the service conditions of Indian Forest Service officers are controlled by Government of India and the decision/advice of Government of India in the matter is to be implemented by the State Government. In view of this, the Chief Secretary held that it was not feasible for the State government to agree to give the arrear financial benefits to the representationists and the State Government

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have no alternative but to reject the representations of all the six aforesaid officers. From the above order at Annexure-7 to the O.A it is clear that the Chief Secretary clearly relied on the direction of Government of India disallowing the arrears of pay and allowances on account of retrospective promotion of the applicants and therefore, there was no point in filing appeal under Rule 16(iii)(a) of All India Services (Discipline & Appeal)Rules,1969 to Government of India against that order because that was not an independent decision of the State government against which an appeal under Rule 16 could lie. In consideration of the above, this contention of the learned Government Advocate is also rejected with regard to the order dated 28.6.1996.

18. The last contention of the learned Government Advocate is about delay in filing the O.A. It has been urged that the applicants claim arrear financial benefits on the basis of the judgment dated 10.12.1987 of the Hon'ble Supreme Court in **K .Prasad's case (supra)**, but have come to the Tribunal only in 1996. It is also submitted that against the order dated 7.11.1994 of Government of India, the applicants have not approached the Tribunal in time and therefore, the application is barred by limitation. As regards the judgment dated 10.12.1987 the applicants have stated in paragraph 4.5 of the O.A. that as the judgment was not implemented, a Civil Misc. Petition No.16209 of 1988 in C.A. No. 17472 of 1984 ( P.K.Pattnaik v. Union of India) was filed before the Hon'ble Supreme Court to immplement the direction in the aforesaid judgment. It is also submitted that the Hon'ble Supreme Court had directed Union of India to give effect to their judgment dated 10.12.1987 by the end of December 1988. These averments have not been denied in the counter filed by the State Government. But notwithstanding

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this order the initial induction of the sixteen officers including the applicants to Indian Forest Service as initial recruits was done only in the order dated 3.2.1989, year of allotment was done only in the order dated 2 5.6.1990 and retrospective promotions were given only in the order dated 12.10.1995. Respondent nos. 1 and 2 themselves have stated in their counter that with the notional retrospective promotion, the judgment of the Hon'ble Supreme Court has been fully complied with. In our discussions above, we have not accepted the above contention. But the fact remains that the respondents have taken inordinately long time to implement the judgment of the Apex Court of the land , and as the judgment was finally implemented, according to the respondents 1 and 2, only in October 1995, it cannot be said that the application is barred by limitation. We have also to note that in this order dated 12.10.1995 arrear financial benefits have been allowed from 8.11.1994, but there is no averment in the counter that arrears have <sup>been</sup> actually been paid to these applicants with effect from 8.11.1994. In the counter of respondent no.1 it has been mentioned that the arrears from 8.11.1994 will be paid to the applicants. Therefore, it cannot be said that the judgment of the Hon'ble Supreme Court has been implemented and if there is any error in such implementation, the applicants have not approached the Tribunal in time. As regards the order dated 7.11.1994 there is no averment in the counter that this order was served on the applicants. The applicants have, on the other hand, stated that they came to know for the first time from the order dated 28.6.1996 that Government of India have advised the State Government not to pay the arrear financial benefits. This assertion has not been denied in so far as the order dated 7.11.1994 is concerned. The respondents 1 and 2 have stated that copy of the order dated 12.10.1995 was sent

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to all the applicants. On the basis of such averment it is clear that the order dated 7.11.1994 was not sent to the applicants and therefore, limitation could not have run from the date of that order. This contention of the learned Government Advocate is also rejected.

19. One last point has been mentioned by the learned Government Advocate which requires to be stated. It has been mentioned that the petitioners in their O.A. have not asked for quashing the order dated 7.11.1994 of Government of India and the order dated 12.10.1995 of Government of Orissa and if these two orders are allowed to stand, the applicants cannot be granted the main relief of arrear financial benefits claimed by them. It has been submitted by the learned counsel for the petitioner that in view of the direction of the Hon'ble Supreme Court in their judgment dated 10.12.1987 in **K.Prasad's case (supra)** allowing consequential financial benefits, the order dated 7.11.1994 is void ab initio and it is not necessary for the applicants to specifically pray for quashing that order, copy of which in any case has also not been given to the applicants. In support of the above contention, the learned counsel for the petitioner has referred to the Full Bench decision of the Tribunal in **Shri Dhiru Mohan's case (supra)** wherein it was held that a void order has no existence in the eye of law and as such is a nullity and the same need not be quashed or set aside. It was also held that an application claiming arrears of salary or any appropriate relief without assailing a void order cannot be defeated by a plea on behalf of the respondents to the effect that the applicant has not filed application to get the order quashed or set aside within the period of limitation. The above Full Bench decision of the Tribunal seems to have full application in this case. Therefore, it is not necessary for the applicants to

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specifically pray for quashing the order dated 7.11.1994. The order dated 12.10.1995 has been issued by the State Government in pursuance of the order dated 7.11.1994 and the above consideration would also apply to this order.

20. The learned counsel for the petitioner has submitted that out of sixteen officers inducted as initial recruits to Indian Forest Service, Orissa Cadre, Shri S.C.Bohidar has already been allowed the arrear financial benefits and as the applicants are similarly situated, they are entitled to the same treatment. In support of his contention, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of Shri Narayan Yeshwant Gore v. Union of India and others, 1995(3) SLJ 188, where it has been laid down that similarly situated persons should be given same treatment. This has been further laid down in the case of K.C.Sharma and others v. Union of India and others, 1998(1) SLJ 54. It is not necessary to <sup>go</sup> into the facts of these two cases. It will suffice to note that the applicants are similarly situated as Shri S.C.Bohidar and therefore, following the decision of the Hon'ble Supreme Court in K.C.Sharma's case (supra) the benefits allowed to Shri S.C.Bohidar will have to be allowed to the applicants as well.

21. In the result, therefore, the Original Application is allowed by issuing a directive to the respondents to allow consequential financial benefits to the applicants with effect from their appointment to Indian Forest Service, Orissa Cadre, from 1.10.1966 till 7.11.1994 in respect of their initial appointment to Indian Forest Service from 1.10.1966 and their subsequent promotions to different grades allowed in order dated 12.10.1995. As some of the

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applicants have already retired, such payment should be made within a period of 60 (sixty) days from the date of receipt of copy of this order. While passing the above order, we have taken note of the fact that the State Government have already allowed arrear financial benefits to these applicants from 8.11.1994.

There shall be no order as to costs.

(G.NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN 2.12.98

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