

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 848 OF 1996

Cuttack, this the 9th day of July, 1999

Sri Radhakanta Dikshit Applicant

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*

(G.NARASIMHAM)
MEMBER (JUDICIAL)

(SOMNATH SOM)
VICE-CHAIRMAN

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CUTTACK BENCH, CUTTACK.

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CORAM:

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

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Sri Radhakanta Dikshit,
son of Jagabandhu Dikshit,
aged about 68 years,
At-Deheripali,
PO-Budiharaja,
District-Sambalpur-768 004 Applicant

Advocates for applicant - M/s A.P.Guru
S.B.Jena
S.K.Dash
P.K.Misra
J.Sengupta

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

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Respondents

Advocate for Respondents - Mr.K.C.Mohanty
Government Advocate
for R 1 and 2
and
Shri U.B.Mohapatra
A.C.G.S.C. for R-3.

O R D E R

- SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 15.4.1996 at Annexure-6

rejecting the representation of the petitioner. The second prayer is for a direction to the respondents to extend the same benefit to the applicant which has been allowed to Shri S.C.Bohidar, IFS (Retired) 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 dated 5.11.1993 of the Tribunal disposing of OA No. 439 of 1991. The third prayer is for payment of arrear dues with interest at prevailing Bank rate.

2. Case of the applicant is that after being selected by Orissa Public Service Commission and after completion of two years diploma course in Forest Research Institute and College, Dehradun during 1962-64, he was appointed to Orissa Forest Service, Class II and at the relevant time his service condition was governed by Orissa Forest Service Class II Recruitment Rules, 1959. In 1966 Indian Forest Service was constituted and rules and regulations were framed under All India Services Act, 1951, governing the recruitment and conditions of service of Indian Forest Service officers. The applicant was eligible to be considered for appointment as an initial recruit in Indian Forest Service under Indian Forest Service (Recruitment)Rules, 1966. When initial recruitment was done under Indian Forest Service (Recruitment) Rules, 1966 the applicant along with some other officers similarly placed were not considered for initial recruitment even though they had fulfilled the eligibility criteria required under the rules. The initial recruitment was challenged before the Hon'ble Supreme Court in Civil Appeal No.3072/80 on the ground that even though the applicant and some others were eligible for consideration under the relevant rules and regulations, they were erroneous not considered. Selections were made by considering eligible officers in order of

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seniority only to the extent necessary to recruit 42 persons and the Selection Board did not consider all the eligible officers. Hon'ble Supreme Court allowed the petition with the finding that the Selection Board merely selected 42 officers and made an omnibus observation that others were found unsuitable. It was held that this was not proper compliance of the rules and so the selection was set aside with a direction that the selection should be redone properly in the light of the principles set out in the judgment. The applicant has stated that though the judgment was delivered by the Hon'ble Supreme Court on 10.12.1987 no step was taken by the Government to implement the said judgment within a reasonable time. So a petition bearing Civil Misc.Petition No.16209/88 in CA 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 above judgment. Hon'ble Supreme Court directed Union of India to give effect to their order by end of December 1988. Even then the above direction was not implemented within the specified period. However, in a notification dated 3.2.1989 (Annexure-1) 16 officers including the applicant were appointed to Indian Forest Service with effect from 1.10.1966. The applicant has stated that in spite of the above notification consequential benefit was not given to the applicant for which representation was made. The applicant has stated that Government is not considering the said claim in spite of request of the petitioner and because of the delay the respondents are liable to pay interest on the arrear financial dues of the applicant. It is further stated that Under Secretary to Government of India in his letter dated 7.11.1994 at Annexure-2 directed

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Chief Secretary, Government of Orissa (respondent no.2) to allow the applicant Senior Time Scale on completion of five years of service to be counted from the year of allotment. The applicant has stated that in spite of this direction consequential financial benefit has not been paid to the petitioner. It is further stated that one S.C.Bohidar, a batch-mate of the petitioner, whose name appears against serial no. 15 in notification dated 3.2.1989 at Annexure-1 filed OA No.439/91 before the Tribunal on the selfsame grounds. The Tribunal allowed the petition in their order dated 5.11.1993 (Annexure-3) and directed the State Government to settle the arrear claim of Shri Bohidar within 90 days from the date of the said order. Government of Orissa in their order dated 12.10.1995 at Annexure-4 gave retrospective promotion to the fifteen out of 16 officers appointed to IFS in order dated 3.2.1989 at Annexure-1, one officer having passed away in the meantime. But in the above order at Annexure-4 it was mentioned that no arrears of pay and allowances on account of such retrospective promotion would be admissible to the officers till 7.11.1994. The arrears of pay and allowances on account of such retrospective promotion would be paid to them for the period commencing from 8.11.1994. The petitioner submitted representation dated 7.12.1995 to Special Secretary, General Administration Department, which is at Annexure-5. In this representation he prayed for retrospective promotion to the level of Conservator Level II with effect from 7.8.1984 and also asked for necessary fixation of his rank and payment of dues in IFS scale. This representation was rejected in the impugned order dated 15.4.1996 at Annexure-6. The applicant has stated that as per the direction of the Tribunal, Shri S.C.Bohidar, who is similarly situated was allowed to draw arrear financial

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benefits from 1.10.1966 to 7.11.1994 and the copy of the order dated 16.10.1995 allowing financial benefits to Shri S.C. Bohidar is at Annexure-7. The applicant has further stated that in their counter filed in OA No. 439/91 (S.C. Bohidar v. Union of India and others) State of Orissa had indicated that they are taking serious steps to clear up the dues of the applicant S.C. Bohidar and other persons similarly situated without any delay. At that stage the State Government had not indicated about instruction of Government of India for non-payment of arrears of pay and allowances till 7.11.1994. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. Secretary, Forest & Environment Department, Government of Orissa (respondent no.1) in his counter has adopted the counter filed by Chief Secretary, Government of Orissa (respondent no.2) and has indicated that Forest & Environment Department have no intention to give the arrear financial benefits to the petitioner as the Hon'ble Supreme Court in their judgment dated 10.12.1987 in civil appeal No. 3072/80 have allowed only service benefits and not arrear financial benefits and this has been averred by respondent no.2 in paragraphs 6 and 7 of his counter.

4. Chief Secretary, Government of Orissa (respondent no.2) in his counter has stated that the petitioner is claiming benefit basing on the judgment of the Hon'ble Supreme Court dated 10.12.1987. He ought to have agitated his rights within a reasonable and appropriate time. The application is grossly barred by delay and laches and therefore not maintainable. It is further stated that the applicant should not have delayed filing of this OA and should not have waited for the final order dated 5.11.1993 passed in OA No. 439/91 filed by Shri

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S.C.Bohidar. Because of this, he cannot be allowed to bank on the benefits given to Shri S.C.Bohidar in OA No. 439/91 and that also by this belated application. It is further stated that the applicant has claimed for payment of arrear financial benefits due to him on the basis of the judgment dated 10.12.1987 of the Hon'ble Supreme Court. In other words, the pay and allowances to which the petitioner claims to be entitled were denied to his disadvantage. Such a grievance is appealable under Rule 16(iii) of the All India Services (Discipline & Appeal) Rules, 1969. The applicant not having exhausted this remedy, the present application is not maintainable. It is further submitted that in the notification dated 12.10.1995 at Annexure-4 of the OA, General Administration Department had ordered that no arrears of pay and allowances on account of such retrospective promotion are admissible to the officers mentioned in that order till 7.11.1994 and arrears of pay and allowances on account of such retrospective promotion will be paid to them for the period commencing from 8.11.1994 onwards. This notification having categorically denied arrear financial benefits to the applicant, the applicant should have filed appeal as contemplated under Rule 16 of All India Services (Discipline & Appeal) Rules, 1969 against the above notification. As he has not filed the appeal within the statutory period of filing appeal but has filed a representation in December 1995, the present application is not maintainable. Respondent no.2 in his other averments has mentioned about initial recruitment of 42 State Forest Service officers to the Orissa Cadre of Indian Forest Service with effect from 1.10.1966 as also the fact that the same recruitment was challenged before the Hon'ble Supreme Court in Civil Appeal No.3072/80 and the decision of the Hon'ble Supreme Court in their judgment

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dated 10.12.1987. It has been submitted that in pursuance of the judgment, 16 more State Forest Service officers were appointed to IFS with effect from 1.10.1966 by Government of India, Ministry of Environment and Forest in their notification dated 3.2.1989 (Annexure-1 of the O.A.). The applicant was one amongst those 16 officers. It is further submitted that proposal for determining the year of allotment and fixation of interse seniority of these sixteen officers including the applicant was sent to Government of India in General Administration Department's letter dated 9.11.1989. Government of India in their letter dated 25.6.1990 requested the State Government to allow the resultant benefits to the sixteen officers. Accordingly, a proposal was sent to Government of India in letter dated 29.10.1993 for creation of temporary posts on various dates for the retrospective periods. Government of India in their letter dated 7.11.1994 advised that these initial recruits would be eligible for further promotion in various grades subject to the condition that no arrears of pay and allowances on account of such retrospective promotion would be admissible and no supernumerary post would be required to be created on account of such retrospective promotion. Therefore, it was not possible for the State Government to give arrear financial benefits. The letter dated 7.11.1994 is at Annexure-R-2/2. It is further stated that in pursuance of the Government of India's advice, fifteen out of 16 officers, one having passed away in the meantime, were given retrospective promotion to various grades. These dates were worked out by taking into consideration their interse seniority and the dates of promotion of their respective immediate juniors. The applicant retired from service with effect from 31.3.1985. By that date no officer

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junior to him was allowed promotion to the rank of Conservator of Forests, Level II and therefore the petitioner was rightly allowed retrospective promotion only to the level of Senior Time Scale and Selection Grade. It is further stated that arrear financial benefits for the period from 1.10.1966 to 7.11.1994 were allowed to Shri S.C.Bohidar in pursuance of the judgment dated 5.11.1993 of the Tribunal in OA No.439/91. The case of the applicant is totally distinguishable. It is further stated that the judgment dated 10.12.1987 of the Hon'ble Supreme Court in Civil Appeal No.3072/80 has been fully implemented and therefore the applicant is not entitled to the arrear financial benefits claimed by him. On the above grounds, respondent no.2 has opposed the prayers of the applicant.

5. Union of India (respondent no.3) have not filed any counter.

6. We have heard Shri S.K.Das, the learned counsel for the petitioner; Shri K.Ch.Mohanty, the learned Government Advocate for respondent nos. 1 and 2; and Shri U.B.Mohapatra, the learned Additional Standing Counsel appearing for respondent no.3 Union of India. At the time of argument the learned counsels for both sides indicated that the matter is already covered by the order dated 2.12.1998 of the Tribunal in OA No.512/96. In view of this, the learned counsels for both sides have not made detailed submissions with regard to the stands taken by them in the pleadings.

7. We have looked into the records of OA No. 512 of 1996 (Sri Birupakhya Mishra and others v. Government of Orissa and others) which was allowed in order dated 2.12.1998. In that petition six officers of Indian Forest Service who were appointed to IFS along with the present petitioner before us in order dated 3.2.1989 of Ministry of Environment & Forests, Governemtn of India, in pursuance

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of the judgment dated 10.12.1987 of the Hon'ble Supreme Court, had come up claiming arrear financial benefits on account of retrospective promotions given to them in order dated 12.10.1995 in which the present applicant was also given retrospective promotion. In OA No.512/96 the State Government had taken the stand that the petition is not maintainable firstly because of delay in approaching the Tribunal and secondly because of non-exhausting of statutory appeal under the All India Services (Discipline & Appeal) Rules, 1969. For reasons elaborately discussed in order dated 2.12.1998 in OA No. 512/96, both these contentions of the respondents were rejected. In view of the submission of the learned counsel for both sides that this is a covered matter, we are not repeating the same arguments in the instant case. For the reasons recorded in our order dated 2.12.1998 in OA No. 512/96 (supra) these two contentions of respondent nos. 1 and 2 in this case are rejected.

8. The next contention of the learned counsel Government Advocate for respondent nos. 1 and 2 is that the Hon'ble Supreme Court in their judgment dated 10.12.1987 did not direct payment of arrear financial benefits and therefore, the arrear financial benefits claimed by the applicant are not payable. This contention has also been discussed and rejected in our order dated 2.12.1998 in OA No.512/96 (supra). On the same grounds as mentioned in the said order, this contention is also rejected.

9. Lastly, it has been claimed by respondent nos. 1 and 2 that arrear financial benefits were allowed to Shri S.C.Bohidar in pursuance of the order dated 5.11.1993 in OA No.439/91, but the case of the present applicant before us is distinguishable from the case of Shri Bohidar.

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Respondent no.1 has further stated that Forest & Environment Department never intended to pay the arrear financial benefits to the present applicant. In our order dated 2.12.1998 in OA No.512/96 (supra) we have noted that the Tribunal in their order dated 5.11.1993 have mentioned in paragraph 3 that in their counter the opposite parties did not dispute the claim of the petitioner,i.e., S.C.Bohidar regarding his entitlement to the financial emoluments. Paragraph 5 of the counter of the State of Orissa in OA No. 439/91 was quoted in our order dated 2.12.1998. This paragraph 5 is reproduced 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 payment of any penal interest also does not arise."

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The applicant is one of the sixteen officers appointed to Indian Forest Service by Unionof India in order dated 3.2.1989. Shri S.C.Bohidar was another such officer covered in the same order. Government of Orissa in paragraph 5 of their counter in OA No.439/91 have specifically mentioned that they were intending to give arrear financial benefits

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to Shri Bohidar as well as other officers. They have specifically mentioned that the case of Shri Bohidar could not be taken up in isolation of other officers who are likely to be entitled to. From this it is clear that the State Government had admitted the claim for payment of arrear financial benefits to other officers who are on the same footing as Shri S.C.Bohidar. In view of the above, this contention of the Government of Orissa that the case of Shri Bohidar is distinguishable is held to be without any merit and is rejected.

10. OA No.512/96 filed by the six applicants who stand on the same footing as the present applicant before us was allowed by issuing a directive to the respondents to allow consequential financial benefits to the applicants therein with effect from their appointment to Indian Forest Service from 1.10.1966 to 7.11.1994 in respect of their initial appointment to IFS from 1.10.1966 and their subsequent promotions to different grades allowed in order dated 12.10.1995. It was also directed that such payment should be made within a period of 60 days from the date of receipt of copy of this order. In line with the above direction, in the present case we direct the respondents to allow consequential benefits to the present applicant with effect from the date of his appointment to Indian Forest Service, Orissa Cadre, from 1.10.1966 till 31.3.1985 when the applicant retired from service. This amount should be paid to the applicant within a period of 60(sixty) days from the date of receipt of copy of this order.

11. In the result, the Original Application is allowed. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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VICE-CHAIRMAN *9.7.99*