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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

ORIGINAL APPLICATION NO.899 of 1996

Cuttack, this the 28th day of January,1997

Bhaskar Chandra Pattnaik .... Applicant

Vrs.

Union of India and others .... Respondents

(FOR INSTRUCTIONS)

1) Whether it be referred to the Reporters or not? Yes

2) Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? Yes

(N.SAHU) 28.1.97.
MEMBER(ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.899 OF 1996

Cuttack, this the 28th day of January, 1997

CORAM:

HONOURABLE SHRI N.SAHU, MEMBER(ADMINISTRATIVE)

.....

Shri Bhaskar Chandra Patnaik, IAS,
Chairman, Orissa State Housing Board,
Gruha Nirman Bhawan,
Sachivalaya Marg,
Bhubaneswar, District-Khurda .... Applicant

-versus-

1. Union of India,
represented through its Secretary,
Department of Personnel & Training,
North Block,
New Delhi.

2. State of Orissa,
represented through Special Secretary to Government,
General Administration Department,
At/P.O-Bhubaneswar,
Dist.Khurda.

3. Chief Secretary to Government of Orissa,
At/PO-Bhubaneswar, Dist. Khurda.

4. Shri Sudhanshu Bhusan Mishra, IAS,
Addl.Chief Secretary to Government of Orissa
and Chairman, Industrial Development Corporation
of Orissa Ltd., At/P.O-Bhubaneswar,
District-Khurda .... Respondents

For Applicant - M/s H.M.Dhal, A.A.Das, J.Patnaik, B.Mohanty, T.K.Patnaik & S.Das.

For Respondents - Mr.Indrajit Ray, Advocate-General & Mr.K.C.Mohanty, Govt.Advocate (For Respondents 2 & 3)
Mr.G.A.R.Dora (For Respondent 4)

O R D E R

N.SAHU, MEMBER(ADMN.) This Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 is directed against order No.29114/AIS of Respondent No.2, the Special Secretary to Government of Orissa, General Administration Department, dated 13.11.1996 forming Annexure-2 which states :

> "On promotion, Shri Sudhanshu Bhusan Mishra,IAS (OR-1965), at present Additional Chief Secretary to Government, and Chairman, I.D.C. of Orissa Ltd., Bhubaneswar and Chairman, IDCO,Bhubaneswar is allowed to continue as such.
>
> The post of Additional Chief Secretary to Government of Orissa is declared equivalent in status and responsibility to the post of Member, Board of Revenue, Orissa provided in the IAS cadre of the State."

Shri Sudhanshu Bhusan Mishra, impleaded here as Respondent No.4, is a direct recruit of 1965 Batch and is placed in the gradation list of officers of I.A.S. prepared by the General Administration Department,one place below that of the applicant who is a direct recruit of 1964 Batch and who has become the Principal Secretary on 8.7.1991 equivalent to the rank of Additional Secretary to Government of India in the scale of Rs.7300-7600/- and continues as such till date. Respondent No.4 has been given the rank and scale of Chief Secretary to Government of Orissa by upgrading his post to that of Member, Board of Revenue. In the Government of Orissa there are only two cadre posts and two ex-cadre posts in the grade of Rs.8000/-, and all these posts were filled up prior to the impugned order of promotion of Respondent No.4.The last officer to be promoted to the grade

of Rs.8000/- was Sri Sahadev Sahoo, a recruit of 1964 Bath, on 31.10.1996 in the vacancy caused by the superannuation of Shri S.L.Chatterji, a recruit of 1963 Batch. There was no vacancy in the grade of Rs.8000/-, but yet Respondent No.4 was promoted to a fifth post on 13.11.1996 hoping that the said new post would be approved by the Government of India on the basis of a proposal sent by the Chief Minister of Orissa, a day before the order of promotion on 12.11.1996. The letter addressed by the Chief Minister to the Prime Minister justifies its decision that Shri Sudhanshu Bhusan Mishra would be given the same pay and status under the State Government as he would be entitled to as Secretary to Government of India because Shri Mishra has been selected by the Government of India for holding the post of Secretary with a pay of Rs.8000/- .The Government considered it necessary in the public interest to retain the services of Shri Mishra because of his specialised experience in the Industries Sector - as Industries Secretary for about 5 years, Chairman, Industrial Development Corporation for about 1½ years, and Chief Executive of Industrial Promotion and Investment Corporation Ltd. for about 3 years. The Chief Minister wrote to the Prime Minister to permit him to retain Shri Misra in the State Government and also accord approval "for operating with immediate effect the fifth post with fixed pay of Rs.8000/- under the State Government".

2. The applicant is aggrieved against his exclusion from consideration. He says that the officers at Sl.14, 15, 16 and 17 should have individually been considered consecutively

in their turn in terms of Rule 3(2A) of the Indian Administrative Services (Pay) Rules, 1954 (hereinafter referred to as "Pay Rules") which provides, inter alia, that appointment to the post carrying pay above the time scale of pay in the Indian Administrative Service shall be made by selection on merit with due regard to seniority. His grievance in this Application is that the selection of Respondent No.4 was made without considering the applicant's case and impliedly, officers figuring at Sl. Nos.14 to 17, and such a selection was made on extraneous consideration to an additionally created post which requires prior permission of the Central Government which has not been obtained. The applicant alleges: "There has been a colourable exercise of power by the State Government inasmuch as the case of senior people like the applicant has not been taken into consideration by the Respondent No.2 and 3".

3. There is no need to deal with at length the Press Note published by the Government of Orissa against the protest of the IAS Officers' Association justifying its stand in retaining Shri Sudhanshu Bhusan Misra and protecting the emoluments he was offered by the Government of India and upgrading the present post thereby creating a fifth post carrying the pay of Chief Secretary to Government of Orissa, nor is it necessary to examine at length the applicant's contention that the criteria for selection of a Secretary to Government of India, which is a deputation post under a well-defined procedure outlined in the Central Staffing Scheme, are not applicable to the promotion to a regular cadre post within the Government of Orissa which is in the grade of Rs.8000/-, because

these are in the realm of merits of the application. Rival contentions advanced are confined to maintainability of this application at the admission stage. In this order I will confine my consideration to those contentions.

4. The arguments of the learned counsel for Respondent No.4, Sri G.A.R.Dora and the learned Advocate General for the State of Orissa focused on the admissibility of the Original Application. Such references to merits, as have been made during the arguments by the rival counsel, shall only be adverted to as are necessary and nothing more. The arguments of Sri Dora and the learned Advocate General varied in respect of emphasis on certain points and varied in respect of presentation with regard to other points, but the thrust of their arguments covered common ground and therefore, it is not necessary to repeat the individual arguments of each counsel. The learned Advocate General prefaced his argument by saying that the applicant has a grievance and his grievance has to be redressed. He stated that the provisions of the Administrative Tribunals Act, a self-contained Code, has to be scrupulously adhered to. Section 20 of the A.T.Act provides exhaustion of alternative remedy as a pre-condition for admission of an application under Section 19. Sri Dora struggled hard to persuade the Court that the applicant ought to have exhausted the remedy available to him under the All India Services (Discipline and Appeal) Rules,1969 (hereinafter referred to as the "Discipline and Appeal Rules") by filing an appeal before the appellate authority against the impugned order before approaching the Tribunal. No doubt, the word "ordinarily" used in sub-section (1) of Setion 20 of the A.T.Act leaves a discretion with the Tribunal

to entertain an application under Section 19 even where the applicant has failed to avail of all the remedies available to him under the relevant service rules as to redressal of grievances. Shri Dora conceded that if the appellate authority lacks jurisdiction or the order is challenged on the ground of bias or for violation of principles of natural justice, there will be no absolute bar in entertaining an application. He states that in this case there is no such contention. He further states that two remedies cannot be pursued simultaneously, one to the appellate authority and the other by way of an application before the Tribunal. He states that two other affected officers of 1964 Batch, senior to the applicant, namely, Sri Pratap Mukhopadhyaya and Sri Pritiman Sarkar have filed appeals provided under the statutory Rules before the Central Government, and the State Government has forwarded their appeals with comments to the Central Government as required under the Rules. To admit the present application at this stage would in essence mean abatement of the pending appeals before the Central Government preferred by the two senior officers, particularly when the appellate authority being the Central Government, impleaded as Respondent No.1, having been noticed in this case. There should be both conformity and consistency in the procedure to be followed in redressal of the grievances. The learned Advocate General admirably summed up the situation that would arise if the views of the appellate authority (Central Government) and the Court are allowed to be passed simultaneously. If the decision of the appellate authority

is contrary to that of this Tribunal, such a view would stand overruled and if the view of the appellate authority is in conformity with that of this Tribunal, such a view becomes redundant. He submits that the statute having provided a specific forum for alternative remedy, it cannot be bypassed, ignored or rendered a nullity. He referred to the decision of the SupremeCourt reported in AIR 1983 SC 603 (Titaghur Paper Mills Co.Ltd. v. State of Orissa and another). The Supreme Court held that where a right or liability is created by the statute and it also gives a special remedy for enforcing it, the remedy as prescribed by the statute must only be availed of. Alternatively where a complete machinery is provided to challenge the order and where an order can be challenged only by a mode prescribed thereunder, the order shall be challenged only by such a mode prescribed by the statute. The learned Advocate General conceded that this Court cannot be constrained or constricted by the routine dictates of Rule 20 about exhaustion of alternative remedies. When there is an extraordinary situation, like where fundamental rights are infringed and there is no efficacious remedy at sight, or where rights are trampled over without respecting the principles of natural justice and any loss of time in appeal will be to the detriment of the subject, then certainly Rule 20 need not come in the way and the application can be admitted. But that is not the situation here and this was admitted by all parties concerned. The learned Advocate General next emphasised on what he called the exercise in futility of the applicant's claim. If Respondent No.4's

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promotion is quashed, does the applicant have any right to claim promotion? The answer is not necessarily, because Sl.Nos.14, 15 and 16 have to be considered. It is only when they are found to be unfit that the applicant's turn would come. In the alternative, if the Central Government refuses to give permission, the whole handiwork of the State Government in creating a post and appointing Respondent No.4 thereto would fall to the ground and there would be absolutely no cause of action for the applicant. In anticipation of the Central Governing honouring the request, this step has been taken. If the Central Government refuses to agree to the State Government's proposal, then Respondent No.4 would go back to the Central Government to join a post which carries the same pay and status, namely, Secretary to Government of India with a fixed pay of Rs.8000/-. There would be no post for consideration and the entire exercise of the applicant would amount to an exercise in futility. The action of the State Government is a contingent action, an ad hoc decision, and until it is ratified by the Central Government, would remain as such. Thus there is no firm cause of action to fight for and if in the interregnum, Sri Sudhanshu Bhusan Misra enjoys a fixed pay of Rs.8000/-, it is not anybody's gift, or a gratuitous offer, but it is his right by virtue of his being selected as a Secretary to Government of India. He was held back purely in public interest and in the interest of the State, and both elementary principles of law and common sense will dictate that an officer cannot be deprived of the pay and perquisites

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that are legally due to him by retaining his services without compensating him at least in an equivalent manner.

5. The learned Advocate General further stated that by admitting this application, this Court would be instrumental in promoting multiplicity of litigations on the same cause of action and conflicting legal fora for the same grievance to be redressed and this might end up in an embarrassing situation at least for the appellate authority. This is not the intention of the framers of the statute, argued the learned Advocate General. He cited ATR 1989(1) CAT 365 (Dashrath Singh and others v. Union of India & others) and ATR 1987(2) CAT 595 (G.S.Prabhakar v. Union of India and another) to support his stand that this Tribunal should not step into the shoes of the appellate authority. He also stated that it is admitted by all concerned that there is no whisper of a word alleging mala fide or prejudice against the appellate authority.

6. Shri Dora placed before the Court the relevant Rules, namely, Rule 16(iii)(c) of the Discipline and Appeal Rules which states that subject to the provisions of Rule 15 and the explanation to Rule 6, a member of the service may prefer an appeal to the Central Government against an order which has the effect of superseding him in promotion to a selection post. This is a clear alternative statutory remedy which the applicant has not availed of and thus this application is premature and cannot be admitted. It is further

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submitted that the order refusing to admit this application will not preclude the applicant from approaching this Tribunal once again after disposal of the appeal by the Central Government, if so advised. A case has also been made out that the other affected senior officers having not been impleaded in this application, this application fails for non-joinder of necessary parties.

7. The learned counsel for the applicant, Shri J.Patnaik refuted the arguments of not availing of the alternative remedy. His first contention is that there is no provision of appeal against such a situation. His second contention is that the appeal against this type of order is excluded by the statute. His third argument is that the statute governing the promotion does not provide any such appeal after a promotion is given. If there are two statutes governing a situation like grievance of the applicant, namely, (1) Discipline and Appeal Rules, and (2) Pay Rules, the second statute being more specific and directly relatable to the subject of the dispute would be applicable to a cause of action of this type. Shri Patnaik forcefully contended that a situation of the type that has arisen is really an extraordinary situation. That the promotion prospects of the applicant, who has an impeccable record having been ignored, to the post of Chief Secretary to Government of Orissa is an instance that has not occurred during the last forty years of administration in Orissa. He argued that it is an obvious case of favour shown

to a particular official. There is no selection; not even a pretence of selection. The Chief Minister wrote to the Prime Minister on 12.11.1996 that he wants to retain Respondent No.4. This shows, in the language of the senior counsel Sri Patnaik, a priori bias in favour of Respondent No.4. By this step as claims of senior officers have been ignored and the entire service is demoralised, this is an extraordinary situation and calls for an extraordinary remedy. It is to meet such a situation that this Tribunal, which has been expressly declared as a substitute for High Court for enforcement of writ jurisdiction in service matters, has been created. Shri Patnaik has taken me through the scheme of the Discipline and Appeal Rules. He states that the entire Chapter deals with punishment, penalty, suspension, etc.. The whole Chapter deals with the disciplinary proceedings and after four parts of the Chapter, in the fifth part there are provisions for appeals. He drew my attention to the opening sentence of Rule 16 which speaks of the orders against which appeal lies: "Subject to the provisions of rule 15 and the explanations to rule 6". Rule 15 specifies the orders against which no appeal lies, and the Explanation to Rule 6 specifies eight situations which shall not amount to penalty within the meaning of Rule 6. He says that the appeal provisions are in conformity with the disciplinary proceedings, penalty provisions and suspension provisions. He further drew my attention to Rule 16(iii)(c) and underlined the word "effect". It is stated that this further shows that the reference could be to an order in a penalty or disciplinary proceeding which has the effect

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of superseding him in promotion to a selection post. He further drew my attention to Section 17 dealing with limitation which provides that no appeal preferred shall be entertained unless such appeal is preferred within forty-five days "from the date on which a copy of the order appealed against is delivered to the appellant". Shri Patnaik stated that there is no order against the applicant. There is no delivery of copy of the order to the applicant. Obviously, how will the limitation be reckoned?

8. Refuting this contention, the learned Advocate General stated that the Discipline and Appeal Rules not only deal with appeals arising out of disciplinary proceedings, but also in other matters. He cited the instance of crossing Efficiency Bar and reversion otherwise than as a penalty mentioned in clause (iv)(a) and (b) of Rule 16. He stated that Rule 16(iii)(a),(b) and (c) and Rule 16(iv)(a) and (b) have no relationship with the disciplinary proceedings and yet an appeal to the Central Government is provided for. This is further strengthened from a reading of Rule 19. While Rule 19(1) deals with the procedure for consideration of appeal in case of penalty arising out of disciplinary proceedings, Rule 19(2) deals with other cases unconnected with the disciplinary proceedings.

9. Exhaustion of alternative departmental remedies is a necessary condition before approaching the Tribunal. This necessity can be dispensed with only in extraordinary cases and circumstances.

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In the case of S.S.Rathore v. State of Madhya Pradesh (AIR 1990 SC 10) the Supreme Court observed that "the purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act". Following the aforesaid ruling of a Constitution Bench of the Supreme Court, a Full Bench of this Tribunal in B.Parameshwara Rao v. Divisional Engineer, Telecommunications, Eluru and another(1990(1)ATJ 584) held that the Tribunal should not ordinarily exercise the power to entertain an application under Section 19 of the Administrative Tribunals Act unless the applicant had exhausted the remedies available to him under the relevant Service Rules. The question at issue in this case is whether there is a right of appeal under Section 16 in a case of this type. The impugned order, Annexure-2 is an order which promoted a junior ignoring a senior or seniors. These affected officers have a cause of action. It is true if the Government of India does not approve or ratify the creation of the fifth post, then Respondent No.4 cannot continue in the 5th post. But then Annexure-2 is a Government notification conferring promotion and additional benefits of pay to the applicant and as long as this notification lasts, it has already created a right in favour of Respondent No.4 and a sense of grievance, as admitted by the learned Advocate General, is in the mind of the applicant. Whether the post will be

ratified or not is a matter between the State Government and the Central Government. As far as the applicant and other affected persons are concerned, they have before them an established fact of the case of Respondent No.4 firmly being conferred a promotion and a rank to which they have been denied. Thus Shri Dora and Sri Ray's contention that the whole edifice created by the State Government will crumble to pieces the moment the Central Government refuses to ratify is not really material as far as the applicant is concerned. I, therefore, do not agree that this point of view has any relevance in deciding the question of maintainability.

10. Coming to the next issue, the argument of Shri Patnaik appeared , at the first blush, quite convincing. The whole thrust of the Discipline and Appeal Rules is to deal with disciplinary matters. Part I is the preamble. Part II deals with suspension and subsistence allowance during suspension. It deals with admissibility of pay and allowances on reinstatement after dismissal, removal or compulsory retirement as a result of appeal or review. Part III deals with penalties and disciplinary authorities. It highlights minor and major penalties, authorities to institute proceedings and to impose penalties. Part IV deals with procedure for imposing penalties. Part V deals with appeals. Part VI deals with revision, review and memorials. Part VII deals with miscellaneous provisions. Thus it is wholly logical

to expect that the entire appeal ~~Chapter~~ part will deal only with penalties, disciplinary proceedings and related matters. Rule 16 begins with saying "subject to the provisions of Rule 15 and the explanations to Rule 6". Rule 15 deals with four types of cases again related to disciplinary proceedings. Explanation to Rule 6 deals with eight contingencies which will not be treated as amounting to a penalty. Rule 16(i) deals with suspension. Rule 16(ii) deals with an order passed by a State Government imposing major and minor penalties. Rule 16(iv), which the learned Advocate General has mentioned, speaks of stopping of Efficiency Bar. I disagree with the learned Advocate General that this is not a case of penalty: stopping somebody at the Efficiency Bar in the time scale of pay on the ground of unfitness is a penalty. Reverting a person otherwise than a penalty may not be penal in nature, but may have something to do with the suitability of his continuance in the deputation post. But then what we have to see is, rightly or wrongly why did the legislature introduce Rule 16(iii)?

> "16. Orders against which appeal lies.- Subject to the provisions of rule 15 and the explanations to rule 6, a member of the service may prefer an appeal to the Central Government against all or any of the following orders, namely:-
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> (iii) an order of a State Government which -
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> (a) denies or varies to his disadvantage his pay, allowances, or other conditions of service as regulated by rules applicable to him; or

(b) interprets to his disadvantage the provisions of any such rule; or

(c) has the effect of superseding him in promotion to a selection post; "

Rule 16(iii)(a) is a very comprehensive sub-clause which covers not only Discipline and Appeal Rules, but all other enactments. What Rule 16(iii)(a) says is that an order of the State Government which denies or varies to an I.A.S. officer to his disadvantage his pay, allowances or denies or varies to his disadvantage other conditions of service as regulated by rules applicable to a member of the service may be the subject matter of an appeal to the Central Government. This really is the master clause which introduced the right to appeal against infringement of service conditions under all the codified rules in All India Services Manual. In the All India Services Manual, Parts I and II, there are at least a score of different codified Rules covering leave, provident fund, medical attendance, conduct, T.A., compensatory allowance, pay, pension, etc.. Rule 16(iii)(a) is a clause which is capable of covering any grievance arising out of implementation of any of the Rules which deny or vary to the disadvantage of the member of the service his conditions of service. Rule 16(iii)(b) is another omnibus clause. It speaks of any order of a State Government which interprets to his disadvantage the provisions of any such rule. Now "such rule" refers to more than a score of Rules mentioned above in Parts I and II of All India Services Manual. At the end of each such Rules, it is mentioned that "If any question arises as to the interpretation of these rules, the Central Government shall decide the same".

Therefore, sub-clause (b) of Rule 16(iii) gives this protection of an appeal where the interpretation is to the disadvantage of a member of the service. Now, we come to sub-clause(c). The significance of sub-clause(c) can be very well appreciated by going into the CCS(CCA)Rules,1965. In CCS(CCA)Rules there are materially similar provisions of appeal,as are embodied in Rule 16 of Discipline & Appeal Rules, in Rule 23. Rule 16(iii)(a) and Rule 16(iii)(b) of the Discipline and Appeal Rules are mutatis mutandis the same as Rule 23(iv)(a) and Rule 23(iv)(b) of the CCS(CCA) Rules. In Rule 23(iv) unlike in Rule 16(iii) there is no clause (c) conferring a right of appeal to a person who is aggrieved by an order which has the effect of superseding him in promotion to a selection post. There was a difficulty amongst all the Central Government officials. The Government of India clarified as under:

> "(1) Appeals against supersession in the matter of promotion.- A doubt had arisen whether an appeal against supersession in the matter of promotion can be considered under the CCS(CCA)Rules, 1965. The Ministry of Home Affairs have clarified that an appeal against supersession in the matter of promotion will fall within the purview of Rule 23 (iv) of the CCS(CCA)Rules,1965.The appellate authority will be that indicated in Rule 24 ibid.
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> (G.I.,Min.of Def., O.M.No.PC 318 to MFO 2051/OS/ Art.3/D(Appts.) dated the 7th June,1967)

This further reinforces the view that the order of a State Government which has the effect of superseding an official in promotion to a selection post has nothing to do with the penalty Chapter and is a general clause. In fact,all the three clauses under Rule 16(iii) are meant to protect the

grievance of an official affected by all other Rules than Discipline and Appeal Rules. If a person is affected by Leave Rules, Gratuity Rules, Pension Rules, or Provident Fund Rules, which denied or varied to his disadvantage the conditions of service or which interpreted to his disadvantage the provisions of any such Rules, he certainly can appeal to the designated authority under Rule 16(iii) of the Discipline and Appeal Rules. What is substituted under Rule 23(iv) of CCS (CCA) Rules by the notification already exists under Rule 16(iii)(c) of Discipline & Appeal Rules. Thus the argument of Shri Patnaik that there is no appeal against the impugned order and such an appeal provision is excluded by the statute is not correct and not acceptable. It must, however, be observed that introducing these three sub-clauses conferring valuable rights of appeal under Rule 16(iii) in such an obscure manner is like a rescue boat submerged in a sea of provisions dealing in disciplinary proceedings and penal measures. This is one more instance of ad-hoc, quixotic, even mindless drafting.

11. The learned Advocate General has definitely hit the correct point when he said that there is a provision for appeal even against orders other than penalty orders and he tried to distinguish between Rule 19(1) and Rule 19(2) of the Discipline and Appeal Rules. Rule 19(1) speaks of penalties and Rule 19(2) speaks of any other order.

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The applicant's case comes under Rule 19(2). I accept for the sake of meeting the argument of Sri Patnaik's point that the applicant's case is covered by Rule 3(2A) of the Pay Rules. If that Rule is assumed to apply, then the applicant questions the appointment of Respondent No.4 as not "a selection on merit with due regard to seniority". It is not necessary to analyse any aspect of this contention because that will take me to merits. But then this is a condition of service, which the applicant alleges has been denied to him because he was ignored and his seniority was not respected. This is a grievance coming under Rule 16(iii)(a) - second part. Further, the impugned order at Annexure-2 has "the effect of superseding him in promotion to a selection post". The law, however, is very firmly laid down that where a selection is purely on merit, there is no concept of "supersession". But then I will not go any further: it will amount to taking up the matter on merits. It is thus very clear that the applicant's case is covered by Rule 16(iii)(a) and 16(iii)(c). He has a right of appeal which is a statutory remedy and non-availing of such a remedy is a bar to admission of an application filed under Section 19 of the Administrative Tribunals Act.

12. The extraordinary situation Sri Patnaik spoke of does not appeal to me to admit this application. The fact of the matter is: there is nothing extraordinary in this. In each batch of the I.A.S. at least 50% to 75% of officers do not even make to the grade of Additional Secretary in

Government of India, though very few are denied to reach the cadre posts of a State. This certainly affected the rights of an officer who at the end of a long career hopes to make to the top. Supersessions are not uncommon in many State selections. In fact, many selections end up with many an aggrieved officer who did not make upto the panel. This, in my view, does not amount to an extraordinary situation calling for a direct intervention of this Court, rendering thereby the appellate stage irrelevant. The law is settled that in such a situation departmental statutory remedies have to be resorted to as a first step, unless there is a fear that the appellate forum does not function independently and merely rubberstamps the decisions of the State Government. Such is not the applicant's argument or apprehension.

13. The next point of Shri Patnaik is, how shall we reckon limitation? As far as the period of limitation is concerned, the very fact that the applicant has annexed the impugned order shows the delivery of the copy of the order to him on the date it is filed in this Court, namely, 18.12.1996. There are several ways of reckoning limitation. One way is to reckon limitation from 18.12.1996. If an appeal is filed by the applicant before the competent authority,

the period of limitation will be counted after adding forty-five days to 18.12.1996. The period spent in pursuing this Original Application can be excluded. The learned Advocate General, on behalf of the Government of Orissa, has already struck a considerate and sympathetic note that he is more concerned with the redressal of a grievance in a manner acceptable to the provisions of law.The Government of Orissa, while forwarding the appeal to the Central Government, can withhold the same under Rule 21 of the Discipline and Appeal Rules if the said appeal is not preferred within the period specified in Rule 17. If the date of delivery of the copy of the impugned order is treated as 18.12.1996, the applicant has time till 2.2.1997 to file an appeal before the Central Government. If still there is unavoidable delay, the State Government in conformity with the submission of the learned Advocate General shall not withhold the appeal. Finally, the power of condoning the delay is with the appellate authority if it is satisfied that the applicant had sufficient cause for not preferring the appeal in time. I direct that the period spent in pursuing this application before this forum is under a genuine and bona fide impression that the applicant entertained that this forum is the only forum available for redressal of his grievance. Therefore, the period spent in pursuing this, namely, from 18.12.1996 till the date of pronouncement of this order, shall stand excluded from the period of limitation. Finally, the applicant can come back to this Tribunal if he is aggrieved or is not fully satisfied with

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the order of the appellate authority.

14. As I have held that Rule 16(iii) of the Discipline and Appeal Rules gives a statutory remedy of appeal before the appellate authority and it is an alternative remedy and as this remedy has not been exhausted, it will not be possible for me to entertain this application. This application, therefore, cannot be admitted and it is disposed of accordingly.

28.1.97.

(N.SAHU)
MEMBER(ADMINISTRATIVE)

A.Nayak,P.S.