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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 255 OF 2000.

Cuttack, this the day of May, 2001.

SRI RAM SAGAR.

23rd
....

APPLICANT.

VERSUS

UNION OF INDIA & ORS.

...

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
(SOMNATH SOM)
VICE-CHAIRMAN
23.5.2001

CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 255 OF 2000.
Cuttack, this the day of May, 2001.

23rd

CORAM:

THE HONOURABLE MR. SOMNATH SOM, ~~MEME~~-CHAIRMAN

AND

THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDICIAL).

SRI SRIRAM SAGAR, IFS,
59 years, S/o. J. Sagar presently serving
as Chief Conservator of Forests,
Mahanadi Coal Fields Ltd., Bhubaneswar. APPLICANT.

By legal practitioner: M/s. A.K. Mishra,
J. Sengupta,
B.B. Acharya,
D.K. Panda,
P.R.J. Dash,
G. Sinha,
Advocates.



- VERSUS -

1. Union of India represented through its Secretary, Ministry of Environment and Forest, CGO Complex, Lodhi Road, New Delhi.
2. Union of India represented through its Secretary, Ministry of Mines and Minerals, Department of Coal, Sashtribhawan, New Delhi.
3. State of Orissa through Secretary to Government of Orissa, Forest & Environment Department, Bhubaneswar.

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RESPONDENTS.

Jm.
By legal practitioner
for Respondents 1 & 2

Mr. S. Behera, ASC.

By legal practitioner
for Res. No. 3.

Mr. K. C. Mohanty,
Govt. Advocate.

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O R D E R

MR. SOMNATH SOM, VICE-CHAIRMAN:

In this Original Application, the applicant has prayed for quashing the order dated 7.1.2000 transferring him from the post of Chief Conservator of Forests, KL to the post of Chief Conservator of Forests, Mahanadi Coal Fields Ltd. (in short MCL). Second prayer is for a direction to the State Government to abolish the post of Chief Conservator of Forests in MCL and the third prayer is for a direction to the Secretary, Forests and Environment Department, Govt. of Orissa, Respondent No.3 to consider his representation dated 6.4.2000 at Annexure-6.

2. Applicant is a member of the Indian Forest Service and was working as Chief Conservator of Forest, KL at Bhubaneswar. In order dated 23.8.1999, Shri Basanta Kumar Mishra, another member of the Indian Forest Service was transferred as CCF, MCL, Burla. Shri Mishra, however, did not join that post and in the impugned order at Annexure-1, applicant was transferred and posted as CCF, MCL with temporary headquarters at Bhubaneswar and Shri Mishra was posted as CCF, KL. The earlier order posting Shri Mishra as CCF, MCL, Burla was cancelled. In the transfer order it was mentioned that office of the CCF, MCL is declared as equivalent in status and responsibility to the post of CCF under the State Government. In pursuance of the order, the applicant joined his new post and is continuing as CCF, MCL, Bhubaneswar. On 19.1.2000 applicant made a representation to



J. J. Som

the Secretary, Forests and Environment Department (Opp. Party No. 3) pointing out his difficulty stating that he has not been provided with any office accommodation or any other ancillary facilities to work and function in the post of CCF, MCL. On 5.2.2000, he pointed out in a further representation that he has not been paid his salary for January, 2000 nor has he been provided with any office accommodation, telephone and the work is not such that it would require a senior officer of CCF rank to be posted. He, therefore, prayed for his repatriation to the Govt. and for abolition of the post of CCF, MCL. On

4.2.2000, Govt. wrote to the Chairman and Managing Director, MCL to provide the petitioner with Telephone, PA, vehicle and other facilities. On 29.2.2000, applicant was informed by the General Manager, MCL to receive his salary from MCL, Headquarters, Burla. On 1.3.2000 the applicant filed a further representation stating that necessary minimum facilities have not been provided to him. He has also not been given any posting order as is required to be given by the foreign employer. He also pointed out that he is going to superannuate from Govt. service in August, 2001 and as such, he prayed ^{for} his repatriation back to Government but no action was taken on his representation. ^{for} _{Sam.}

He filed a further representation on 6.4.2000 pointing out that it would be difficult for him to continue on deputation and he will not be getting his pensionary dues. He also stated that the order of transfer shows nonapplication of mind and he again prayed for abolishing the post and repatriating him to Government. Applicant has stated that he



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has been posted as CCF, MCL only in order to accommodate Shri B.K. Mishra, who was transferred to that post on 23.8.1999 but did not join. He also stated that the post of CCF, MCL has been declared equivalent to the post of CCF in the Department in a mechanical manner and merely by a declaration the equivalence is not established. He has also stated that there is no work for a CCF at MCL. The MCL also had not made any request to post an Officer of the level of CCF on deputation. His term of deputation has not yet been finalised nor communicated to him, and this will create complications in future for getting his pensionary benefits after his superannuation. He has further stated that the order of deputation has been passed in violation of Rule-6 of IFS (cadre) Rules, 1966 and Rule 9 of IFS (Pay) Rules, 1968. It is not necessary to record the details averred by the applicant in this regard because these will be considered at a later stage. He has also stated that the post of CCF, MCL is not mentioned in IFS fixation of cadre strength regulations and it is not a cadre post. It is further stated that the State Govt. have no competency to declare the post as equivalent to that of CCF without approval of the Central Govt. He has also stated that the order of appointment has not yet been issued by the MCL even though he has already joined the organisation. He has stated that no action has been taken on his representation and no intimation has been sent to him. He has also stated that as per cadre strength regulation and cadre rules a cadre officer can not be posted to a non-cadre post. On the above grounds, he has come up in this



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Original Application with the prayers referred to earlier.

3. In this case, the Union of India, Respondents 1 and 2 have not filed any counter. Shri S. Behera, learned ASC appearing for the Union of India submitted on 28.2.2001 that it is necessary for the Govt. of India to file counter in this case and on his request four weeks time was allowed to file counter by the Respondents 1 and 2, even though granting of further time was opposed by the counsel for the applicant. On 22.3.2001, learned ASC, Mr. Behera, appearing for the Union of India submitted that Govt. of India does not want to file any counter. Before proceeding further, we must note with strong disapproval the action of the learned ASC appearing for the Govt. of India, Shri S. Behera, who had urged for time for filing of counter and accordingly time was allowed and after expiry of the time it was submitted by him that the Union of India does not want to file any counter. In this process, consideration of the grievance of applicant has been delayed by the Union of India. Respondent No. 3 i.e. State of Orissa represented by the Secretary, Forests and Environment Deptt. has stated in his counter that creation and abolition of post is a matter which falls within the exclusive jurisdiction of the Govt. and the applicant can not make any prayer in this regard. It is further stated that transfer of officers are always made in public interest or administrative grounds and in the interest of Govt. work and there is no question of nonapplication of mind in the case of the transfer of the petitioner to the MCL. With regard to the impending date of superannuation of applicant, Respondent No. 3 has made the following averments in para 5 of his counter:



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"The apprehension of the petitioner that he would not get his pension if he continues in Mahanadi Coal Fields Ltd., on deputation is totally unfounded and a mere apprehension can not be a ground for a cause of action to be agitated".

Respondent No.3 has denied that the transfer has been made to accommodate Shri B.K.Mishra, as CCF, MCL. It is stated that the post of CCF, MCL has been created for some specific purpose and for administrative reasons. The contention of the applicant that there is no sufficient work for an officer of CCF's level in that post is not correct as the Govt. is the best authority in the matter. It is further stated that the post of CCF has been created by the MCL and an officer in the rank of CCF has been continuing in that post for a long time. Because of this, there is no need for any request from MCL to post one officer in the rank of CCF. Moreover, this is an internal matter between the State Government and the Mahanadi Coal Fields Ltd. and the applicant can not have any grievance in this regard. It is further stated that sanction of the terms and conditions of deputation is routine nature of work and this will be sanctioned in due course. It is further stated that this will not create any complication after the superannuation of the applicant. Respondent No.3 has further stated that the transfer order is not violative Rule 6 of IFS cadre rules. It is stated that the post of CCF, MCL, is not a cadre post. It is a post under State deputation reserve post and has been declared equivalent to that of CCF. On the above grounds, Respondent No.3 has opposed the prayers of the applicant.



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4. In his rejoinder, the applicant has pointed out that equivalence of a post has to be declared not only with regard to the pay attached to the post but with regard to the duties and responsibilities of the post and in the instant case, the equivalence has been declared without any application of mind. He has pointed out that his prayer for seeking abolition of the post of CCF, MCL is based on the letter dated 13.7.1988 of the Chairman Cum Managing Director, MCL enclosed at Annexure-8 of the O.A. This letter was issued much before the posting order in favour of the applicant. It is further stated that even though creation and abolition of posts are exclusively ^{by the} executive functions, Courts and Tribunals can not shut their eyes to the whimsical action and decision if any taken by the Govt. When a transfer order is questioned on the ground of there being no public purpose, it is obligatory on the part of the Govt. to show what the public purpose is behind the transfer. Similarly, in case when equivalence is challenged, Govt. must show that the post is indeed equivalent in all respects to the post of CCF. It is also stated that mere sending of a letter by the Forest Deptt. to MCL did not absolve them of their responsibility in ensuring that the applicant is able to function as CCF smoothly. It is also stated that notwithstanding so many representations, the applicant has not yet been provided with office telephone, PA, Vehicle, Orderly and other facilities to enable him to function as CCF, MCL. With regard to sanctioning the term of deputation, the applicant has pointed out that he was on deputation to OFDC from 1985 to 1988 and till the date of filing of rejoinder, the services of the petitioner on deputation to



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OFDC have not been regularised. It is also stated that Shri B.K. Mishra, on his transfer as CCF, MCL, KL went on leave. He had never represented for cancellation of the transfer and notwithstanding ^{absence of} any objection from his ^{side} to join as CCF, MCL, the transfer order has been cancelled and he has been accommodated in place of the applicant and the applicant has been posted as CCF, MCL. It is further stated that in the past Shri SC Bohidar, the first officer, who was posted to MCL had written letter stating that there is no adequate work. Subsequently, Shri P. Singh and A.B. Tripathy were also posted and they have also expressed that there is no sufficient work of an officer of CCF rank in that post. Applicant has further stated that till date, the term of his deputation has not been finalised even though he is shortly going to retire on superannuation. Applicant has made further averment with regard to his contention that the transfer order is violative of Rule 6 of IFS Cadre rules and the post is not a state deputation reserve post. It is also stated that MCL is not a Company controlled by the State Govt. or Govt. of India and therefore, without the consent of the applicant, he could not have been sent on deputation ^{even} if it is taken for argument sake that it is a State deputation reserve post. Applicant has further stated that on an earlier occasion one Shri P. Singh, was sent on deputation to CCF, MCL and one Shri Harinarayan Sahu was allowed in turn to continue as CCF in the office of the PCCF, Orissa, Bhubaneswar. In an OA filed by Shri P. Singh, IFS, the State Govt. have taken the specific stand that as Shri Sahu was due to retire shortly it would



S. J. Singh

not be correct to continue him on deputation and that is why he was brought back to the Govt. but the same consideration has not been applied in case of the applicant. On the above grounds, the applicant has reiterated his prayer in his rejoinder.

5. We have heard Shri Aswini Kumar Mishra, learned counsel for the Applicant, Shri K.C. Mohanty, learned Govt. Advocate appearing for the State of Orissa, Respondent No. 3 and Shri S. Behera, Learned Additional Standing Counsel appearing for the Union of India, Respondents 1 and 2 and have also perused the records.

6. Respondent No. 3 has filed two Memos dated 19.5.2001 and 2.5.2001 enclosing certain documents. Counsel for the applicant has filed Memo of citation as also xerox copy of IFS cadre schedule and these have been taken into consideration.

7. It has been submitted by Shri K.C. Mohanty, learned counsel for the applicant that after issue of the impugned order dated 7.1.2000 applicant has joined the post of CCF, MCL and as the transfer order has been given effect to the Original Application has become infructuous. It has also been submitted by learned Government Advocate that in this Original Application, the applicant has come up with multiple prayers and on this ground the Original application is not maintainable. We have considered these two submissions carefully. In the present application, applicant has prayed for quashing his transfer order on certain grounds like noncompliance of the statutory rules etc. which will be referred to further in this order. Even after his joining



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these points subsist and it can not be said that merely by the fact of his joining, the applicant has lost his right to challenge this transfer order. If that be the case, then in every case of order of transfer, where stay is refused and where the concerned officer joins the new place of posting, by the fact of his joining, the application would become infructuous. In view of this we hold that merely by the fact of applicant's joining, the post of CCF, MCL, the OA has not become infructuous.

8. As regards, the second ground we find that the prayers made by the applicant are consequential and are closely inter-related and in view of this, the application cannot be said to be suffering from plural remedies. This contention is also accordingly rejected. The applicant has prayed for quashing the order of transfer on various grounds which are discussed below.

9. The first ground urged by the applicant is that he has been sent on deputation to MCL and such deputation is in violation of Rule 6 of IFS Cadre rules. Respondents have taken the stand that as per the IFS fixation of cadre strength regulation in the schedule to regulation, the strength of IFS cadre in Orissa has been shown as 121 which includes 18 posts as State deputation reserve. It has been stated that CCF, MCL is a post in state deputation reserve. The relevant portion of Indian Forest Service (Cadre) Rules, 1966 is



J. S. M.

quoted below:

*6. DEPUTATION OF CADRE OFFICERS - (1) A cadre officer may, with the concurrence of the State Government or the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government or under a Company, association or body of individuals, whether incorporated or not, which is wholly or substantially owned or controlled by the Central Government or by another State Government *.

18 posts shown as State deputation reserve has been mentioned in the schedule to the IFS fixation of cadre strength regulation, 1996. Rule-2 of this regulation lays down that the post borne on and the strength and composition of the cadre of IFS in each of the State shall be as specified in the schedule to this regulation. In view of this, State deputation reserve posts which are included in the schedule are the posts borne in the cadre but with an important difference. In the beginning of the schedule, specific posts have been identified and the total of the identified posts comes to 74. State deputation reserve is taken as 25% of the 74 i.e. 18 posts just as Central deputation reserve is taken as 20% of the 74. In the case of Central deputation reserve and State deputation reserve, specific posts are not identified and therefore, clause-6 of the cadre rules is attracted while sending officers on deputation under State deputation reserve posts. Had the post to which the applicant has been transferred, been an identified cadre post then State Govt. would have straightaway posted a cadre officer to the cadre post without clearance of any other authority. Rule-6 inter alia provides as quoted by us above, that a cadre officer may with the concurrence of the State Govt. or the State Governments concerned and the Central Government be deputed for service under the Central Government or another



J. J. M.

State Government or under a company, association or body of individuals, which is wholly or substantially owned or controlled by the Central Government or by another State Government. In the instant case Respondents have rightly pointed out that MCL is a Government of India undertaking and is substantially, if not, wholly controlled by the Central Government. But for deputing a cadre officer to that post under clause-1 of Rule-6 concurrence of the Central Government was required. Applicant has specifically pleaded that clearance of the Central Govt. i.e. Ministry of Environment and Forest, which is the cadre controlling authority has not been taken. Respondent No. 3 has made no averment in this regard except showing that prior to the applicant they have posted other officers of the IFS cadre to the above post. Such action can not nullify the specific provision in the rule quoted by us above and therefore, we must hold that in this case the concurrence of the Central Government has not been obtained. It is also to be noted that Respondent No. 3 has not pleaded that concurrence of the Central Government has been obtained at a later stage. This contention of the applicant, is therefore, upheld. Counsel for the applicant has relied on the decision of the Hon'ble High Court of Delhi in the case of PREM PARVEEN VRS. UNION OF INDIA AND ORS reported in 1973(2) SLR 659 in which it has been held by the Hon'ble High Court that a Govt. servant recruited to a particular cadre can not be compelled to serve outside the cadre. That view was taken in the context of the provisions of FR 14 and 15 and moreover, we have held that the post of CCF, MCL is a non-identified post



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within the cadre and therefore, on the strength of the above decision, the applicant can not claim that there has been ^a transfer to outside the cadre.

10. Next contention of the applicant is that transfer of applicant to the post of CCF, MCL is in violation of Rule-9 of IFS (Pay) Rules, 1968. Relevant portion of Rule-9 is quoted below:

9. PAY OF MEMBERS OF THE SERVICE APPOINTED TO POSTS NOT INCLUDED IN SCHEDULE III - (1) No member of the service shall be appointed to a post other than a post specified in Schedule-III, unless the State Government concerned in respect of posts under its control, or the Central Government in respect of posts under its control, as the case may be, make a declaration that the said post is equivalent in status and responsibility to a post specified in the said Schedule.



In the schedule to IFS Pay Rules, 1968 certain posts of the cadre have been identified not by numbers but by their levels and pay scales. On a reference to this, it is clear that the posts mentioned in the schedule is some of the identified posts out of 74 posts in the cadre schedule referred to by us earlier. Rule-9 provides that no member of the service shall be appointed to a post other than a post specified in the schedule III unless the State Govt. concerned in respect of the posts under its control and Central Government in respect of posts under their control make a declaration that the said post is equivalent in status and responsibility to a post specified in the schedule. In the instant case in the impugned order at Annexure-1, there is a declaration that the post of CCF, MCL is equivalent in status and responsibility to the post of CCF under the State Govt. This declaration of equivalence has been challenged by the applicant. It has been submitted by him that there is no work

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in MCL for an officer of the rank of CCF. In support of this it has also been stated that the applicant on his joining has not been provided with any office accommodation, telephone, PA, office vehicle etc. He has also stated that on his joining, he was even not getting his pay. Only after he represented to the State Govt. and the State Govt. wrote to the MCL that he has got his pay from February, 2000. Applicant has stated that equivalence is to be determined on the basis of work and responsibility of the post and not on pay alone. He has also stated that his contention that the post does not have any work which has to be attended to by an officer of CCF rank is borne out by the fact that several of ^{Jm} his predecessors of the applicant in the same rank had written to the State Govt. stating that there is no work for them in MCL. Applicant has also enclosed to his rejoinder a letter from Chairman Oum MD, MCL dt. 13.7.98 stating that CCF in MCL can not be of much use and the officer should be placed more appropriately in the Steel and Mines Deptt. as Spl. Secy. so that with appropriate delegation of power he can be useful to MCL ^{who will} meet the salary ^{A Jm} and allowances and other related expenses by placing funds with the Steel and Mines Department. Applicant has stated that in view of the letter, also there is no need for this post of CCF in MCL. State Govt. in their counter have stated that it is for them to decide whether there is need for a post of CCF in MCL and the applicant can have no say in the matter. The power of State Govt. to declare a post equivalent to a cadre post has been considered by the Hon'ble SC in several



decisions in the past. On the question of equivalence, the learned counsel for the petitioner has relied on the decision of the Hon'ble Supreme Court in the case of E.P.Royappa v. State of Tamil Nadu and another, AIR 1974 SC 555 and the decision of Chandigarh Bench of the Tribunal in the caswe of Gurnam Singh v. Union of India and others, 1993 (2) SLR 167. Before considering these two decisions, it is necessary to note the selfcontradictory stand taken by State of Orissa in their counter on this point. It has been specifically averred by the State of Orissa in page 3 of the counter that the post of CCF, MCL, is not a cadre post. It is a post under State Deputation Reserve. We have pointed out that under Regulation 2 of Indian Forest Service (Fixation of Cadre Strength) Regulations, 1966, the posts borne on, and the strength and composition of the cadre of the Indian Forest Service in each of the State shall be as specified in the schedule to these regulations. In the schedule to the Regulations relating to Orissa, 18 posts under State Deputation Reserve have been mentioned and therefore the State Deputation Reserve posts are cadre posts but are non-identified cadre posts. Thus, the contention of the State Government that the post of CCF, MCL, is not a cadre post is not correct. Under Rule 9 of the Indian Forest Service (Pay) Rules, 1968, whenever a member of the Service is posted to a post other than those mentioned in Schedule III to the Rules, an order of equivalence is necessary. In this Schedule relating to Orissa, naturally, non-identified cadre posts are not mentioned and therefore, under Rule 9, a declaration of equivalence is necessary and the State Government have in their impugned



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order of transfer, declared the post of CCF, MCL, as equivalent to the cadre post of CCF. In E.P.Royappa's case(supra), followed in Gurnam Singh's case (supra), it has been held that equivalence has to be declared not mechanically but after taking into account the duties and responsibilities of the post to which the cadre officer is being deputed and the Hon'ble Supreme Court have held in E.P.Royappa's case(supra (vide paragraph 82) that notwithstanding the declaration of equivalence it is open for an officer to urge that the post to which he is appointed is in truth and reality inferior in status and responsibility to the cadre post with which it has been declared equivalent. The Hon'ble Supreme Court have also held that burden of establishing this would undoubtedly be very heavy and the Court would be slow to interfere with the declaration of equivalence made by the Government. The learned Government Advocate has submitted that declaration of equivalence is a matter to be decided by the State Government and this cannot be interfered with by the Tribunal. We are unable to accept the above proposition because in Gurnam Singh's case(supra) the validity of the declaration of equivalence with a post in Indian Forest Service was challenged and the State Government took the stand that declaration of equivalence is not justiciable. The Bench took the view that in consideration of their finding with regard to mala fide and bias, it is not necessary to deal with the question of validity of declaration of equivalence. Even then they went into the concerned file of the Department and noted that in that case the declaration has been made in the same note whereby the applicant therein was sought to be transferred



J. Som.

and there is no examination of the proposal in the usual mode. The Forest Minister had also not been associated with the proposal and in view of this, it was held that the ground assailing validity of declaration of equivalence cannot be deemed to be devoid of merit. From this it is clear that whether declaration has been rightly done or not is a matter which is justiciable. But as the Hon'ble Supreme Court have held in E.P.Royappa's case(supra) the burden lies on the person challenging the declaration of equivalence and it is a heavy burden. In the instant case, the applicant has stated that there is no adequate work of an officer of the level of CCF in MCL. He has also stated that several of his predecessors in that post have also written to Government like him stating that there is no need for an officer of CCF level in that post. It is also stated that MCL has not provided him with office accommodation, P.A., telephone and office vehicle. What is more is that the applicant has brought on record the letter dated 13.7.1998 from Chairman-cum-Managing Director, MCL, addressed to the Chief Secretary to Government of Orissa, in which MCL has stated that the post of CCF in MCL cannot be of much use unless the officer is placed as Special Secretary in Steel & Mines Department and is delegated with adequate powers. As already noted, the applicant has not stated the nature of work he has been called upon to do as CCF, MCL after he has joined there in January 2000. It is, therefore, not possible for us to determine whether the work there justifies posting of an officer of the rank of CCF, or in other words, if the declaration of equivalence is proper. The fact that he has not been provided with office



J.S.M.

accommodation, P.A., telephone and vehicle, no doubt goes to show that the post of CCF, MCL, is not considered as one of sufficient importance by MCL. Otherwise, they would have provided him with office accommodation, P.A., telephone and vehicle, without which an officer of the rank of CCF cannot function. But besides this, in view of absence of specific averment of the work which the applicant has been called upon to do as CCF, MCL, it is not possible to hold that the declaration of equivalence has been done in a mechanical manner. It is also to be noted that prior to the applicant several officers of CCF rank have held that post. Both in the cases of E.P.Royappa and Gurnam Singh's case (supra) the petitioners were being transferred to posts specifically created for the first time and declared equivalent to their cadre posts. This contention of the petitioner is accordingly held to be without any merit and is rejected.

11. There is, however, another aspect arising out of the above contention of the petitioner which requires consideration. State Government have indicated that this is a State Deputation Reserve post. The applicant has made specific averment that there has been no request from MCL for posting an officer of the rank of CCF. State Government have enclosed a letter dated 22.3.1995 with a memo in which MCL has asked for upgrading the post of Conservator of Forests who looks after forest clearance as required under Forest Conservation Act to that of CCF. The State Government have made an averment that a post of CCF has been created by MCL. This having been denied by the applicant's counsel



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during hearing, we have called upon the concerned verificant of the State Government's counter to produce the order of MCL creating a post of CCF as such an order, if it be in existence, would have been sent to the Forest Department. As no such order was filed the concerned verificant appeared in person before us and indicated that as in March 1995 MCL had asked for upgradation of the post of Conservator of Forests to that of Chief Conservator of Forests, they must have created the post. We are not inclined to accept the above proposition. Before sending an officer on State Deputation to a public sector undertaking, it has to be ensured by the State Government that a post of CCF exists in MCL. Moreover, this request came in 1995 and thereafter in 1998 the Chairman-cum-Managing Director has written in his letter dated 13.7.1998 enclosed by both the applicants and the State Government that the post of CCF is not of much use in the MCL. In view of this, it is clear that MCL did not ask for deputation of an officer of the rank of CCF at the time the applicant was so deputed. Even for posting an officer against State Deputation Reserve, it is necessary that the borrowing authority should ask for such deputation of an officer. In the absence that in the present case it cannot be said that the applicant has been rightly sent on a State Deputation Reserve post. The order posting the applicant as CCF, MCL, is also held to be bad on this ground.

12. The next aspect of the matter is the contention of the applicant that he will be superannuating in August 2001 and it is necessary for him to come back to the Department rather than remain on deputation on the



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date of his superannuation as this will result in complication for settling his pensionary dues. He has also stated that even though he has joined MCL in January 2000, till the date of filing of rejoinder on 25.1.2001, i.e., for one year, the terms of his deputation have not been finalised and communicated to him. He has also stated that earlier he was on deputation to Orissa Forest Corporation Ltd. from 1985 to 1988. But even after passage of thirteen years the services of the petitioner for that period have not yet been regularised. The State Government have made a bland averment that being on deputation would not present any difficulty for finalisation of the pensionary entitlement of the applicant on his superannuation. It is also stated that issuing of terms of deputation is a routine matter. We have considered the rival submissions carefully. If sanction of terms of deputation is a routine matter, as has been mentioned by the State Government, then it should not have taken them an year to issue the terms of deputation. The State Government have filed certain documents at the time of hearing. But they have filed no document controverting the stand of the applicant that his period of deputation in Orissa Forest Corporation from 1985 to 1988 has not yet been regularised and that for the present period of deputation the terms of his deputation have not been settled and issued. Lastly, the applicant has stated that in a case filed by Paramatam Singh, the State Government had taken the stand that H.N.Sahu had to be brought back to the Department necessitating transfer of Paramatam Singh as CCF, MCL, because H.N.Sahu would be retiring shortly. We have called for the record of OA No.592 of 1997. The averment made by



J. J. S.

the applicant is not correct. In that case H.N.Sahu was brought in the place of Paramatam Singh who was working as Director, SFP and was transferred to the post of CCF, MCL, in place of one S.C.Bohidar and not in place of H.N.Sahu. In that case the State Government in paragraph 6 of their counter to OA No. 492 of 1997 had made the following averment:

".....Since Sri S.C.Bohidar is to retire soon, he would have faced problems in the matter of finalisation of pension and other retirement benefits unless he is withdrawn to the department. This would be apparent from Annexure-7 of the Original application (last line) written by Sri S.C.Bohidar."

From this it is clear that in case of Shri S.C.Bohidar, the State Government upheld his contention that being on deputation at the time of superannuation will present problem for finalising the pension matters of Sri Bohidar. On the very same stand taken by the applicant in his numerous representations no consideration has been shown by the State Government. On the contrary, the stand taken by them on this point with regard to this averment of the applicant is totally contrary to the stand taken by them in the case of S.C.Bohidar in the O.A.No. 492 of 1997. It cannot be the position that pension rules will be applied differently in respect of two officers. We have, therefore, no hesitation in holding that by treating the case of the applicant differently from the case of Shri S.C.Bohidar, the applicant has been subjected to hostile discrimination and the State Government have taken a stand which cannot but be held as arbitrary and discriminatory. In consideration of the above, we allow the first prayer of the applicant and quash Annexure-1, the order of his transfer/posting as CCF, MCL. He will be deemed to have continued under the State Government during this period.



J. J. M.

The State Government (respondent no.3) is directed to give him a posting in the State Government within a period of fifteen days from the date of receipt of copy of this order.

13. In view of our above order and direction it is not necessary to pass any order on the third prayer of the applicant for a direction to the State Government to consider his representation. As regards the second prayer of the applicant for abolition of the post of CCF, MCL, we direct that the State Government should take a view on this after full consultation with the Mahanadi Coalfields Ltd. authorities and if it is decided to continue with the post, then posting of an IFS officer of appropriate rank to be decided in consultation with MCL can be made by the State Government only if MCL asks for deputation of such an officer.

14. With the above observation and direction, the Original Application is partly allowed. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

CAT/CB/23-5-2001/KNM/AN-PS



Somnath Som
(SOMNATH SOM)
23.5.2001
VICE-CHAIRMAN