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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.NO. 750 of 2005
Cuttack, this the 09th day of September 2009

Sri Mahendra Pratap, IPS Applicant
Vrs.
State of Orissa and others Respondents

FOR INSTRUCTIONS

- 1) Whether it be referred to the Reporters or not? *TC*
- 2) Whether it be sent to the Principal Bench, CAT or not? *TC*

(C.R.MOHAPATRA)
ADMINISTRATIVE MEMBER

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(K.THANKAPPAN)
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH

O.A.NO. 750 of 2005

Cuttack, this the 09th day of September 2009

CORAM:

HON'BLE SHRI JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

AND

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER

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Sri Mahendra Pratap, IPS,
s/o late Sri S.Kumar
aged about 44 years,
now working as Superintendent of Police,
Railways, Rourkela, At/PO-Rourkela,
Dist.Sundargarh Applicant

Advocates for applicant - M/s A.K.Mishra, J.Sengupta, D.K.Panda,
G.Sinha & A.Mishra

Vrs.

1. State of Orissa, represented by Principal Secretary to Government of Orissa, Home Department, At/PO Bhubaneswar, Dist. Khurda.
2. Secretary to Government of Orissa, General Administration Department, At/PO Bhubaneswar, Dist. Khurda.
3. Director General of Police, Orissa, At/PO/Dist. Cuttack.
4. Union of India represented by Secretary to Govt. of India, Ministry of Home Affairs, New Delhi.
5. Sri Bishnu Prasad Mohapatra, IPS, D.I.G. of Police (HR & SJ), O/O D.G. of Police, Orissa, At/PO/Dist.Cuttack.
6. Sri Debasish Panigrahi, IPS,
D.I.G. of Police (Admn.), O/o D.G. of Police, Orissa,
At/PO/Dist.Cuttack Respondents

Advocates for Respondents - Mr.A.K.Bose, G.A.(for Respondents 1 to 3),
Mr.U.B.Mohapatra, SCGSC (for Respondent 4)
M/s P.Routray, L.Samal,G.Panda & S.Routray (for
Respondent 5)
M/s Ashok Mohanty,J.Sahu, S.P.Nayak,
M.K.Rout(for Respondent 6)

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[Signature]

ORDER

JUSTICE SHRI K.THANKAPPAN, JUDICIAL MEMBER

1. The applicant, a member of the Indian Police Service (IPS) of Orissa Cadre, has filed this Original Application praying that the State of Orissa (Respondent No.1) be directed to issue the posting order in his favour in the rank of Deputy Inspector General of Police. It is also prayed that this Tribunal may declare that the applicant is deemed to have been promoted to the rank of D.I.G. of Police w.e.f. 7.3.2005, i.e., the date on which one of his juniors was promoted and posted as D.I.G. of Police, with all consequential service and financial benefits. Further, it is prayed that the promotion of the applicant shall take effect from 20.1.2005, i.e., the date of notification issued by the General Administration Department and not on the basis of the date of posting ordered by the Home Department.

2. The bare facts of the case, which are necessary for consideration of the O.A., are as follows:

The applicant is a direct recruit IPS officer of the allotment year 1990 and assigned to Orissa Cadre. The applicant was eligible for selection and promotion to the rank of D.I.G. of Police as on 20.1.2005, i.e., the date when the D.P.C. met and found the applicant suitable to be promoted to the rank of D.I.G. of Police. However, on 29.4.2005, a charge memo having been issued, all the promotion procedure, in so far as the applicant is concerned, was kept in the sealed cover by the Government. The applicant

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has, therefore, filed this O.A. with the prayers as stated above. The applicant also prayed for an interim relief for a direction to the 1st Respondent to give him a posting as D.I.G. of Police. However, this Tribunal, while issuing notices to the Respondents, vide order dated 7.9.2005, did not feel it proper to pass any order on the prayer for interim relief. Being aggrieved thereby, the applicant filed W.P. (C) No. 12047 of 2005 before the Hon'ble High Court of Orissa. The Hon'ble Court, after hearing the parties, passed order dated 5.10.2005 as follows:

"Now, the questions for determination are, after the D.P.C. found the petitioner fit for promotion and made recommendation in that regard, consequent upon which promotion order was passed on 20.01.2005 by the Government of Orissa in the G.A. Department indicating therein that benefits of the promotion would be made available only from the date of joining against the promotional post and place of posting was to be decided by the Home Department, whether the Home Department can withhold the place of posting and deprive the petitioner of availing the benefits of promotion order when there was no enquiry contemplated or proceeding initiated against the petitioner at the time when the D.P.C. was held or promotion order was made; and whether the posting of the petitioner in pursuance of the promotion to the rank of D.I.G. can be held up due to the reason that for the incident taken place much after the order of promotion a departmental proceeding was initiated against the petitioner in respect of that incident.

Since the matter is pending before the Tribunal, the above questions are to be decided by the Tribunal.

We have to see only that since the petitioner would be entitled to get his salary from the date of joining on promotional post, the place of posting of the petitioner having not been assigned by the opposite parties, he would not be entitled to get salary of the D.I.G. during the pendency of the O.A. before the Tribunal. It is to be noted here that his juniors, who were given

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promotion much later, i.e., in the month of May, 2005, have been given posting of D.I.G. of Police and they are getting salary of that post. Therefore, we feel that interim protection should be given to the petitioner to the effect that it will be open to the opposite parties to post the petitioner or not, but he shall be paid salary in the grade of D.I.G. of Police with effect from today and in case the petitioner loses his case or it is found that he was not entitled to get the salary of the D.I.G. in pursuance of the promotion order dated 20th January, 2005, the difference of salary receiving by the petitioner at present and that he would get in the grade of D.I.G. of Police shall be liable to be recovered from the petitioner.

However, the above order shall continue till next listing of the case or during pendency of the O.A. before the Tribunal whichever is earlier. It will be open for the learned Additional Government Advocate to file a detailed counter affidavit along with the application for vacating the above order."

3. In pursuance of the notices received from this Tribunal, separate

reply statements have been filed by the Respondents.

4. We have heard the learned counsel for the parties.

5. The main contentions of the applicant are two-fold. It is contended by the learned counsel for the applicant that once the Screening Committee recommended the name of the applicant for promotion to the rank of D.I.G. of Police and such recommendation was accepted by the Government followed by a notification in the official gazette, it should be construed that the applicant was promoted to the rank of D.I.G. of Police. Secondly, it is contended by the learned counsel that the very invocation of paragraph 21 of the guidelines issued by the Ministry of Home Affairs, Government of India, circulated vide letter dated 9.1.199 in the case of the

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applicant is incorrect as there arose none of the circumstances mentioned in paragraph 11 of the guidelines. It is also the contention of the learned counsel that once the vacancies were notified and on the basis of the recommendation of the Screening Committee, the promotion was notified by the Government, it is not necessary to have a formal posting for the applicant to be considered as actually promoted. Lastly, the learned counsel relies on the orders passed by the Hon'ble High Court of Orissa in W.P.(C) No. 12047 of 2005 holding that the applicant has to be declared as promoted to the rank of D.I.G. of Police and as per the orders passed by the said Hon'ble Court, the applicant has already been posted as D.I.G. of Police and drawing his pay of that post.

6. Shri U.B.Mohapatra, the learned Senior Standing Counsel appearing for Respondent No.4-Union of India, relying on the counter filed on behalf of Respondent No.4,, submits that as per the letter dated 9.1.1999 issued by the Ministry of Home Affairs, a uniform procedure should be adopted for promotion of IPS officers to different grades throughout the country and in terms of the guidelines appended to the said letter, various factors to be considered by the Screening Committee have been mentioned in different paragraphs. In paragraph 21 of the guidelines it is clearly stated that in the case of officers recommended for promotion by the Screening Committee where any of the circumstances mentioned in paragraph 11 of the

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said guidelines arises before actual promotion, a deemed sealed cover procedure can be followed in the case of such officers. Hence, according to the learned Senior Standing Counsel Shri Mohapatra, the recommendation of the Screening Committee in respect of the applicant for promotion to the rank of D.I.G. of Police is now kept by the State Government in a deemed sealed cover as after the recommendation made by the Screening Committee in favour of the applicant for promotion to the rank of D.I.G. of Police was accepted by the Government on 20.01.2005, a charge memo was issued against the applicant as per the Memo dated 29.4.2005. Hence the sealed cover procedure adopted in the case of the applicant is justifiable and his case for promotion could be considered only after conclusion of the disciplinary proceedings so initiated against him. Even if his juniors of the applicant have been promoted on the basis of the recommendation made by the Screening Committee, that by itself is not a reason to hold that the deemed sealed cover procedure adopted by the Government is not justifiable and the delay that occurred in giving him a posting as DIG of Police before the issuance of the charge sheet cannot also be taken as a ground to declare that the procedure adopted by the Government is irregular and illegal.

7. Shri A.K.Bose, the learned Government Advocate appearing for and on behalf of the State Government as well as the State officers, relying on the respective counter affidavits filed both by the State Government as

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well as the Ministry of Home Affairs, submits that though the applicant has been recommended by the Screening Committee for promotion as DIG of Police, a charge memo has been issued against the applicant before the actual promotion could be effected and in such a contingency, as per the guidelines issued by the Ministry of Home Affairs, the case of the applicant should be treated as one coming within the purview of paragraph 21 of the guidelines. Shri Bose further submits that though the Screening Committee has recommended four officers to be promoted to the rank of D.I.G.of Police and the General Administration Department, Government of Orissa, has issued a notification to that effect on 20.1.2005, the said notification categorically stipulates that "Officers are promoted to the grade of D.I.G.of Police with effect from the date of their joining against the promotional post". It is further contended by Shri Bose that out of the four officers recommended for promotion, the first one has already been promoted and posted and has gone on study leave, and the second one has been promoted only on 23.8.2005, whereas the charge memo has been issued to the applicant on 29.4.2005. If so, the procedure adopted in the case of the applicant by invoking Paragraph 21 is justifiable. The learned counsel further submitted that the applicant has no case that delay in giving him posting either even to the senior of the applicant or to the applicant is with mala fide intention or with ulterior motive on the part of the Respondents. If so, the invocation of Paragraph 21

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is justifiable and his case can be decided only in accordance with the guidelines issued by the Ministry of Home Affairs, Government of India.

8. The Fifth Respondent has filed a reply statement. He being one of the juniors of the officers recommended for promotion subsequent to the recommendation made by the Screening Committee for promotion of the applicant, his case is only concerned with the inter se seniority between him and the applicant. In this case, we are not deciding the inter se seniority between the applicant and Fifth Respondent, and hence that question is left aside.

9. In the light of the arguments of the learned counsel appearing for the parties, the questions to be considered in this O.A. are as follows:

(a) Whether the invocation of Paragraph 21 of the guidelines issued by the Ministry of Home Affairs, Government of India, vide letter dated 9.1.1999, in the case of the applicant is correct or not?

And

(b) Whether the applicant could be declared to have been promoted to the rank of D.I.G.of Police with effect from 20.1.2005? and

10. Before we answer the questions formulated above, it is to be noted that in the O.A. itself the applicant had sought for an interim relief to

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the effect that the Respondents might be directed to promote the applicant to the rank of D.I.G. of Police with all financial benefits during the pendency of the O.A. But this Tribunal, while issuing notice to the Respondents, did not consider the prayer for interim relief. Aggrieved with the above stand, the applicant filed W.P. (C) No. 12047 of 2005 before the Hon'ble High Court of Orissa under Articles 226 and 227 of the Constitution of India. After hearing the parties, the Hon'ble High Court passed an order on 5.10.2005 directing the Respondents to pay salary to the applicant in the rank of D.I.G. of Police during the pendency of the O.A. with a rider that the amount shall be recovered if the decision taken by the Tribunal is against him. Subsequent to the said order passed by the Hon'ble High Court, the applicant was given salary as well as posting in the rank of DIG of Police. Hence we are not considering the factual position of the case as such. But we have to consider the legal questions raised before us, especially when the applicant has not challenged the charge memo issued to him or the disciplinary proceeding initiated against him.

11. The learned counsel appearing for the applicant had taken mainly two contentions. Firstly, the learned counsel submitted that the meeting of the Screening Committee was held on 12.01.2005 for considering promotion of eligible officers to the rank of D.I.G. of Police which recommended the name of the applicant for promotion. The Government of

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Orissa also accepted the recommendation of the Screening Committee on 20.1.2005 by issuing Notification No.AIS/II-3/2005-2555/AIS, dated 20.1.2005. If so, the applicant should have been promoted to the rank of DIG of Police with effect from 20.1.2005. The second contention of the learned counsel for the applicant is that after issuance of the notification dated 20.1.2005, the invocation of Paragraph 21 of the guidelines issued by the Ministry of Home Affairs, Government of India, is irregular and illegal. Hence this Tribunal should declare that the applicant was promoted to the rank of DIG of Police w.e.f. 20.1.2005. To substantiate this contention, the learned counsel for the applicant relies on the decisions of the Hon'ble Supreme Court reported in AIR 1967 SC 903, State of Assam v. Ranga Muhammad and others. The learned counsel also relies on the decisions of the Hon'ble Supreme Court reported in AIR 2000 SC 2337, Union of India and another v. R.S.Sharma, and (2007) 2 SCC (L&S) 587, Union of India and others v. Sangram Keshari Nayak. Apart from the said decisions of the Hon'ble Supreme Court, the learned counsel also relies on the definition given to the terms "promotion" and "posting" as contained in various law dictionaries.

12. Before we consider the arguments of the learned counsel for the applicant having regard to the decisions of the Apex Court, it is advantageous to analyze a few facts and circumstances of the allegations

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contained in Annexure A/8, the charge memo dated 29.4.2005 issued to the applicant. The recommendation of the Screening Committee was accepted by the Government of Orissa and notified vide Annexure A/3 notification. In the charge memo it is stated that the applicant committed the following misconducts:

“Article No.1:

He was aware of the “rail rook” agitation being organized at Garposh Railway Station in Kuchinda Sub Division of Sambalpur district on 7.2.2005. He failed to take the proper steps to tackle the situation and washed his hands off by sending a request to Superintendent of Police, Sambalpur, to tackle the situation. He even absented himself from the spot the whole day. He deliberately shirked his responsibility and passed the burden on to Superintendent of Police, Sambalpur.

He indulged in gross dereliction of his duty, which is unbecoming of a member of the All India Services. He violated rule 3(1) of the A.I.S. (Conduct)Rules, 1968.

Article No.2:

He deliberately absent himself from Rourkela as repeated efforts to locate him there failed. He was located on 7.2.2005 at Vizag, which is outside his jurisdiction. He had taken no prior permission of the lawful authority for journey outside the State. He also did not submit and obtain the approval of his tour programme from I.G. (Railways), his superior authority.

He indulged in gross misconduct, which is unbecoming of a member of the All India Services. He violated rule 3(1) of the A.I.S.(Conduct) Rules, 1968.”

In the light of the above factual matrix, it has to be considered as to whether the applicant could be declared or deemed to have been promoted as per Annexure A/3 notification. The relevant portion of Annexure A/3 notification is quoted hereunder:

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“.....The following I.P.S. Officers are promoted to the grade of D.I. G. of Police with effect from the date of their joining against the promotional post.

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The places of posting of the above I.P.S.Officers shall be decided by the Home Department.”

The above notification should be considered in the light of the subsequent circumstances those occurred in the case. Admittedly, there were four vacancies in the rank of D.I.G.of Police and four officers including the applicant were recommended by the Screening Committee. However, the promotion so recommended was to take effect only from the date of their joining against the promotional post. At this juncture, it has to be analyzed in the light of the counters filed by the Respondent-State of Orissa and the State officials, as to whether the delay in giving effect to the promotion of those officers to the rank of D.I.G. of Police was with any ulterior motive or for any other reason. The stand taken by the said Respondents in their counters is that out of the four officers recommended for promotion, the first one was given posting in advance and the second one was given posting on 7.3.2005 whereas the senior of the applicant was given posting only on 23.8.2005, and this delay is not willful or for any ulterior motive. The Home Department being the posting Department, it has to take stock of the situation, locate the place where the vacancy arises, and decide the posting of the officers so promoted and this is the practice in every case of promotion of IPS officers and promotions are effected on the basis of the



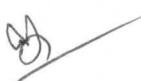
notification issued by the General Administration Department consequent upon recommendation by the Screening Committee. In the light of the above stands taken in the counters, the Respondents have submitted that the applicant has no case before this Tribunal that he was not given posting till 29.4.2005 and in between 20.1.2005 and 29.4.2005 there occurred an incident and he was charged with the misconduct. Hence the invocation of Paragraph 21 of the guidelines issued by the Government of India, Ministry of Home Affairs (ibid) is justifiable.

13. For the purpose of appreciating the issue, it is worthwhile to quote the guidelines in paragraphs 11 and 21 respectively, issued by the Government of India, Ministry of Home Affairs, here-in-below:

11	PROCEDURE TO BE FOLLOWED IN RESPECT OF OFFICERS UNDER CLOUD	11.1	At the time of consideration of the cases of officers for promotion, details of such officers in the zone of consideration falling under the following categories should be specifically brought to the notice of the concerned Screening Committee:-
		11.2	(a) Officers under suspension; (b) Officers in respect of whom a charge sheet has been issued and disciplinary proceedings are pending; (c) Officers in respect of whom prosecution for criminal charge is pending.
			11.2 The Screening Committee shall assess the suitability of the officers



		<p>coming within the purview of the circumstances mentioned above, along with other eligible candidates, without taking into consideration the disciplinary case/criminal prosecution which is pending. The assessment of the Committee including "unfit for Promotion" and the grading awarded by it will be kept in a sealed cover. The cover will be superscribed "FINDINGS REGARDING THE SUITABILITY FOR PROMOTION TO THE SCALEOFIN RESPECT OF SHRINOT TO BE OPENED TILL THE TERMINATION OF THE DISCIPLINARY CASE/CRIMINAL PROSECUTION AGAINST SHRI". The proceedings of the Committee need only contain the note "THE FINDINGS ARE CONTAINED IN THE ATTACHED SEALED COVER". The same procedure will be adopted by the subsequent Screening Committees till the disciplinary case/criminal prosecution against the officer concerned is concluded.</p>
21	SEALED COVER PROCEDURE APPLICABLE TO OFFICERS COMING UNDER CLOUD BEFORE PROMOTION	21.1 In the case of an officer recommended for promotion by the Screening Committee where any of the circumstances mentioned in Para 11 above arise before actual promotion, sealed cover procedure would have to be followed. The subsequent Committee shall assess the suitability of such officers along with other eligible candidates and place their assessment in sealed cover. The sealed cover/covers will be opened on conclusion of the disciplinary case/criminal prosecution. In



		case the officer is completely exonerated, he would be promoted as per the procedure outlined in Para 18 above and the question of grant of arrears would also be decided accordingly. If any penalty is imposed upon him as a result of the disciplinary proceedings or if he is found guilty in the criminal prosecution against him, the findings of the sealed cover shall not be acted upon, as outlined in Para 18.2 above.
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It is the case of the applicant that the circumstances mentioned in paragraph 11 (supra) do not come within the purview of paragraph 21 empowering the Respondent-authorities to adopt sealed cover procedure. We have considered the same in an harmonious reading of both the paragraphs. A bare reading of the above Paragraph 21 would show that in between the recommendation made by the Screening Committee and the issuance of the posting order by the Home Department, the sealed cover procedure could be adopted in the case of an officer recommended for promotion where any of the circumstances mentioned in Paragraph 11 of the guidelines arises in as much as the words couched in paragraph 21, "in case of an officer recommended for promotion by the Screening Committee where any of the circumstances mentioned in paragraph 11 above arise before actual promotion", in our considered view, refer to the circumstances that arise in between the recommendation by the Screening Committee and actual promotion. For the sake of clarity, it is to be noted that had there any of the circumstances



arisen in case of the applicant as in paragraph 11, by the operation of the relevant guidelines the recommendation of the Screening Committee could have been kept under the sealed cover, the circumstances being prior to recommendation of the Screening Committee. But here is a case where admittedly, one of the circumstances has arisen in the time between the recommendation of the Screening Committee and the actual promotion in so far as the applicant is concerned. In this context, it is to be noted that the language couched in paragraph 21, "any of the circumstances" in the fitness of things, means – the circumstances of the past, present or future, as the case may be. In case of circumstances of the past, as indicated above, the recommendation of the Screening Committee should be kept in the sealed cover and as of present or future, as the case may be, in so far as the applicant is concerned, he being circumstanced by paragraph 11, the Respondent-authorities have rightly invoked the provision of paragraph 21.

14. The further question to be answered is whether the applicant was promoted w.e.f. 20.1.2005. This question we have to consider in the light of the judgment of the Apex Court in R.S.Sharma's case (supra). In R.S.Sharma's case (supra), the Apex Court held in paragraphs 13 and 15 of the judgment that as per the Office Memorandum of the Government of India, 'sealed cover procedure' can be adopted if any of the circumstances as mentioned in the relevant paragraph arises before actual promotion. Further



even in the literal meaning of the words "promotion" and "posting", as per the definitions contained in the legal dictionaries, it can be held that promotion shall be vested with change of duty and responsibility of higher post, or a move to a more important job or rank in a company or an organization, or to raise a person, especially an employee, to a higher grade to further progress of advancement in rank or in honour. Admittedly, as per Annexure A/3 it is categorically stated that the promotion will take effect only from the date of joining against the promotional post. The case in hand would show that though the name of the applicant has been recommended for promotion, actual promotion has not been given effect to and that will take effect with effect from the date of joining against the promotional post. If so, the contentions of the learned counsel appearing for the applicant that the invocation of Paragraph 21 of the guidelines of the Ministry of Home Affairs is unsustainable and that the applicant would be declared or deemed to have been promoted to the rank of DIG of Police are untenable. The very incorporation of Paragraph 21 of the guidelines issued by the Ministry of Home Affairs, Government of India, is with a view to turning inside out the effect of charge memo in the time between the notification notifying the promotion and posting on promotion. In other words, the Government have the prerogative, if the conduct of an incumbent *prima facie* appears to be under cloud, to defer promotion by adopting deemed sealed cover procedure





by invoking paragraph 21 of the guidelines issued by the Ministry of Home Affairs, notwithstanding the fact that he has been recommended by the Screening for promotion, followed by a notification to that effect.

15. In this context, a further question also to be considered is whether the State Government is justified in issuing Annexure A/3 notification with a rider that promotion will be given effect to from the date of joining against the promotional post. In this connection, it is to be noted that the General Administration Department is not the appropriate Department in the matter of posting on promotion in case of the applicant. By Annexure A/3, the General Administration Department only accepted the recommendation of the Screening Committee notifying the promotion of the applicant to have the effect from the date of his joining the promotional post and it is the Home Department which has to issue order posting the applicant on promotion in pursuance of Annexure A/3. In the service jurisprudence, the status and recognition of an employee are known by his incumbency and therefore, unless and until the applicant joins the promotional post, he can never be an incumbent of the post to which he has been promoted. Viewed from this, by putting a rider in Annexure A/3 to the effect that the promotion of the applicant will take effect from the date of joining against the promotional post is wholly justified in as much as the said joining date will be the actual date of promotion for all purposes.

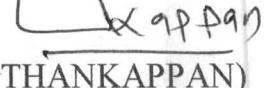


16. In the light of the above discussions and also the findings arrived at that the Respondent-authorities have rightly invoked paragraph 21 of the guidelines issued by the Ministry of Home Affairs, Government of India, in the case of the applicant, we are of the view that the Original Application is devoid of any merit.

17. Before parting with the order, we are of the view that since a charge memo has been issued against the applicant, it is only proper for the applicant to face the disciplinary proceedings on the basis of the charge sheet and defend his case in the proper forum.

18. With the above observations, the O.A. is dismissed. No costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER