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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No. 318 of 2008

Cuttack, this the 31st day of March, 2011

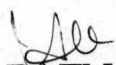
M.Gourinath Applicant


-v-

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not?
2. Whether it be circulated to Principal Bench, Central Administrative Tribunal or not?


(A.K.PATNAIK)
Member(Judl)


(C. R. MOHAPATRA)
Member (Admn.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A No. 318 of 2008

Cuttack, this the 28th day of March, 2011

CORAM:

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

A N D

THE HON'BLE MR.A.K.PATNAIK, MEMBER (J)

M.Gourinath, aged about 58 years, son of Late M.Atchanna, presently Conservator of Forests (S.F), Office of the Principal Chief Conservator of Forests, Orissa.

.....Applicant

By legal practitioner: M/s.B.Routray, P.K.Sahoo, S.Das,
S.Jena, R.P.Dalei, Counsel.

-Versus-

1. State of Orissa, represented through the Chief Secretary to Government, GA Department, Government of Orissa, Secretariat, Building, Bhubaneswar, Dist. Khurda.
2. Union of India, represented through the Secretary, Ministry of Forest and Environment, Central Secretariat, New Delhi-1.
3. State of Orissa, represented through Commissioner-cum-Secretary, Forest and Environment Department, Secretariat Building, Bhubaneswar, Dist. Khurda.

....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC
(for Res.No.2)
Mr.A.K.Bose, GA (State)

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

The Applicant who was working as Chief Conservator of Forest and retired from service on 31.12.2009 has filed this OA under section 19 of the A.T. Act, 1985 seeking to quash the Memorandum of

charge dated 11-05-2001 (Annexure-2) and the additional charge dated 1.8.2002 (Annexure-4) with prayer to direct the Respondents to exonerate him from all charges. He also prays to direct the Respondents to give him promotion to the rank of Chief Conservator of Forest in super time scale in Indian Forest Service from the date his juniors got such promotion vide Notification dated 12.3.2008 and give him all consequential benefits.

2. During the pendency of this OA, the applicant approached the Hon'ble High Court of Orissa in WP (C) No. 7711 of 2009 challenging the order dated 28.8.2008 in which this Tribunal refused to grant him the interim order prayed for by the applicant in this OA. As per the order of the Hon'ble High Court of Orissa, the applicant was allowed promotion from the post of Conservator of Forest to the Chief Conservator of Forests before his retirement and as such he retired from service while working in the post of Chief Conservator of Forest on 31.12.2009.

3. The delay and laches in concluding the departmental proceedings are the main limbs of argument advanced by the Applicant in support of his prayer.

4. Respondents in their counter have stated that earlier the applicant approached before this Tribunal in OA No. 429 of 2002. This Tribunal disposed of the said OA in which by an order dated 30.09.2004 this Tribunal directed the Respondent No.3 to instruct the IO to complete the enquiry by holding day to day proceeding and submit the report by 31.12.2004 and on receipt of the report of the enquiry the DA should take a final view in the matter within a period of 45 days from the date of receipt of enquiry. Accordingly, instruction was issued to the IO to hold the enquiry expeditiously and submit the report within the time frame. The IO in his letter dated 10.1.2005 sought time upto 28.2.2005 to finalize the enquiry and he had submitted his report on 14.5.2008. On receipt of the said report, in letter dated 20.9.2008, the IO was asked to transmit some of the relevant records kept with him. However, pending receipt of the documents from the IO, the report of the IO was supplied to the applicant inviting his comments thereon within a period of fifteen days vide letter dated 9.1.2009. Applicant in his representation dated 14.1.2009 (Annexure-R/2) refused to submit the reply on the ground of pendency of OA No. 318 of 2008 filed by him before this Tribunal challenging the disciplinary proceedings initiated against him. In so

far as delay in conclusion of the disciplinary proceedings is concerned, it was the contention of the Respondents that as the disciplinary proceedings initiated against the applicant involves financial loss to Government exchequer on salvaging of a large number of illicit felled green trees in the name of RMP at Chitrakonda and Kalimela Range of Jeypore Forest Division the delay in finalization of the proceedings had taken place which was not intentional or deliberate. In the aforesaid circumstances, the Respondents have prayed for dismissal of this OA.

5. Learned Counsel appearing for both sides have reiterated the stand taken in their pleadings. Having heard at a considerable length, perused the materials placed on record.

6. In this OA the prayers of the applicant are two fold i.e. to quash the charge sheet and the other is to direct the Respondents to promote him to the rank of Chief Conservator of Forests in the Super time scale of Indian Forest Service from the date his juniors got promotion vide notification dated 12.3.2008 (Annexure-6) and to give him all consequential benefits from the date his juniors were promoted. Though by virtue of the Hon'ble High Court of Orissa order dated 07-08-2009 in WP (C) No.7711 of 2009, he had got

promoted to the post of CCF on 19.11.2009 but due to the charge sheet pending he has not been promoted after the regular DPC based on whose recommendation his juniors were promoted vide notification dated 12.3.2008. Thus, he wants antedating his promotion as CCF. Final view on his promotion can be taken only when the DA takes decision on the proceedings which are yet to be completed.

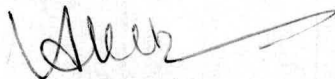
7. Besides, the Applicant seeks direction for promotion to Super Time Scale from the date when his juniors were promoted. No juniors were made as a party Respondent in this OA. Even the notification through which the juniors were promoted has not been challenged by the Applicant in this OA. As such, this OA can be held to be suffering from the vice of non-joinder/ mis-joinder of party.

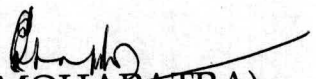
8. In so far as merit of the matter is concerned, it is noticed that the Respondents have given sufficient ground for non-completion of the proceedings within the stipulated date (31-12-2004) as directed by this Tribunal in earlier OA filed by the Applicant. Be that as it may, the Applicant participated in the enquiry and the IO submitted its report on 14.5.2008. Thereafter, by filing this OA on 22nd July, 2008 the Applicant sought to quash the charge sheet. In the instant case enquiry

has already been completed and copy of the enquiry report has been made available to the applicant seeking his comments. After receipt of the reply the Disciplinary Authority has to take a decision on the same. At this stage, we are of the considered view that the interference of this Tribunal in the matter is unwarranted because, the report of the IO does not amount to an adverse order. It is quite possible that after considering the reply the DA may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed that the said party can be said to have any grievance. If the enquiry was not completed within the stipulated time as directed by this Tribunal in earlier OA the applicant made no tangible effort for redressal of his grievance in time. Meanwhile, the Applicant has retired from Service and hence the Respondents have to take further course of action as per relevant service Rules and Law notwithstanding the applicant's participation in the enquiry as the proceedings have remained inconclusive. We, therefore, remand the matter to the Respondents to consider the case and take appropriate

decision regarding continuation of proceedings as per the extant Rules/Laws on the subject within a period of 60(sixty) days from the date of receipt of this order.

9. With the aforesaid observation and direction, this OA stands disposed of by leaving the parties to bear their own costs.


(A.K.PATNAIK)
Member (Judicial)


(C.R.MOHAPATRA)
Member (Admn.)