

**Central Administrative Tribunal, Lucknow Bench, Lucknow**

**O.A. No. 535/2010**

This the 2<sup>nd</sup> day of AUGUST, 2011

**Hon'ble Shri Justice Alok Kumar Singh, Member (J)**

**Hon'ble Sri S.P.Singh , Member (A)**

Sudarshan Singh aged about 58 years son of Sri R.J. Singh presently working as Deputy Divisional Forest Officer, Social Forestry Division, Etawah, resident of Forest Campus, Etawah.

Applicant

By Advocate: Sri A.R. Masoodi

Versus

1. Union of India through Secretary, Ministry of Environment and Forest , Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi.
2. Union Public Service Commission, through its Chairman, Dholpur House, Shahjahan Road, New Delhi.
3. State of U.P. through Principal Secretary, Department of Forest, Bapu Bhawan, Civil Secretariat, Lucknow.
4. Principal Chief Conservator of Forests, U.P., 17, Rana Pratap Marg, Lucknow.

Respondents

By Advocate: Sri S.K. Awasthi for respondent No.1

Sri Pankoj Awasthi for Sri A.k.Chaturvedi for respondent No.2

Sri Himanshu Gupta for Sri Sudeep Seth for respondents No. 3 and 4

**ORDER**

**By Hon'ble Sri Justice Alok Kumar Singh, Member (J)**

Following reliefs have been sought in this O.A.

(i) direct the opposite parties to consider the applicant for promotion on Junior Administrative Grade, Selection grade and higher promotion on the post of Conservator of Forest ot par with the similarly situated /junior persons from the due dates with all consequential benefits.

(ii) direct the opposite parties to consider the applicant for higher promotion in the ensuing selection by ignoring the disciplinary proceedings arising out of charge sheet dated 25.11.2004.



- (iii) pass any such order or direction as the circumstances of the case may admit of.

2. The case of the applicant is that he was inducted in IFS , U.P. cadre (Senior Time Scale) against the promotion quota vacancies by notification dated 8.7.2005 and his date of substantive appointment was specified as 31.12.1990. The recruitment in IFS through promotion in the Sr. Time Scale of pay is made in accordance with IFS (Recruitment )Rules, 1966. According to these rules, a member of service is promoted in the Jr. Administrative Grade (non-functional) upon completion of 9 years satisfactory service. Accordingly, promotion in Jr. Administrative Grade was considered in March , 2006 wherein as many as 10 officers were granted benefit of Junior Administrative Grade, which included direct recruits of 1997 and also some junior persons to the applicant. The next promotion of selection grade is based on merit and it is made on the basis of recommendations of the Selection Committee. In the case of the applicant, his juniors were considered for promotion in the selection grade also in March 2006 and accordingly they were promoted. Similarly, vide another order dated 1.4.2006, officers whose order of allotment corresponds to 1990 were also accorded the benefit of selection grade (Annexure 4). Not only this, after the above, a selection for filling up the post of Conservator took place in which several juniors were promoted whereas the applicant was deprived from promotion on the ground of pendency of disciplinary proceedings , which were instituted against him in the year 2004 with the issuance of charge sheet dated 25.11.2004 (Annexure 5) received by him on 3.1.2005. It is said that as far as Jr. Administrative Grade is

• concerned, the aforesaid charge sheet was irrelevant. However, the applicant duly participated in the enquiry and the enquiry officer has also submitted his enquiry report on 9.12.2005 (Annexure 7), exonerating the applicant of the charges leveled against him. But for the reasons best known to the opposite parties, a final decision has not been taken till date. It is further said that right for consideration for higher promotion at par with similarly situated officers, is a fundamental right, which cannot be denied within the ambit of Article 14 and 16 of Constitution of India. The State Govt. however, expressed some disagreement with the findings of the enquiry officer against which a detailed reply was filed by the applicant on 21.2.2006. It is also said that some subordinate officers, who were also facing the same charges, either they have been exonerated or have been subjected to minor punishment. In this regard in para 4.14, it has been specifically pleaded that District Magistrate, who was also proceeded with the enquiry in respect of same charges has been exonerated fully on the ground that no excavation took place in the area of Kaimour Wild Life Century (Annexure 9). Then in para 4.15, it has been specifically pleaded that a Senior Officer of Forest Deptt. Mohd. Ehsan was also exonerated from the alleged charges on the ground that there was no excavation from the area of Kamour Wild Life Century (Annexure No.10). In para 4.18, it has been said that the charge sheet pursuant to which the disciplinary proceedings have not been concluded against the applicant for the last about 6-7 years, is liable to be ignored, also because two charges were framed against him and both the charges have not been found to be proved by the enquiry officer. The first charge was in respect of issuance of no

- objection for mining and the second charge relates to illegal excavation. In para 4.19, it has been specifically pleaded that so far as Khasra Plot No.1762 (Patvardhan village) is concerned, the District Magistrate was exonerated on the ground that this Khasra Plot No. 1762 is beyond the forest boundary at a distance of more than 100 meters. Therefore, issuance of no objection certificate has not resulted into any loss or injury to the department. Similarly in Para 4.20, it has been pleaded that the District Magistrate was also exonerated on the ground that no illegal excavation has taken place. It is said that after the above, there is no reason to keep pending the enquiry against the applicant

3. Counter reply has been filed on behalf of respondents No.3 and 4 saying that the contention of paragraphs 4.1 to 4.3 of OA. being the matter of record, require no comments.. In respect of granting of Junior Administrative Grade on completing 9 years of service, it has been said that it could have been given only if no disciplinary proceedings were pending. In respect of enquiry report, it has been said that disciplinary authority did not agree with the report and opined that the applicant was required to obtain suitable instruction from his superiour authority before granting no objection certificate and therefore, the applicant was careless in discharging his duties with utmost integrity, which caused illegal excavation in the Kaimur Wild Life Division and the applicant was also required to demarcate the land of forest Division before granting no objection certificate. These disagreements were communicated to the applicant vide letter dated 1.1.2006 giving him an opportunity to explain. He submitted his reply on 21.2.2006. After considering his reply, the disciplinary

- authority decided to impose a penalty of 'Censure Entry" on him. Thereafter, on 11.6.2008, the entire record was submitted to the UPSC for obtaining its advice. The Dy. Secretary, UPSC however, vide his letter dated 22.1.2010 called for a list of documents which were required for taking a decision in the matter. In response thereof, the Special Secretary of the State Govt. vide letter dated 7.6.2010, directed the Enquiry Officer for providing the documents. The enquiry Officer informed the State Govt. that those documents have already been provided on 16.12.2008. Then the entire documents were further provided to the UPSC informing them that no more document is available with the Govt. On 18.4.2011, the State Govt. sent a reminder to the UPSC to give its advice (Annexure 5) . This letter is still pending with the UPSC, on account of which, the State Govt. could not pass the final orders. It has been also pleaded that the O.A. has not been preferred within the prescribed time as stipulated under Section 21 of the AT Act, 1985. In response to para 4.14 of the O.A., in respect of exoneration of the District Magistrate , nothing has been said. Similarly, in response to para 4.15 of the O.A., in respect of Mohd. Ehsan, a Senior Officer of Forest Department , who was exonerated , it has been merely said that duties of conservator of forests and Divisional Forest Officer are different and therefore, applicant cannot claim parity with the Conservator forest. In response to para 4.19 and 4.20 of the O.A., in para 33 of the C.A., merely it has been said that the applicant did not discharge supervisory duty in the proper manner and that the duties of Conservator of Forests and Divisional Forest Officer are different. Nothing has been said on the plea contained in para 4.19 of the OA., that the District

- Magistrate was exonerated on the ground that Khasra Plot No. 1762 was found to be beyond the forest boundary at a distance of more than 100 meters and therefore issuance of no objection had not resulted any loss or injury. Similarly, in respect of specific plea contained in para 4.20 that the District Magistrate was also exonerated on the ground that no illegal excavation has taken place, nothing has been said in relevant para 33 of the C.A.

4. In the Rejoinder Affidavit, the contents of the C.A. have been denied. It has been further emphasised that in the instant case, the disciplinary authority has delayed the finalization of the enquiry for a period of more than 6 years. Therefore, those proceedings are liable to be ignored for the purpose of grant of service benefits to the applicant which are admissible to him as per law. It has also been pointed out that communication between the disciplinary authority and UPSC has already been taken note of by this Tribunal in order dated 4.4.2011 and it is only after this Tribunal made certain observation that the State Govt. wrote two letters dated 7.4.2011 and 18.4.2011 to the UPSC. In respect of Jr. Administrative Grade, it has been averred that charge sheet dated 25.4.2004 has no relevance because Jr. Administrative Grade became due on completion of 9 years of service from the year of allotment. At that time, no disciplinary proceedings were pending against the applicant. In respect of selection grade also it has been further averred that it fell due to the applicant when some persons of 1986 batch were promoted vide order dated 28.3.2003. One such person is Prabhakar Dubey (1987) (YOA). On that point of time also, there was no disciplinary proceedings pending against the applicant.

- According to the applicant, his claim stands fortified on the strength of law laid down in the cases of Janki Raman and Delhi Jal Board's cases. Further, it has been averred that in the event of dis-agreement, the disciplinary authority ought to have proceeded with the enquiry as per rule 8, which was not done, hence the disciplinary proceedings are liable to be ignored in the light of law laid down in the case of State of Punjab Vs. Chaman Lal Goel reported in 1995 (2) SCC 570.

5. A Supplementary Counter Affidavit has also been filed on behalf of the respondents No. 3 and 4 controverting most of the averments made in the Rejoinder Affidavit. In respect of Selection from the State Forest Service to Indian Forest Service, it has been clarified that a combined select list was prepared in respect of the vacancies for the year 1985 to 1995-96. On the basis of that selection, the applicant was appointed in the IFS vide select list of the year 1996 and he was allotted the year 1992 batch in the IFS but subsequently, the selection was challenged before the Hon'ble Tribunal, who vide its order dated 10.9.97 set aside the selection. In pursuance thereof, again the selection committee was constituted on 19.12.2003 for the vacancies from the year 1985 to 1995-96 and in view of the recommendations of the selection committee, the applicant was appointed against the vacancies of the year 1990 in the IFS and he was allotted the 1986 batch in the IFS. Prior to the above dates, no promotional benefits could have been granted to the applicant. Even no officer has been extended the promotional benefits as well as Jr. Administrative Grade scale prior to the above date.

6. We have heard the learned counsel for the parties and scrutinized the material on record including the written arguments which have also been filed.

7. The first contention on behalf of the applicant is that in view of Rule 3(1)(ii) of IFS (Pay) Rules, 1968, the claim for Junior Administrative Grade fell due to the applicant as on 1.1.1995 because his year of select list was 1990 while the year of allotment was 1986 and his date of appointment in IFS (Sr. Time Scale) is 31.12.1990. Thus, 9 years were completed on 1.1.1995. The charge sheet was issued to him on 25.11.2004. A notification for appointment in IFS was issued on 8.7.2005 and the year of allotment was assigned as 1986 by order dated 6.10.2005. As a consequence of both these orders, the State Govt. issued an order dated 21.3.2006 (Annexure 2) whereby the persons similarly situated as well as junior to him were given the benefit of Junior Administrative Grade from the due date. Soon thereafter, a meeting for grant of selection grade was also held and by order dated 24.3.2006 (Annexure 3), the person similarly situated and junior to him were given the benefit of selection grade also. On the aforesaid occasion, the applicant was neither granted the benefit of Junior Administrative Grade nor the selection grade. He was also not considered for higher promotion on the post of Conservator of Forests, although his juniors were considered for promotion in April/ May, 2006 and they were promoted. He, therefore, moved representations on 1.6.2007 and 21.7.2007 in the light of decision rendered by CAT, Principal Bench in O.A. No. 772/2006, but those were kept pending. No justifiable reason has been set forth by the State Govt. for inordinate delay of about six years in conclusion of disciplinary



proceedings. The applicant has prayed for ignoring the pendency of disciplinary proceedings.

8. From the side of respondents No. 3 and 4, it has been submitted that the juniors to the applicant were granted promotion to Jr. Administrative Grade on 21.3.2006 while the O.A. has been preferred in December, 2010 and as such, it is barred by limitation and is liable to be dismissed. Further, it has been said that in the O.A., it has been wrongly mentioned that in absence of any statutory remedy, the applicant is invoking jurisdiction of this Tribunal, whereas statutory remedy of appeal is available under Rule 16(iii)(c) of All India Services (Disciplinary and Appeal) Rules, 1969, which provides that a member of service may prefer an appeal to the Central Govt. against order of State Govt. which has the effect of superseding him in promotion to a selection post. Therefore, it has been submitted that O.A. is liable to be dismissed on the ground of availability of statutory remedy of appeal.

9. The next submission was that a combined select list was prepared by clubbing the vacancies of the period of 1985 to 1996 and on that basis, the applicant was appointed in the IFS vide select list of 1996 and he was allotted the year of 1992 batch in the IFS vide notification dated 6.9.96. Subsequently, this selection was challenged before the Hon'ble Tribunal and vide order dated 10.9.97, it was set aside with a direction to the respondents to convene review DPC. However, protection was granted to the appointees to continue subject to the decision in the review DPC. Hence, the applicant continued as IFS officer even subsequent to the order dated 10.9.1997. In pursuance of the recommendations of the review Selection Committee

convened by the UPSC on 29.12.2003, the applicant was selected and was appointed to IFS through notification dated 8.7.2005 and his name finds place at Sl. No. 10. He has been appointed against the select list of 1990. After the review DPC of 29.12.2003, a charge sheet dated 25.11.2004 containing two charges was issued to the applicant. The enquiry officer submitted its report on 9.12.2005 exonerating the applicant but the disciplinary authority disagreed with the findings and recorded disagreement vide letter dated 1.2.2006, calling for reply of the applicant which he submitted it on 21.2.2006. Upon considering the entire material, the disciplinary authority found that charges levelled against the applicant were partly proved and therefore, proposed a 'Censure entry' and sent the entire record to the UPSC for obtaining its advice vide letter dated 11.6.08. The UPSC sought some list of documents. This letter was finally replied vide letter dated 7.4.2011 saying that all the records of enquiry has already been sent and no such documents as mentioned in the letter dated 22.1.2010 are available. It was also submitted that the State Govt. cannot generate the documents sought by the UPSC. Another submission was that the applicant has not sought any relief challenging the disciplinary proceedings pending against him. It has also been pointed out that the plea raised by the applicant is inconsistent. On one hand, the applicant claims that Jr. Administrative Grade has been admissible to his juniors vide order dated 21.3.2006 (Annexure 2 of OA) whereas on the other hand, according to him, the next promotional post of selection grade has been given to his juniors vide order dated 28.8.2003, which is beyond comprehension. Emphasis was also laid on the notification dated 22.12.2000 (R-8

to Rejoinder Affidavit) issued by Govt. of India laying down detailed guidelines for functioning of Departmental Promotion Committees and for promotion of members of IFS to the Sr. Scale and super time scale. The Jr. Administrative Grade can be given after completion of 9 years of service and it can be done without any screening. But there is an exception in the cases where disciplinary/criminal proceedings are pending and in the present case, the disciplinary proceedings were pending against the applicant on 21.3.2006 (Annexure 2), when the Jr. Administrative Grade was given to the persons appointed along with the applicant as well as his juniors. Similarly the selection grade can be given on completion of 13 years of service after selection through screening committee. Since the applicant was not given even Jr. Administrative Grade, he was not eligible for appointment to selection grade because only an officer of J.A.G. was eligible. As per item No.11, the Screening Committee has to adopt the procedure of sealed cover in case of an officer who is facing an enquiry.

10. We have gone through the cases relied upon by both the parties, entailing discussion in the following manner:-

**Cases Relied upon on behalf of the applicant**

i) ***State of Punjab and Others Vs. Chaman Lal Goyal (1995) 2 Supreme Court Cases, 570:-*** In this case, the Superintendent Jail was charged after a long period of 5-1/2 years for being responsible of escape of some prisoners. The Hon'ble Apex Court held that initiation of the departmental proceedings should be prompt. It cannot be initiated after a lapse of considerable time, because it would not be fair to the delinquent officer. Delayed initiation of proceedings is bound to give room

of allegation of bias, malafides and misuse of powers. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. The Hon'ble Court also observed that principles laid down by the Constitution Bench in A.R. Antulay Vs.R.S. Nayak (1992) 1 SCC 225, should also be borne in mind, though that case pertains to criminal prosecution. But the Hon'ble Apex Court observed in this case of Chaman Lal Goyal that the principles laid down in the case of A.R. Antulay are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. After applying the balancing process of each and every case, it has to be determined whether the right to speedy trial has been denied in a given case. Therefore, where right to speedy trial has been infringed, the charges or the conviction as the case may be, will be quashed. But at the same time, it was observed that if the nature of the offence and other circumstances may be such that quashing of the proceedings may not be in the interest of justice, then the court may make such appropriate order, as it finds just and equitable in the circumstances of the case. Finally, after applying the balancing process, the Hon'ble Apex Court in the cases of Chaman Lal Goyal did not quash the charge or the order of appointing enquiry officer. Nevertheless, it directed for consideration of promotion of the respondents forthwith without taking into consideration the pendency of the enquiry and if it is found fit and if promotion so made, it was to be subject to review after conclusion of the enquiry. It also directed to conclude the enquiry within 8 months and also directed the respondents to cooperate in the enquiry.

- ii) **1998(iv) SCC 154 State of Andhra Pradesh Vs. N. Radha Krishnan-** The main question formulated (as mentioned in para 4 of this case law) was whether the delay did vitiate the disciplinary proceedings and if the Tribunal was justified in giving certain directions. By the judgment dated 12.12.1996 in O.A. No. 2239/96. Andhra Pradesh Administrative Tribunal, Hyderabad allowed the petition quashing subsequent charge memo dated 31.7.1995 and directed that the respondents may be promoted in the existing vacancy ignoring the charge memo dated 27.10.95 and 1.6.96, if the respondents is otherwise eligible. Earlier, the Tribunal had noticed that a memo dated 31.7.95 related to an incident that happened in the year 1978, 1979, 1984, which were also the subject matter of earlier Memo dated 22.12.1987, which was issued under the old CCA Rules, of 1963. The subsequent memo dated 31.7.95 was issued under the new CCA Rules of 1991, but without cancelling and annulling the earlier memo. Therefore, the Tribunal was of the view that because of this circumstances, the memo dated 31.7.95 could not have been issued and enquiry should have been proceeded under the old rules. After examining the matter, the Hon'ble Apex Court opined that the delinquent can always challenge the second memo and rather even the first memo on the ground of delay which he did. The case of State of Punjan Vs. Chaman Lal Goyal (supra) was also considered in this case. Finally, it was found that there was no explanation whatsoever for delay in concluding the enquiry proceedings and it was no body's case that the delinquent at any stage tried to strike or delay the enquiry proceedings. Finally, the appeal was dismissed with cost.

iii. **2007(iv) SCC 566 – Inspector Prem Chand Vs. Govt. of NCT of Delhi and others-** This case law deals with the meaning of 'misconduct', which is not relevant for the purpose of the case in hand.

iv. **1991(3) JT 527- Union of India and others Vs. K.V. Jankiraman and others-** This case deals with the promotion , pending disciplinary/ criminal proceedings against an employee and sealed cover procedure. The Hon'ble Apex Court upheld the decision of Full Bench of the Tribunal which said that it is only when a charge memo in a disciplinary proceedings or charge sheet in a criminal prosecution is issued to an employee that it can be said that departmental proceedings/criminal proceedings is initiated against the employee, therefore, the sealed cover procedure is to be resorted to only after a charge memo/ charge sheet is issued and the pendency of preliminary investigation will not be sufficient to enable the authorities to adopt the sealed cover procedure. Hon'ble Apex Court also held that the normal rules of 'no work no pay' is not applicable in the case where the employee although he is willing to work, is kept away from work by the authorities for no fault of his. Therefore, F.R. 17(1) will not be applicable to such cases. Hence, findings of the Tribunal was upheld that when an employee is completely exonerated , he has to be given benefit of salary of the higher post along with other benefits from the date on which he would have normally been promoted. At the same time, the Hon'ble Apex Court opined that there may be cases which have been delayed at the instance of the employee or acquittal in a criminal proceedings is on account of benefit of doubt or on account of non-availability of evidence, due to act of attributable to the

employee etc. In such circumstances, the concerned authorities must be vested with the power to decide the extent to which an employee deserves salary for the intervening period.

v) **1979 (ii) SCC 286 Union of India and others Vs. J.Ahmed-**

This case also deals with 'misconduct' which has no relevance here.

vi) **2008 (viii) SCC 648- Union of India and others Vs. Tarsem**

**Singh-** In this case, the respondent was declared invalid from Army on 13.11.1983. He therefore, approached the High Court as late as in 1999 for grant of disability pension. His writ petition was allowed by single judge but grant of arrears was restricted for a period of 3 years and 2 months prior to filing of writ petition. The Division Bench, however, allowed the respondent arrears from 13.11.1993 itself. The Hon'ble Supreme Court allowed the appeal and upheld the order of Hon'ble Single Judge. Relevant para 7 of the judgment is as under:-

"To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several

others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of the writ petition."

vii) **1992 (iv) SCC 54 State of Punjab and others Vs. Ram Singh,**

**Ex- Constable** - This case law also pertains to the meaning of 'misconduct' which is not relevant for the present case.

viii) **2005 (viii) SCC page 351 M.M. Malhotra Vs. Union of India**

**and others-** This case law also deals with the meaning and scope of 'misconduct, which is not relevant in the present case.

ix) **2000 (vii) SCC 210- Delhi Jal Board Vs. Mahinder Singh** - It

was held in this case that right to be considered for promotion is a fundamental right under article 16 subject to the condition that the claimant is eligible and is within the zone of consideration. It also deals with the sealed cover procedure and it was laid down that if an employee has been found fit for promotion and later exonerated in the enquiry, which was pending at the time of DPC, the mere fact is that by that time, the enquiry ended in his favour and the sealed cover was opened to give effect to it,



another departmental enquiry was started, would not come in the way of giving him the benefit of the assessment of the first DPC in the anterior selection.

**Cases relied upon on behalf of the respondents**

i) **1998 (iii) Supreme Court Cases, 714 – State of M.P. Vs. J.S.**

**Bansal and another-** It was held in this case that the Tribunal was not justified in passing the impugned interim order for opening the sealed cover and for giving effect of the recommendations of the DPC. However, disciplinary proceedings were directed to be completed within 4 months, provided that the respondents cooperate. The promotional post was directed to be kept vacant for 4 months, if not already filled up.

ii) **1996 (vii) Supreme Court Cases 533, State of Haryana and**

**others Vs. O.P. Gupta and others-** In this case, fresh seniority list was prepared according to the directions of the Hon'ble Supreme Court and thereafter, notional promotion was given from the deemed date. It was held that in such circumstances, the promotees were not entitled to arrears of pay from the deemed date to the date of their posting in promotional post as they had not worked during that period. In the case before us, there is no such question.

11. In the background of prepositions of law as laid down in the case laws cited above, which are applicable in the present case, now we proceed to enter into merit of this case.

12. There is no quarrel on the point that the applicant initially a member of Provincial Forest Service, was inducted in the IFS, U.P., cadre vide notification dated 8.7.2005. His date of substantive appointment has been specified as 31.12.1990. The relevant rules which are applicable for promotion are the IFS

(Recruitment ) Rules, 1966. The Govt. of India , vide notification dated 18.11.2002 has issued certain guidelines for promotion. In the case before us, the applicant has claimed promotion on (i) Junior Administrative Grade (ii) Selection Grade and (iii) Higher promotion on the post of Conservator of Forest at par with the similarly situated /junior persons from the due dates with all consequential benefits. He has further sought a direction to the opposite parties to consider his case by ignoring the disciplinary proceedings arising out of charge sheet dated 25.11.2004.

13. As far as, the promotion of Junior Administrative Grade is concerned, an officer is eligible for appointment in this grade on completing 9 years of service. This grade is non-functional and it is admissible without any screening to all the officers of Senior Time Scale from 1<sup>st</sup> January of the relevant year except in cases where any disciplinary/ criminal proceedings are pending against the officer. Admittedly some of the officers of the batch of the applicant including some junior officers have been given Junior Administrative Grade vide order dated 21.5.2006. But on account of pendency of the enquiry in question, the applicant has not been given Jr. Administrative Grade. As far as Selection Grade is concerned, only an officer of the Junior Administrative Grade shall be eligible on completion of 13 years of service after screening. Similarly, for the post of Conservator of Forest, the officer who are working in the Selection grade and have completed 14 years, shall be eligible for appointment in the post of Conservator, subject to availability of vacancies in this grade. Obviously, as the applicant was not given the Junior Administrative Grade, he was not considered for either Selection Grade or promotion to the post of Conservator of Forests. The only

impediment in getting the Junior Administrative grade is said to be the pendency of enquiry in question from the year 2004.

14. During the course of arguments, learned counsel for the applicant has vehemently argued that a direction may be accorded to the respondents to consider the case of the applicant for promotion to Jr. Administrative Grade, Selection Grade etc. by ignoring the disciplinary proceedings on the ground that the respondents have caused an inordinate and unexplained delay of about 7 years for which they are themselves responsible. There is no pleading from the other side that any delay was caused on account of non-cooperation of the applicant. In fact, after service of the charge sheet, the enquiry officer submitted its report on 9.12.2005 exonerating the applicant. But the disciplinary authority did not agree with it and therefore, issued a charge sheet notice on 1.2.2006 against which reply was promptly submitted by the applicant on 21.2.2006. But till date, it has not been concluded. Therefore, in this backdrop, the learned counsel for the applicant confines his arguments mainly on the point of inordinate and unexplained delay in the enquiry. Therefore, we are not advertent to other points raised in the O.A.

15. This delay comprises two parts. In the first part, the disciplinary authority received a reply of the applicant on 21.2.2006 against his show cause notice dated 1.2.2006 but thereafter kept the matter pending for about 2-1/4 years (approx.) and then only he could arrive at a conclusion to propose a 'censure entry' for which a letter dated 11.6.2008 (Annexure 1 of CR) was sent to the UPSC seeking its advice. In the pleadings of the respondents, there is no explanation at all as to

why and how such a long period of 2-1/4 years was consumed for this purpose.

16. The second part of delay is of about 3 years (from June 08 to July 2011) which have been unnecessarily consumed on the pretext of obtaining advice of UPSC (respondent No.2) which could not be obtained till date. During this period, UPSC returned the case record five times to the State Govt. on 5.8.2008, 18.3.2009, 25.3.2009 and 22.1.2010 and lastly on 6.5.2011. A copy of the last letter dated 6.5.2011 was submitted before the Tribunal which has been taken on record. The perusal of these letters would show that the relevant basic five documents which are required to be furnished in the prescribed proforma, were never submitted to UPSC from the very beginning till date to enable it to give advice. At this point, it is also relevant to note that as per DOP&T O.M. NO. 39011/12/2009-Estt (B) dated 16.11.2010, UPSC normally takes 3-4 months time to render its advice once the complete case record is made available. But in the present case, instead of 3 months, about 3 years have passed but the enquiry is being kept pending by respondents No. 3 and 4 on the pretext of seeking advice while basic five documents have not been made available to the UPSC for its advice. For this lapse there is no justification on the part of the respondents No. 3 and 4. The perusal of enclosed proforma/ check list which was initially sent on 11.6.2008 by the respondents No. 3 and 4 to UPSC shows that it was filled up in a slipshod and callous manner leaving certain columns as blank. There is no clear mention in respect of the basic five documents i.e. (1) General Examination of the Charged Officer, (2) Daily order sheet (3) Written brief of P.O., (4) written brief of Charged Officer and (5) Statement of Defence. It would

be apparent from the extract of the above letter of the UPSC dated 6.5.2011 which is being reproduced herein-below. In fact, misrepresentation was made in respect of these basic documents saying and claiming some other documents to be construed as these documents. The relevant extract of last letter of UPSC dated 6.5.2011 is as under:-

*“3. Now the State Govt. has made a fresh reference in the matter, vide letter dated 7.4.2011 ibid.*

*4. However, on thorough examination of above documents, it has been observed that complete inquiry procedure has not been complied with which is against the principle of natural justice, in this regard, following observations are made:-*

*i) The letter from the MOS to the DA for providing the listed documents and letter from IO to PO is being claimed by the State Govt. to be general examination of the MOS. However, it is not general examination, General examination as provided in Rule 8(19) of All India Services (D&A) Rules, 1969 may be forwarded to the Commission.*

*ii) As regards daily order sheets, correspondents with IO to PO is claimed by the State Govt. to be daily order sheets. However, these are only correspondence with IO and PO.*

*iii) Similarly, written brief of PO as claimed by the State Govt. is not PO brief but it is letter of PO to MOS to inspect the document and letter of PO to IO. PO's brief as provided under Rule 8(20) ibid has not been furnished.*

*iv) Written brief of the MOS is not the written brief of the MOS but it is reply dated 10.8.2005 and 18.4.2008 of the MOS to the charge sheet dated 25.11.2004. The written brief of the MOS as stipulated under Rule 8(20) ibid may be provided to the Commission.*

v) *Statement of defence as claimed by the State Govt. is not the statement of defence but it is letter of the MOS with PO and DA. Statement of defence as provided under Rule 8(17) of All India Services (D&A) Rules, 1969 may be provided to the Commission.*

5. *In view of the position explained above, it appears that reasonable opportunity has not been provided to the MOS for defending his case which is a procedural lacunae/ deficiencies. In the absence of above mentioned vital documents and unless the deficiencies mentioned above are rectified, it is not possible to process the case for consideration of the Commission.*

6. *Therefore, the case records are returned herewith with the request that a fresh self-contained reference accompanied by all the relevant documents including those mentioned above be made available to the Commission at the earliest. It is observed that there is a CAT case involved in this case. It may be emphasized that the Commission can not render its advice until and unless complete case records are supplied, as per the extant rules. Further, as per DOP&T's O.M. No. 39011/12/2009-Estt (B) dated 16.11.2010 (copy enclosed for ready reference) Commission takes at least 3 - 4 months time to render its advice once the complete case record are made available. Accordingly, it is requested that complete case records may be furnished on priority and if required, extension of 3-4 months time may be sought from the Hon'ble CAT.*

7. *It is also requested that before forwarding any case for advice of Commission, State Govt. should thoroughly check the case records, as to whether all the documents are in original/ authenticated copies are at proper place as mentioned in proforma/ check list keeping in view that cases with incomplete records will be returned by the Commission in any case. This will save a lot of time of the Commission in pointing out the deficiencies and returning the*

*for*

*case to Ministry/ Department/ State Govt. Proper page numbering should also be done in all the concerned folders/ files.*

8. *It is further mentioned that in terms of DOPT's O.M. No. 39011/12/2010 -Estt. (B) dated 14<sup>th</sup> September, 2010, while forwarding the case records to the Commission, a certificate shall be appended duly signed by an officer, not below the level of Joint Secretary that the case records are being sent to the Commission for advice after complying with all the items as applicable in the proforma by the Ministry/ Department concerned. The above instruction may also be complied with while forwarding the case records for the advice of the Commisison.*

*The receipt of case records may please be acknowledged.*

*Sd/-*

*Deputy Secretary*

*Encl:- Case record as per list attached."*

17. From the aforesaid entire correspondence between the UPSC and the State Govt. (Respondents No. 3 and 4), it appears that , in fact, the respondents No. 3 and 4 knew it very well from the very beginning that these basic five documents which are required to be sent in the prescribed proforma for seeking advice from the UPSC, were never prepared. That is why the enclosed proforma was not duly filled and relevant columns were left blank, when the initial letter dated 11.6.2008 (Annexure – 1 of CR) was sent to UPSC for seeking advice. Time and again , this short coming was specifically pointed out by the UPSC, but the respondents No. 3 and 4 did not pay any heed and kept on justifying their stand. Not only this, they ,in fact, misrepresented and misconstrued the documents claiming the same to be those five documents, although, they were not those five documents, as has been clearly highlighted in para 4 of the aforesaid letter dated 6.5.2011 of the UPSC. Now the matter has

come to a dead end. The lapse on the part of respondents No.3 and 4 has been clearly exposed by the UPSC. For the last about three months, the ball is lying stand still in the court of respondents No. 3 and 4. They did send an officer of the rank of Special Secretary of U.P.Govt. to the UPSC with the entire record of enquiry as was directed by this Tribunal vide detailed order dated 16.5.2011. But as per the instructions received by Sri Pankaj Awasthi from UPSC, that record was returned back to the Special Secretary of U.P. Govt. for want of those five vital documents. Thus, there is no plausible explanation for aforesaid inordinate delay of 3 years on the part of the respondents No.3 and 4.

18. In the case of State of Punjab Vs. Chaman Lal Goyal (Supra), the Hon'ble Apex Court has observed that the principles laid down by the Constitution Bench in the case of A.R. Antulay's case are broadly applicable to a plea of delay in taking the disciplinary proceedings as well and after applying the balancing process of each and every case, it has to be determined whether the right to speedy trial has been denied in a given case. In the case before us, we have found that the enquiry is pending for the last 7 years.

19. As far as applying the principles of balancing process is concerned, it is worthwhile to mention that the District Magistrate and the Chief Conservator of Forest were also charged similarly and they have been exonerated on the ground that no excavation whatsoever took place in the land in question causing any loss to the Department/ Govt. This fact, has been specifically pleaded by the applicant and the respondents No. 3 and 4 have not refuted/controverted these pleadings in their counter affidavit. The charges were also not found proved against the



'applicant by the enquiry officer but the disciplinary authority, according to the applicant, adopted a different para-meter by disagreeing with the report of the enquiry officer. Though as a disciplinary authority, he had every right to do so, but there cannot be any justification in keeping the matter pending with him for about 2-1/4 years (from 21.2.2006 to 11.6.2008) to take a final decision for proposing only a 'censure entry' and thereafter, further keeping the matter pending for about 3 years on the pretext of seeking advice from the UPSC by sending incomplete record and not only that also mis-representing and mis-construing the nomenclature of basic five documents which entailed return of the case records by the UPSC as many as five times. Now, it has come to a dead end because those five vital documents were never prepared in the enquiry proceedings and therefore, respondents no. 3 and 4 do not possess it and cannot make it available to the UPSC and the UPSC cannot render its advice in the absence of complete record, particularly the vital five documents of the check list and other deficiencies mentioned in the letter of UPSC. Thus, there is no plausible explanation at all for such an inordinate delay of at least about 5-1/4 years, in which the applicant had no role to play because during these years, the matter kept lying either with the disciplinary authority or between the respondents No. 3 and 4 and the UPSC.

20. In order to evaluate the principles of 'balancing process' it is also worthwhile to mention that as UPSC itself has pointed out in para 4 of its letter dated 6.5.2011, that the complete enquiry procedure has not been complied with in this case, which is against the principles of natural justice. Further, in para 5 of the

'same letter, it has been observed by the UPSC that reasonable opportunity has not been provided to the MOS for defending his case which is a procedural lacunae /deficiency. It has also been observed that in the absence of five vital documents, as mentioned in the letter and unless the deficiency mentioned therein are rectified, it is not possible for the UPSC to process the case for consideration. From the side of the respondents No. 3 and 4, it has been submitted that whatsoever documents were available with them, the same were sent and that they cannot generate any document now. Thus, the matter has come to a dead end.

21. Finally, therefore, keeping in view the preposition of law laid down in case of Chaman Lal Goyal and A.R. Antulay (*supra*) and also after applying the principle of 'balancing process' in the present case, we come to the conclusion that right to speedy trial has been denied in the present case, wherein the disciplinary proceedings have been kept pending for the last 7 years without any plausible explanation.

22. From the side of the respondents No. 3 and 4, a point of alternative remedy has also been raised saying that under Rule 16(iii)(c) of All India Services (Disciplinary and Appeal) Rules, 1969, remedy of appeal is available against an order of State Govt. which has the effect of superseding him in promotion to a selection post. From the side of the applicant, it has been replied that the above rule pertains to a selection post whereas the grievance of the applicant starts with the denial of giving Junior Administrative Grade, which is not a selection post. We find substance in the above reply given on behalf of the applicant.

Therefore, we decide this point also against the respondents No. 3 and 4.

23. It has also been submitted on behalf of the respondents No.3 and 4 that the O.A. has not been filed within the prescribed time as stipulated under Section 21 of the AT Act, 1985. In this regard, it is said that according to the applicant himself, promotion in Junior Administrative Grade was considered in March 2006, when some officers junior to the applicant were given selection grade and as such the O.A. ought to have been filed within a year or 1-1/2 year in view of Section 20 and 21 of the AT Act. In reply to this, learned counsel for the applicant submitted that Section 20 and 21 of the Act mention about an 'order' from which this limitation has to be calculated but in the present case, there is no such order. It has been further submitted by the learned counsel for the applicant that this service related claim is based on a continuing wrong and therefore, relief can be granted even if there is any delay in seeking remedy with reference to the date from which the continuing wrong commenced because such continuing wrong creates a continuing source of injury. In support of this contention, reliance has been placed on the case of Union of India Vs. Tarsen Singh (supra), wherein it has been laid down that normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by on application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy. Keeping in view the

above proposition of law, we are of the opinion that in the present case, there is indeed a continuing wrong causing continuing source of injury to the applicant, particularly because he is being deprived from Junior Administrative Grade on the pretext of an inquiry pending for the last seven years. At the cost of repetition, it may be recapitulated that the applicant was exonerated by the Enquiry Officer vide his report dated 9.12.2005. But the disciplinary authority did not agree with it and issued a show cause notice, which was promptly replied by the applicant on 21.2.2006. Since then, nothing has been conveyed to the applicant till finalising of this OA. Therefore, having regard to the point of continuing wrong creating a continuing source of injury to the applicant, the point of limitation is decided in favour of the applicant.

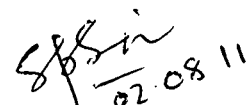
24. We are conscious of the fact that the charges or the disciplinary proceedings have not been specifically challenged in this O.A. as has been pointed out time and again from the side of the respondents No.3 and 4. Nevertheless, a relief has been sought by the applicant for directing the opposite parties to consider the applicant for higher promotion **by ignoring the disciplinary proceedings arising out of charge sheet dated 25.11.2004** and as mentioned herein before, the arguments advanced on behalf of the applicant were confined mainly on the point of ignoring the disciplinary proceedings arising out of the charge sheet dated 25.11.2004 on the ground of inordinate and unexplained delay which has become fatal to the interest of the applicant in the sense that the applicant has been denied his fundamental right to be considered for promotion along with his

other batch mates leading to the violation of Article 14 and 16 of the Constitution of India.

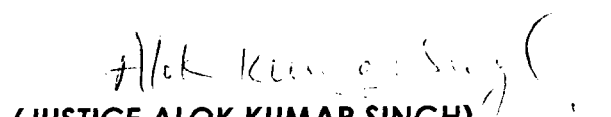
25. Though we have found that there has been inordinate and unexplained delay on the part of the respondents No. 3 and 4 in concluding the enquiry and after applying principles of balancing process in view of the case of Chaman Lal Goyal and A.R. Antulay (supra) we have already reached to the conclusion that right to speedy trial has been denied in the present case and even the UPSC has opined that complete enquiry procedure has not been complied with which is against the principles of natural justice and that reasonable opportunity has not been provided to the MOS for defending his case which is procedural lacunae/ deficiency and that the advice cannot be rendered by the UPSC in absence of five vital documents mentioned in the check list and those documents concededly were not prepared and are not in the possession of respondents No. 3 and 4 and thus this matter has almost reached to a dead end. But as the applicant has not sought relief for quashing of charge sheet or inquiry proceedings, we leave this matter here, as it is and refrain ourselves from quashing the charge sheet or enquiry proceedings. Nevertheless, in view of our findings as mentioned hereinabove, we are inclined to follow the preposition of law laid down in the case of State of Punjab and others Vs. Chaman Lal Goyal (supra) in which the preposition laid down by the Constitution Bench in A.R. Antulay's case have been broadly made applicable in such cases of delay. In the aforesaid case of Chaman Lal Goyal, the Hon'ble Apex Court had directed for consideration of promotion of the respondents forthwith without taking into consideration the pendency of the enquiry and if the

respondents of that case are found fit and so promoted, it was to be subject to review after conclusion of the enquiry. The Hon'ble Apex Court also directed to conclude the enquiry within a stipulated period. Accordingly, this O.A. is partly allowed with the direction to the respondents No. 1,3 and 4 to consider the applicant for promotion to the Junior Administrative Grade from the date applicant's juniors were promoted and also consider the applicant for selection grade and higher promotion on the post of Conservator of Forests at par with the similarly situated / junior person from the due dates, if he is otherwise found suitable, without taking into consideration the pendency of enquiry in question. But it would be subject to review, if any, after conclusion of the enquiry in question. Simultaneously, the respondents are directed to conclude the enquiry in question within 4 months from the date of this order.

26. Since, the enquiry is still pending, we find ourselves handicapped in dealing with the relief pertaining to consequential benefits. However, we provide that the applicant can come to this Tribunal for redressal of his grievance, if any, in respect of consequential benefits at the appropriate stage if he is so advised. No order as to costs.

  
(S.P. SINGH)  
MEMBER (A)

HLS/-

  
(JUSTICE ALOK KUMAR SINGH)  
MEMBER (J)