

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 2530 of 2022

Kedar Chandra Dalai, IFS (Retd.)

Petitioner

Mr. S. Behera, Adv.

Vs.

Union of India and others

Opposite parties

Mr. P.K. Parhi, ASGI

along with Mr. B.K. Padhi, CGC

Mr. A.K. Mishra, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

26.04.2022

Order No.

02.

This matter is taken up through hybrid mode.

2. Heard Mr. S. Behera, learned counsel for the Petitioner; Mr. P.K. Parhi, learned Assistant Solicitor General of India along with Mr. B.K. Padhi, learned Central Govt. Counsel for the opposite parties and Mr. A.K. Mishra, learned Addl. Government Advocate for opposite parties no.2 and 3.

3. The petitioner has filed this writ petition challenging the order dated 01.02.2021 passed in O.A. No. 1005 of 2013 by the Central Administrative Tribunal, Cuttack Bench, Cuttack rejecting the original application, as the same suffers from delay and laches.

4. The factual matrix of the case, in brief, is that the petitioner was initially appointed as Assistant Conservator of Forest in the year, 1988 and he was promoted to the rank of Deputy Conservator of Forest in the year 1998 under OFS Class-I. While he was continuing in the said cadre, a departmental proceeding was drawn up against him. It is contended by the petitioner that the authority published a gradation list for OFS-I (Group-A) Officer as on 01.01.2006 wherein his name was found place at Sl.No.8. As per gradation list, Govt. of India in the

department of Forest and Environment, after considering the suitability and seniority of the petitioner, issued a notification on 08.02.2007, wherein the petitioner was provisionally selected to IFS cadre under the Indian Forest Service (appointment by promotion) Regulation 1966 and his name was found at Sl.No.2 in the select list of 2003. Thereafter, opposite party no.1 issued another notification on 21.02.2007, wherein some juniors to the petitioner were selected in the IFS cadre, whereas his name did not find place. The petitioner made several representations to the authorities with a prayer to select him in the IFS cadre from the date when his immediate juniors have been selected, but did not yield any result. While the matter stood thus, the Govt. of Odisha in the department of Forest and Environment, by the order of the Governor, dropped the departmental proceeding, vide order 08.07.2008, which was drawn up against the petitioner in the year 2002. After dropping of charge, a notification dated 30.07.2009 was issued by the Department of Forest and Environment, Govt. of India, wherein the petitioner was selected to the IFS cadre with immediate effect. After selection to the IFS cadre, the name of the petitioner was found at Sl.No.96 in the disposition list of All India Service Cadre whereas his immediate juniors (Opposite Party Nos. 5 to 8), who were provisionally selected along with the petitioner, their names found place at Sl.92, 93, 94 and 95. It is also contended that though he was selected in the IFS cadre along with his juniors, by virtue of the notification dated 08.02.2007, but due to sheer inaction on the part of opposite parties, he was not selected in the year, 2007, along with his juniors, but in the year, 2009. The petitioner made two representations, one on 24.02.2010 and the other on 19.07.2010, with a prayer to restore his seniority in the cadre of IFS, but no action was taken. Thereby, he approached the tribunal by filing O.A. No. 1005 of

2013. Since the petitioner claims to restore his seniority in the cadre of IFS, the same was rejected by the tribunal on the ground of delay and also on merit, vide order dated 01.02.2021. Hence this writ petition.

5. Mr. S. Behera, learned counsel for the petitioner contended that rejection of the claim of the petitioner is an outcome of non-application of mind and, as such, for unnecessary pendency of the departmental proceeding, the petitioner was debarred from getting the benefit w.e.f. 2007. It is further contended that the petitioner was extended with the benefit in the year 2009, though his juniors were given promotion in the year, 2007. Therefore, the petitioner should have been placed at an appropriate place over and above his juniors, i.e., opposite parties no.5 to 8, by giving him promotion in due time in the year 2007. But the tribunal, without applying its mind in proper perspective, rejected the O.A. Challenging the order of rejection passed by the tribunal, the petitioner has approached this Court by filing the present writ petition.

6. Mr. P.K. Parhi, learned Assistant Solicitor General of India appearing for the Union of India vehemently contended that by the time the case of the juniors to the petitioner was considered for promotion to the post of IFS Class-I, the petitioner's name was taken into consideration, but he was not given promotion, as because departmental proceeding was pending against him. Soon after dropping of the proceeding, he was immediately granted promotion. Thereby, the claim made by the petitioner, that his promotion should relate back to the year 2007, does not arise, as admittedly a proceeding was initiated against him. It is further contended that the cause of action arose in the year 2009 when he got promotion, but the petitioner had approached the tribunal in the year 2013, i.e. after 4 years.

Thereby, the tribunal rejected the original application filed by the petitioner on the ground of delay and laches. Accordingly, the tribunal is well justified in rejecting the claim of the petitioner with regard to promotion from the date his juniors got promotional benefit, i.e. from the year 2007. Consequentially, no illegality or irregularity has been committed by the tribunal so as to warrant interference of this Court with the order impugned.

7. Having heard learned counsel for the parties and after going through the records, this Court finds that admittedly in the year 2007, the case of the petitioner, as well as opposite party nos.5 to 8, was recommended for consideration of promotion to the cadre of IFS Class-I. The opposite party nos.5 to 8, who are admittedly juniors to the petitioner, were considered for promotion, whereas the case of the petitioner was not considered, as because a departmental proceeding was pending against him. When the charge was dropped on 30.07.2009, immediately his case was considered and promotion was given to him in the year 2009. Even though such promotion was given in the year 2009, the petitioner did not take any steps immediately to relate back such order of promotion, rather he kept quiet for four years and, thereafter, approached the tribunal in the year 2013. Thereby, the tribunal rejected the original application filed by the petitioner on the ground of delay and laches. As per the Administrative Tribunal's Act, one year statutory period, from the date of cause of action, has been prescribed to approach the tribunal and, as such, the said period had already been over long since. The petitioner claimed seniority over and above his juniors those who have got promotion in the year 2007. Even though the petitioner made representations, but the same were rejected by the authority and, as such, no proposal was received by the Commission during the period of validity of select list in question. Thereby, the claim

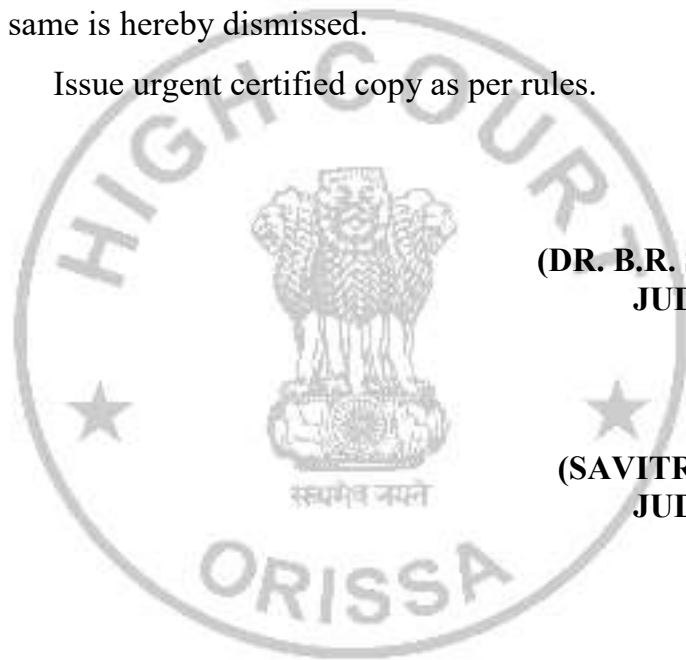
made by the petitioner to consider his case for promotion w.e.f 07.04.2007 at par with his juniors cannot have any justification. As such, the benefit so claimed by the petitioner cannot sustain in the eye of law, in view of the judgment of the Coordinate Bench Central Administrative Tribunal, Ernakulam Bench in the case of R. Rajendran v. Union of India (O.A. No. 628 of 2008 disposed of on 03.04.2009). Thereby, the tribunal has rightly rejected the claim of the petitioner.

8. In such view of the matter, this Court does not find any error apparent on the face of record in the order impugned passed by the tribunal so as to warrant interference with the same.

9. Accordingly, the writ petition merits no consideration and the same is hereby dismissed.

Issue urgent certified copy as per rules.

Ashok/Puspa



(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE