

ORISSA ADMINISTRATIVE TRIBUNAL,  
Bhubaneswar.

Decided on 22nd May, 1990

CCRAM :

Hon'ble Shri A. ... Chairman.  
Hon'ble Shri I. ... Roy, member (Judicial).

TRANSFERRED APPLICATION NO.110 OF 1988  
(U.J.C.No.2401 of 1984.

Bhaskar Padhi ... Petitioner  
Vrs.

1. State of Orissa represented through Secretary, Home and General Administration Departments, Bhubaneswar.
2. The Director General of Police, Orissa, Cuttack.
3. The Inspector General of Police, Orissa, Cuttack.

... Opposite Parties

APPEARANCE

For the petitioner ... M/s. Ashok Mohanty and Sashi Das, Advocates.  
For the Opposite Parties ... I A. Rath, Standing Counsel.

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A.K. Ray, Vice-Chairman : This is a petition filed by one Bhaskar Chandra Padhi, Assistant Commandant, Police Training School, Nayagarh under Government of Orissa claiming that the period of service rendered by him in the Indian Navy limiting it to the period of National Emergency should be counted for the purpose of service benefits to the petitioner as per Government of Orissa Circular Annexure-1. The petition was originally filed in Orissa High Court and has since been transferred to us under Section 29 of the Administrative Tribunals Act, 1985.

2. The petitioner's case is that he enrolled as Leading Patrol Man in the Indian Navy on 1.4.1957 and was released on the expiry of engagement on 31.3.1967. While serving in the Indian Navy, he applied for the post of Sergeant in Orissa Military Police and was selected and appointed as Cadet sergeant and joined on 1.4.1967 in the third Battalion O.M.P., Koraput. Therefore he has served for 10 years in the Indian Navy prior to his joining the Orissa Police Service. The Government of Orissa vide Annexure-1 issued an order in 1963 which gave benefit to ex-service men for calculating their initial pay, seniority and pension on joining civil post who have come from the Armed Forces. On the basis of this circular, petitioner represented through the Superintendent of Police, Koraput and the said representation was forwarded through the proper channel to Government of Orissa. The Government of Orissa however, took the stand that the benefit would be applicable only to that category of recruits to the armed force who have been recruited between 26.10.1962 to 10.1.1968 i.e. the period of National Emergency and none else. Thereafter petitioner made representation to the Governor of Orissa but nothing came out of his representation. He has annexed as Annexure-5 the recommendation of the Superintendent of Police, Koraput in which the Superintendent has given a list of six persons who have got similar benefit of service in armed force though they were not recruited during the emergency. In Annexure-6, the Inspector General of Police has also recommended the case of the petitioner and has mentioned names of number of persons who have got similar benefit. y entered military service prior to the proclamation of Emergency. 7. The Inspector General's report to the Home Dept. points out that the Orissa High Court has in a decision the

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benefit of military service in case of a Havildar who entered army prior to the emergency. The petitioner prays that his military service rendered between 26.10.62 and 13.3.1967, when he was released from the Navy, should be taken into consideration for fixation of his pay, seniority and other consequential benefits as per Government of Orissa circular at Annexure-1.

3. In the counter affidavit filed by the State, the stand taken by the State is " the State Government issued clarification in P & S. Department letter dated 28.12.70 that the concessions of service benefits would be extended only to Government employees and outsiders who were recruited to military service in between 26.10.1962 and 10.1.1968.

4. We have heard the learned Counsel for the petitioner and the Government Advocate in this matter and perused all the documents. We had the benefit of consideration of this circular in two earlier cases T.A.-283/86 N.K.Mohanty Vrs. State of Orissa and T.A.7/87 Guruprasana Misra Vrs. State of Orissa. In both these cases, this point came for our consideration. We have held in T.A.283/86 " coming to the question of military service we find that the P & S. Department circular at Annexure-A gives

certain concessions; as per that circular for those persons who joined the armed forces during the emergency. In the counter affidavit Government <sup>have</sup> taken the stand that this circular is meant to encourage people <sup>to</sup> join military service and would not apply to persons who on their own have joined the military service before the Emergency period. The circular does not specify that those who have joined the military service earlier would be denied of the concession mentioned in that circular but in our opinion it would be discriminatory and would be hit by Article 16 of the Constitution of India, if the same benefit is not extended to the persons who are already in the military service. Just because somebody is already in military service he would be denied that concession and only those who joined after the circular, would get the concession appears to us unreasonable and discriminatory in nature. When a circular is issued by Government it would naturally apply to all citizens similarly placed and to deny the benefits just because he is already

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IN MILITARY SERVICE ON HIS OWN APPEARS TO US TO BE TOTALLY DISCRIMINATORY. A PERSON WHO HAS JOINED ARMY EARLIER CANNOT BE SAID TO BE LESS PATRIOTIC THAN THE PERSONS WHO HAVE JOINED AFTER THE CIRCULAR IS ISSUED. IN FACT, IN OUR OPINION, IF JOINING ARMED FORCES IS A PATRIOTIC DUTY DURING EMERGENCY, WHICH GIVES THEM CERTAIN CONCESSIONS IN GOVERNMENT SERVICE, THE SAID CONCESSION HAS TO APPLY UNIVERSALLY TO THOSE PERSONS WHO ARE ALREADY IN THE ARMY. IN THE INSTANT CASE THE PETITIONER JOINED THE ARMY IN 1959 AND WAS DISCHARGED IN 1968 BUT HE WILL ONLY GET THE CONCESSION FOR THE PERIOD OF EMERGENCY WHICH IS APPLICABLE TO THE REST OF THE CITIZENS, ANNEXURE-A THE CIRCULAR FILED BY GOVERNMENT, DOES NOT CONTAIN THE TWO ANNEXURES MENTIONED IN THE CIRCULAR BUT WHATEVER IS THE CONCESSION APPLICABLE TO THE REST OF THE CITIZENS WHO JOINED DURING EMERGENCY WOULD NECESSARILY APPLY TO THE PETITIONER. THE PETITIONER IN PARA 5 OF HIS PETITION HAS CLAIMED THAT FOR OTHER PERSONS THIS HAS BEEN GIVEN CREDIT BETWEEN THE PERIOD 26.10.1962 AND 10.1.1968. THIS HAS NOT BEEN DENIED IN THE COUNTER AFFIDAVIT AND WE, THEREFORE, HOLD THAT THE PETITIONER IS ENTITLED TO GET THE BENEFIT UNDER THE CIRCULAR AT ANNEXURE-A FOR THE PERIOD 26.10.1962 TO 10.1.1968". AGAIN WE HAVE HELD IN T.A.7/87 EXACTLY ON THE SAME LINES. THE PETITIONER AS IN THIS CASE CLAIMS SERVICE BENEFITS FOR THE PERIOD BETWEEN 1962 I.E. FROM THE DATE THE EMERGENCY WAS DECLARED TO 31.3.1967 THE DATE HE WAS RELEASED FROM THE NAVY. ON THE BASIS OF OUR EARLIER DECISIONS MENTIONED ABOVE, WE HAVE NO HESITATION IN HOLDING THAT THE PETITIONER IS ENTITLED TO THE FIXATION OF PAY, SENIORITY AND PENSION AS PER ANNEXURE-1 FOR THE PERIOD BETWEEN 26.10.1962 TO 31.3.1967 FOR CALCULATION OF HIS SERVICE AND OTHER BENEFITS. THE PETITION IS ALLOWED BUT THERE WILL BE NO ORDER AS TO COSTS.

Sd  
(Indrajeet Roy)  
Member (Judicial).

Sd.  
(A.K.Ray)  
Vice-Chairman.

