

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.12405 of 2016**

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Sri Akhileshwar Mishra son of late Baijnath Mishra, resident of R.M.S. Colony,  
Kankarbagh, Police Station - Kankarbagh, District - Patna (Bihar).

.... .... Petitioner/s

Versus

1. The Union of India through the Secretary, Department of Forest & Environment, Government of India, CGO Complex, Lodi Road, New Delhi - 110003.
2. The State of Bihar through the Chief Secretary, State of Bihar, Patna.
3. The Commissioner and Secretary, Department of Forest & Environment, Government of Bihar, Patna.
4. The Principal Chief Conservator of Forest, Ranchi.
5. The Additional Secretary, Department of Forest & Environment, Government of Bihar, Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Sanjeev Kumar, Advocate  
Mr. P.K. Lal, Advocate  
For the Union of India : Mr. S.D. Sanjay, Addl. S.G.  
Mr. Abhay Shankar Jha, CGC

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**

**and**

**HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date: 28-02-2017**

Heard counsel for the petitioner, learned Additional  
Solicitor General representing the Union of India and the counsel for  
the State.

2. Unnecessary legal battle has been carried out by the  
petitioner, one to many times on the issue of grant of benefit of Senior  
Selection Grade in the Bihar Forest Service with effect from  
01.04.1992 and also to refix the salary of the petitioner in the cadre of



Indian Forest Service with effect from 19.03.1994. There are many rounds of litigation. Even previously and the present order dated 12.04.2016, which is under challenge, is part of the chain of litigation.

3. The Tribunal after considering the submissions has concluded the facts in paragraph 16 as under:

“16. The following facts come out of the aforesaid reasoned order:-

(i) In the DPC meeting held on 28.01.1991, the applicant's name was at sl. 34. However, only the candidates upto sl. 29 were given promotions as per the vacancies available and no one below sl. 29 has been given promotion.

(ii) The only officer junior to the applicant who has been given promotion is Shri Shiv Shankar Mishra which was covered by a specific judgment in another Writ. Among several persons who were issued show cause notice for reversion of promotion, notice was given to Shri Shiv Shankar Mishra also. The reasoned order quotes para 22 of the Tribunal's order in OA 64/2007 which is as follows:-

“Certainly, if the promotions were done against the rules, we cannot give a direction to grant the same benefit to the applicant, but then the respondents should clearly show that the same was wrong explaining reasons and



corrective actions have been taken to cancel the same in these cases.”

(iii) About the cadre strength and sanctioned post the reasoned order refers to the Hon’ble Supreme Court’s observations which essentially implies that cadre strength is simply an authorization to create that many posts, following which posts are created and sanctioned. Therefore, just because authorized cadre strength is there, the employees do not get entitled to promotion because promotion can be given only sanctioned posts which may be less than the cadre strength.

(iv) Based on the above considerations, the reasoned order has rejected the claim of the applicant.”

4. If this is the finding, which has emerged, then the claim of the petitioner for grant of such benefit is based not on solid foundation of discrimination but on imaginary kind of discrimination, for which he has relied on the case of one Shri Shiv Shankar Mishra, which cannot be the basis for discrimination. It has been held and also found that on a mistaken kind of understanding of the order of the High Court passed in the writ, the benefit was extended to the said person to which he was not entitled. The Tribunal rightly, therefore, refused to grant advantage of similar kind because it will amount to giving benefit to this petitioner for which he is not entitled under law.



Since Shiv Shankar Mishra was exception and not a rule, therefore, petitioner cannot get benefit which he had claimed before the Tribunal and the Tribunal has rightly rejected the same.

5. No interference is warranted with the order of the Central Administrative Tribunal. The writ is dismissed.

**(Ajay Kumar Tripathi, J.)**

**(Nilu Agrawal, J.)**

Arjun/-

AFR/NAFR	NAFR
CAV DATE	NA
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