PETITIONER:
JUDHISTIR MOHANTY

Vs.

RESPONDENT:
STATE OF ORISSA & ORS.

DATE OF JUDGMENT: 13/09/1996

BENCH:
K. RAMASWAMY, G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Delay condoned.

Leave granted.

We have heard learned counsel on both sides.

This appeal by special leave arises from the two orders dated April 26, 1988 of the Administrative Tribunal at Bhubaneswar made in T.A. No. 29/87(OJC No.2540/84) traneferred from the High Court and M.P. No. 281/88.

The admitted position is that the appellant, while working as Superintendent of Jail in leave reserve in the head Office of l.G. (Prisons) made a representation on February 5, 1978 to the Chief Minister stating that he had, no house of his own and had recently secured a site at Behrampur. He wanted to settle down at Behrampur. He had served the Department for more than 37 years. His children were prosecuting studies near Behrampur. If he is transferred to Behrampur or near about Behrampur, he would be able to construct the house and settle him down after retirement at Behrampur. Taking that representation into consideration, the Government granted sanction on January 27, 1978 directing that he was transferred and posted as Superintendent of Jail at Circle Jail at Behrampur. By proceedings dated January 27, 1978, the Government have sanctioned two posts of Superintendent of Jail for Circle Jail at Behrampur in the pay scale of Rs.850-1450/ with D.A. In one of the above sanctioned posts, the appellant came to be adjusted by proceedings dated March 28, 1978 and it is dispute that he worked during the period from April 1, 1978 to October 31, 1978 the date on, which he attained superannuation and retired from service. The writ petition filed in the High Court was subsequently transferred to the Tribunal. Though there is no mention as regards his entitlement to the payment of the salary in the post of Superintendent referred to hereinbefore, the same was not paid to him for the reason that he was transferred and posted to the said post at his request. It is the contention of Shri Y. Prabhakara Rao, learned counsel for the appellant, that since he was asked to discharge that duty for the said period, he is entitled to the payment of the salary Prima facie, we are impressed with the arguments

addressed by Shri Y.P. Rao, but it is pointed by Shri Misra, learned counsel appearing for the State, that the Superintendent leave reserve is only Class II post whereas the Superintendent of the Circle is Class I post. Since the appellant made a request for adjustment of him at Behrampur and since there was no other post equivalent to Class II available, he came to he adjusted in that post at request. Therefore, he was not eligible to the scale of pay attached to the post. We are in agreement with Shri Misra, learned counsel for the State. It is a settled position that if the Government, for want of candidate, directs an officer in the lower cadre to perform the duties of the post in the higher cadre, during that period, necessarily, the incumbent would be entitled to the payment of the salary attached to the post if the incumbent had performed the duties in that post. Similarly where concerned officer is on promotion from lower cadre to the higher cadre, though on ad hoc or even temporary basis, the incumbent would be entitled to the payment of the salary attached to the post for the period of his discharging the duty in that post. In this case, neither would be is applicable. At request, he was transferred and though order does not speak of, but the fact remains and is not disputed that the order came to be passed pursuant to a representation made by the appellant to the Chief Minister. It was obviously on that basis that direction was issued by the Chief Minister's Office and the transfer order came to be made to accommodate him, before his retirement, at Behrampur where he had proposed to construct the house. Since there was no equivalent post of Grade II category, necessarily he was accommodated in that post. Consequently he is not entitled to the higher scale or pay than to which he was entitled as Superintendent Leave Reserve on which post he would otherwise have retired.

The appeal is accordingly dismissed, but in the circumstances, without costs.