

(V)

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH : CUTTACK.

Original Application No.43 of 1987.

Date of decision : January 2, 1989.

Gouranga Charan Poi, aged about 35 years,  
son of Sri Laxmidhar Poi, L.D.C., Office of  
the Assistant Collector, Central Excise &  
Customs, Cuttack Division, At, P.O. &  
District- Cuttack.

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Applicant.

Versus

1. Union of India, represented by its  
Secretary, Department of Banking and  
Revenue, Ministry of Finance, New Delhi.
2. Collector, Central Excise & Customs,  
Orissa, Bhubaneswar, District- Puri.
3. Assistant Collector, Headquarters,  
Central Excise & Customs, Bhubaneswar  
Division, At/P.O. Bhubaneswar, District-  
Puri.
4. Deputy Collector ( P & E ),  
Central Excise & Customs,  
At, P.O. Bhubaneswar, Dist. Puri.

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Respondents.

For the applicant : M/s. Devanand Misra,  
Deepak Misra,  
R.N. Naik &  
S.S. Hota, Advocates.

For the respondents ... Mr. A.B. Mishra, Sr. Standing Counsel  
(Central)  
Mr. Ashok Misra, Addl. Standing Counsel  
(Central)

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C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

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1. Whether reporters of local papers may be allowed  
to see the judgment ? Yes.
  2. To be referred to the Reporters or not ? M'
  3. Whether Their Lordships wish to see the fair copy  
of the judgment ? Yes.
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J U D G M E N T

K.P. ACHARYA, MEMBER (J)

In this application under section 19 of the Administrative Tribunals Act, 1985, the prayer of the applicant is to command the respondents to give him due promotion to the post of Upper Division Clerk with effect from 31.3.1981 and to make him entitled to all consequential service benefits including arrear emoluments.

2. Shortly stated, the case of the applicant is that he was appointed as a Lower Division Clerk in the Office of the Assistant Collector, Central Excise & Customs and he joined as such on 13.1.1977 in the grade of L.D.C. and was confirmed in the said grade on 1.3.1979. The applicant is said to have been promoted to the post of Upper Division Clerk on ad hoc basis with effect from 31.3.1981. Thereafter on 3rd, 4th & 6th September, 1982, the Departmental Promotion Committee met to consider the suitability of different officers for regular promotion to the post of U.D.C. and vide Annexure-2 dated 18.9.1982 the applicant having been reverted, he filed a representation before the Collector, Central Excise & Customs which was turned down and thereafter an appeal was preferred before the Secretary, Central Board of Excise & Customs, New Delhi. The said appeal not having been disposed of, the applicant has come up with the present application with the aforesaid prayer.

3. In their counter, the respondents maintained that the applicant not having been found to be suitable for promotion to the post of Upper Division Clerk and the earlier promotion given to the applicant being on ad hoc basis, he was rightly reverted on the findings of the Departmental

Promotion Committee and the competent authority had no other option but to order his reversion.

4. We have heard Mr. Deepak Misra, learned counsel for the applicant and Mr. A. B. Mishra, learned Senior Standing Counsel (Central) at some length. We do not feel inclined to express our opinion on the arguments advanced at the Bar relating to the merits of the case because of the order we propose to pass in this case. Admittedly, the Departmental Promotion Committee had met on 3rd, 4th and 6th September, 1982 to consider the cases of several persons relating to their suitability and further admitted case is that the case of the applicant was considered and the Departmental Promotion Committee was of opinion that he (the applicant) was not fit by then ('not yet fit') and hence, the applicant's reversion took place, from the promotional post which he was occupying on ad hoc basis. Further admitted case is that against the order of reversion and denial of promotion to the applicant, he filed a representation to the Collector, Central Excise & Customs with a prayer to order expunction of the adverse remarks contained in his Confidential Character Roll and to give him due promotion to the post of Upper Division Clerk with effect from 31.3.1981. This representation filed by the applicant has been admittedly turned down - dismissed by the Collector. Against the order of the Collector, the applicant preferred an appeal to the Secretary, Central Board of Excise & Customs, New Delhi contained in Annexure-14 dated 2.12.1982. It was submitted before us

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by learned counsel for the applicant that as yet the said appeal preferred to the Secretary, Central Board of Excise & Customs, has not been disposed of and is still pending. Ofcourse, there is no averment in the counter as to whether the appeal is pending or has since been disposed of. In this state of affairs we are unable to come to a definite conclusion as to whether the appeal has been disposed of or is still pending. We would direct, that in case the appeal has not been disposed of and is still pending with the Secretary, Central Board of Excise & Customs, it should be disposed of within two months from the date of receipt of a copy of this judgment and the order passed by the Secretary would govern the service benefits of the applicant, according to Rules and in case it has already been disposed of, the order passed by the Secretary be carried out as contemplated under the Rules.

5. It is submitted on behalf of the applicant that no order from the Secretary has yet been communicated to the applicant. In case the appeal has been disposed of, or ~~the order~~ after disposal of the appeal, a copy of the order passed by the Secretary should be communicated to the applicant within 15 (fifteen) days from the date of disposal of the appeal and if already disposed of <sup>otherwise</sup> a copy of the order should be supplied to the applicant within 15 (Fifteen) days from the date of disposal of the appeal. We give liberty to the applicant to approach this Bench, if any adverse order is passed against him on this issue by the Secretary, Central Board of Excise & Customs.

6. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

*[Signature]*  
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Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

9 agree.



*[Signature]*  
2.1.89  
.....  
Vice-Chairman

Central Administrative Tribunal,  
Cuttack Bench, Cuttack.  
January 2, 1989/S.Sarangi.