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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH.

O.A.175/91

Cuttack this the 14th day of March, 97

HON'BLE SHRI SOMNATH SOM, VICE CHAIRMAN.
HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J).

Sujogya Kumar Sahoo,
s/o Shri Joginath Sahoo,
Central Excise and Customs
Collectorate, C.R. Buildings,
Rajaswa Vihar,
Bhubaneswar,
Dist - Puri.

... Applicant.

By Advocate Shri Antaryami Rath.

Versus

1. Union of India, represented by
The Secretary,
Ministry of Finance Department
of Revenue,
New Delhi.
2. Collector,
Central Excise and Customs,
C.R. Building, Rajaswa Vihar,
Bhubaneswar,
Dist. Puri.
3. Shri Bangali Mundari,
Officiating Deputy Office
Superintendent (L-II), Office of
the Assistant Collector,
Central Excise and Customs,
Rourkela,
Dist - Sundargarh.

... Respondents.

By Advocate Shri P.N. Mohapatra.

O R D E R

HON'BLE SMT. LAKSHMI SWAMINATHAN, MEMBER(J).

The applicant, who is working as a Tax Assistant with
the respondents, is aggrieved that he has not been considered

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for promotion to one of the posts of Deputy Office Superintendent (Level-II) (for short 'DOS-II') against the reserved point provided for physically handicapped persons.

2. The brief facts of the case are that the applicant, who is ^a orthopaedically handicapped person, had been selected through the Staff Selection Commission against physically handicapped quota in terms of the O.M. issued by the Government of India, Department of Personnel dated 4.11.1977. Thereafter, he had been promoted as Tax Assistant w.e.f. 1.1.1991. According to the applicant, 4 new posts of DOS-II and 11 posts of Inspectors of Central Excise and Customs had fallen vacant in the promotion quota. The applicant states that he fulfils the requirements provided in the Central Excise and Land Customs Department Recruitment Rules, 1979 as he has completed five years of regular service in the grade of U.D.C. and Tax Assistant and he is, therefore, eligible for consideration for promotion to the post of DOS-II. He has also referred to the DOP&T O.M. dated 20.11.1989 on the question of reservation for the physically handicapped persons and the posts to be filled by promotion. The learned counsel for the applicant has submitted that the respondents should, therefore, have considered the applicant for promotion against the reserved vacancies for the physically handicapped persons taking into account the total number of vacancies that arise for being filled by promotion in accordance with the O.M. of 1989 which the respondents have failed to do. He also relies on the DOP&T O.M. dated 20.1.1984 and submits that the applicant should be given ^{the promotion} post in the 3% quota for handicapped persons. According to the applicant, since there were four vacancies

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of DOS-II in the year 1991, there would be atleast one point which should have been reserved for ^{an Rs} orthopaedically handicapped person and he should have been considered for that post. He had made a representation on 13.3.1991 which he states, has not been replied. He has, therefore, prayed that the relevant records may be called for and he may be considered for promotion to the post of DOS-II against the reserved point in the roster for physically handicapped persons in terms of the Govt. of India's O.Ms dated 4.11.1977, 20.11.1989 and 20.1.1984. The learned counsel for the applicant has, however, submitted that he would be satisfied if this application is disposed of by issuing a direction to the departmental authorities to fix the roster in accordance with the D.O.P&T's circulars dated 4.11.1977, 20.11.1989 and 20.1.1984.

3. The respondents have filed the reply and we have also heard the learned counsel for the respondents. They have admitted that there are four posts vacant in the grade of DOS-II. They have also submitted that the DOS-II post is a non-selection post to be filled from amongst the eligible Tax Assistants, U.D.Cs, and Stenographers Gr-III on seniority-cum-fitness basis after selection by the DPC. They have, therefore, submitted that the claim of the applicant to be promoted just after completion of the qualifying service is baseless. According to them, in terms of the DOP&T O.M. dated 20.11.1989 reservation in promotion posts has been provided for the first time and hence the O.M. dated 20.1.1984 is not applicable to the applicant's case. They have submitted that in 1990 there were only two vacancies and in 1991 there were 15 vacancies and so 3% of this would be less than one. Hence, no reservation for the physically handicapped persons can be given.

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4. In pursuance of the Tribunal's order dated 25.7.1995, the respondents have submitted certain further clarifications/O.Ms issued by the Government dated 20.9.1994, 13.7.1993 and 10.11.1994 which are placed on record. In the O.M. dated 20.9.1994, it has been stated that the vacancies reserved for physically handicapped will be calculated as per the instructions on the subject contained in O.M. dated 1.4.1986 and detailed instructions have been given as to how the vacancies for the physically handicapped persons have to be worked out as against the SC/ST and OBC categories of reservation. The respondents have also submitted a Fax copy of the letter from Respondent 1 to Respondent 2 in which it has been stated that the issue relating to reservation for physically handicapped persons in promotion is still under review by the DOP&T and the final decision in this regard arrived at as and when received will be intimated for compliance. The learned counsel^{has also}/relied on the judgements of the Supreme Court in Ajit Singh Januja & Ors. Vs. State of Punjab & Ors. with connected case (AIR 1996 SC 1189) and Indra Sawhney Vs. Union of India (AIR 1993 SC 477).

5. The reliance of the respondents on the judgements in Ajit Singh Januja^{and Indra Sawhney(supra)}^(supra) will not assist them as the question under consideration in those cases was regarding reservation quota in respect of SC/ST and OBC categories and not physically handicapped persons. It is also relevant to note that no final decision, as mentioned above, has been placed on record^{by the Respondents} for the learned counsel for the respondents has satisfactorily explained

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as to how the vacancies reserved in respect of ^{the}/physically handicapped persons have to be computed in the case of ~~promotion~~ posts of DOS-II.

6. In the facts and circumstances of the case, this O.A. is disposed of with the following directions:

The respondents shall consider the claim of the applicant for promotion to the post of DOS-II for the year 1991 and onwards against the promotion post in the reservation quota for physically handicapped persons ~~in~~ accordance with the relevant recruitment rules and instructions, within a period of three months from the date of receipt of a copy of this order, with intimation to the applicant. If the applicant ^{shall} is found eligible for promotion, he/~~be~~ entitled to all consequential benefits in accordance with law. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

Somnath Som
(Somnath Som)
Vice-Chairman 14/3/97

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