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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 379 OF 1992

Cuttack, this the 20th day of May, 1999

Jayanta Kumar Bhattacharyee ...

Applicant

Vrs.

Union of India and others

Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*

G. NARASIMHAM
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
20.5.99

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 379 OF 1992
Cuttack, this the 20th day of May, 1992

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Jayanta Kumar Bhattacharyee, aged about
41 years, son of Dr.S.K.Bhattacharyee, at present
working as Inspector, Central Storage Depot,
Qr.No. 3R72, Aviation Research Centre,
Charbatia, Cuttack Applicant

Advocate for applicant - Mr.B.S.Tripathy

Vrs.

1. Union of India, represented by
Cabinet Secretary (Cabinet Secretariat),
Room 8-B South Block,
New Delhi.
2. Director, Aviation Research Centre, East Block-5,
Level V, R.K.Puram, New Delhi-110 066.
3. Deputy Director (Admn.), Aviation Research Centre,
Charbatia, Dist.Cuttack, Pin-754 028

..... Respondents
Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for a direction to the respondents to fill up five
posts of Inspector on regular basis by calling DPC and to
consider the applicant for the post of Inspector as he is
coming in the zone of consideration in view of the fact
that five regular posts are vacant. By way of interim
relief, it was prayed that pending adjudication of the OA,
the applicant should be considered along with others for
the post of Inspector or in the alternative the DPC
proceedings should be stayed. On the date of admission of

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application on 11.8.1992 the prayer for interim relief was rejected subject to the condition that the result of the Application would govern the future service benefits of the petitioner.

2. Facts of this case, according to the petitioner, are that on 3.12.1970 he joined as Havildar in Aviation Research Centre (A.R.C.), Charbatia. The post of Havildar was later on redesignated as Senior Armourer. On 1.7.1971 he was appointed as L.D.C. which was outside his cadre without his consent or without obtaining any option from him. Subsequently, on 22.5.1976 he was posted back as Havildar and was given seniority in the post of Havildar (Senior Armourer) for the period he worked as LDC. He was promoted to Sub-Inspector on 1.12.1976. While he was working as Sub-Inspector, one S.N.Samal filed OJC No. 1018 of 1977 before the Hon'ble High Court of Orissa claiming promotion to the post of Sub-Inspector from the date the applicant was so promoted. The Hon'ble High Court in their order dated 14.5.1980 held that the appointment of the present applicant as Sub-Inspector would not be disturbed. But necessary steps should be taken by the opposite parties to give the same benefits to S.N.Samal, the writ applicant before them. According to the Recruitment Rules, a Sub-Inspector having five years of experience is entitled to be considered for the post of Inspector. As the applicant had completed five years of service as Sub-Inspector, he was considered by the Selection Committee for promotion to the post of Inspector along with others and in order dated 28.1.1985 (Annexure-2) the applicant along with four others were promoted to the post of Inspector on ad hoc basis. Accordingly, the applicant joined the post of Inspector 28.1.1985 and is continuing

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as such. After the order of the Hon'ble High Court in the case of S.N.Samal, several applications were filed by other senior Havildars claiming the benefit of the said judgment and promotion to the post of Sub-Inspector alleging that they are senior to the applicant. These applications were transferred to the Tribunal and all these T.As. were disposed of in order dated 29.4.1988 (Annexure-3). In view of the above order, the respondents without conducting the DPC for filling up of the five posts of Inspector passed order No.A-21/92 (Annexure-4) reverting the applicant on 25.3.1992 to the post of Sub-Inspector. Against this order, the applicant preferred OA No. 138/92 and the order of reversion was stayed. In OA No.138/92 the respondents filed counter as also application for vacation of stay in which they stated that in order to accommodate 11 persons who have been declared senior to the applicant by the Tribunal, the applicant was reverted to the post of Sub-Inspector. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. Respondents in their counter have opposed the prayer of the applicant by stating that seven T.As. were disposed of by the Tribunal in order dated 29.4.1988. The decision of the Tribunal was upheld by the Hon'ble Supreme Court in SLP no. 11455/90. In the order dated 29.4.1988 eleven Senior Armourers were declared senior to the applicant and as they had to be given promotion to the posts of Sub-Inspector and Inspector, the applicant had to be reverted from the post of Inspector held by him on ad hoc basis to the post of Sub-Inspector with effect from 25.3.1992. The respondents have further stated that altogether there were five posts of Inspector in Charbatia, but there are only two vacancies. Three posts of Inspector have been filled up by

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M.D.Mohapatra, S.A.Ganesan and S.N.Samal. These three persons were promoted to the post of Inspector on adhoc basis along with the petitioner in January 1985. But as there was no controversy about their seniority, their ad hoc promotions have been regularised. Thus, there are only two vacant posts. The respondents have stated that the remaining two vacancies were reserved for SC and ST. The DPC has also approved the promotion of one SC candidate and promotion of one General candidate against ST quota after de-reservation. Both the incumbents are senior to the applicant and as such he cannot be considered for the post. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri B.S.Tripathy, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have perused the records. The learned counsel for the petitioner has filed written note of arguments with copy to the other side which has also been taken note of.

5. For the purpose of considering the prayers made in this O.A. by the petitioner, it is not necessary to go into the facts of the previous litigations referred to by both the applicant and the respondents in their pleadings. The first prayer of the applicant is for a direction to the respondents to fill up the five vacant posts of Inspector. The respondents have pointed out that altogether there were five posts of which three have already been filled up by persons who are senior to the applicant and there are only two vacancies. In this petition, the applicant has not challenged the position of his seniority which has in any case been settled in earlier litigations between the parties. As such,

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his prayer for a direction to fill up five vacant posts of Inspector is held to be without any merit because there are only two vacant posts according to the respondents and this averment of the respondents in the counter has not been denied by the applicant. As regards the two vacant posts the respondents have pointed out that those two posts were reserved for SC and ST candidates and as a matter of fact, against the post reserved for SC, one SC candidate, who is also senior to the applicant, has been recommended by the DPC. As this post is coming under SC quota, the applicant cannot seek consideration of his case for promotion against this post. The fifth post, according to the respondents, was reserved for ST candidate. But the DPC has recommended a General candidate for that post after the post is dereserved. The respondents have pointed out that the person recommended by the DPC to be appointed against the fifth post after the same is dereserved is also a Sub-Inspector who is senior to the applicant. In view of this, as the respondents have already taken steps to fill up the two vacant posts, it is not necessary to issue a direction to the respondents to fill up the two vacant posts. The applicant also cannot seek consideration against those two posts because one post is reserved for SC and for the other post, a person senior to the applicant has been recommended by the Selection Committee.

6. In consideration of all the above, we hold that the applicant has not been able to make out a case for any of the reliefs claimed by him. The Application is, therefore, held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

SOMNATH SOM

VICE-CHAIRMAN