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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.492 OF 1992

Cuttack, this the 23rd day of April, 1999

Laxmidhar Moharana

....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)

MEMBER(JUDICIAL)

(SOMNATH SOM)

23.4.99  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 492 OF 1992  
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CORAM:

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

.....

Laxmidhar Moharana,  
Enforcement Officer,  
son of late Bhramarbar Moharana, aged about 40 years,  
office of the Provident Fund Inspector,  
Barabati Stadium,  
Cuttack-753001 ..... Applicant

Advocates for applicant - M/s B.B.Ratho  
B.N.Rath  
R.P.Mohapatra  
K.R.Mohapatra  
S.Ghosh  
S.K.Jethy  
M.K.Panda  
P.K.Panda.

Vrs.

1. Union of India, represented through  
Ministry of Labour, Shrama Sakti Bhawan,  
New Delhi-1.
2. Central Provident Fund Commissioner,  
9th Floor, Mayur Bhawan,  
New Delhi-1.
3. Regional Provident Fund Commissioner,  
Orissa, Bhabishyanidhi Bhawan,  
Janpath, Bhubaneswar-7(Orissa)
4. Laximidhar Oram, 43 years,  
son of Manga Oram  
at present serving as Public Relations Officer,  
in the office of the R.P.F.C., Sub-Regional Office,  
Rourkela, Mangal Bhawan,  
Rourkela-769 001 ..... Respondents

Advocates for respondents - M/s U.B.Mohapatra  
A.K.Misra

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 quashing the order dated 23.9.1992 reverting the



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applicant and another person from the post of A.A.O. to the post of Section Supervisor.

2. The case of the applicant is that he was serving as Head Clerk in the office of Regional Provident Fund Commissioner (respondent no.3) and was promoted to the post of Assistant Accounts Officer/Enforcement Officer in the scale of Rs.1640-2900/- on temporary and ad hoc basis with effect from 15.5.1991. The applicant was promoted on ad hoc basis along with Shri S.C.Lamai. Subsequently, one Laxmidhar Oram (respondent no.4) was given promotion on 26.7.1991 to the said post on temporary and ad hoc basis and on similar terms and conditions. Thus, Laxmidhar Oram is junior to the applicant in the promoted post. The applicant and two other persons were given ad hoc promotion to the post of AAO/EO as a stop gap arrangement till the posts are filled up by candidates through direct recruitment/<sup>or</sup> from the examination quota. This is clear from the order of promotion dated 15.5.1991 of the applicant and one Shri S.C.Lamai, which is at Annexure-1. Respondent no.3 in the impugned office order dated 21.9.1992 directed reverting the applicant along with Shri S.C.Lamai on the ground that three direct recruit candidates have been appointed. The applicant states that there are still two more posts of AAO/EO lying vacant and these posts are also to be filled up through direct recruitment or by candidates from examination quota. In view of this, the applicant has stated that he and Shri S.C.Lamai should not have been reverted. It is also stated that while reverting the applicant, respondent no.3 should have reverted Shri Laxmidhar Oram who had been given ad hoc promotion later on the principle of last come first go. In the context of the above facts, he has come up with the prayer referred to earlier.

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3. By way of interim relief it was claimed that the respondents should be directed not to revert the applicant during the pendency of the OA. On the date of admission on 29.9.1992 by way of interim measure it was directed that the petitioner should not be reverted to the post of Head Clerk until further orders. After hearing the other side, in order dated 18.2.1993 it was ordered that as the learned Additional Standing Counsel has submitted that two posts of AAO/EO are now vacant the applicant should be allowed to occupy one such post until further orders. This interim order has continued till date.

The departmental

4. respondents in their counter have stated that the assertion of the applicant that two vacancies have arisen in the cadre of AAO/EO due to promotion of S/Shri J.S.Patro and B.N.Mangal is not correct. It is stated that Central Provident Fund Commissioner had issued ad hoc promotion order in favour of S/Shri J.S.Patro and B.N.Mangal to the post of Assistant Provident Fund Commissioner. In the promotion order it has been stated that the order will be effective from the date of assumption of charge of the new posts only at the new place of posting. Accordingly, Shri Mangal had assumed charge on 25.8.1992, but Shri Patro has not assumed charge as A.P.F.C. at his new place of posting in West Bengal and as such only one resultant vacancy in the cadre of AAO/EO was available as on 21.9.1992. Therefore, as against the averment of the petitioner that four vacancies were available, actually three vacancies were available in which as a stop gap arrangement promotions were given to Shri S.C.Lamai and the applicant and to Shri Laxmidhar Oram. The departmental respondents have also denied the assertion of the petitioner that he has made a representation to the departmental authorities not to revert him. They have

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further stated that in the cadre of AAO/EO 50% is to be filled up by departmental promotion, 25% by examination quota, and the balance 25% by direct recruitment quota. The Central Provident Fund Commissioner who is the cadre controlling authority/appointing authority of AAO/EO had issued appointment orders in favour of S/Shri Abanindra Mohanty, M.A.H.Baig and Sambhu Nath Parida against the direct recruitment quota and in this order respondent no.3 has been directed to revert the juniormost persons. Therefore, consequent upon appointment of three direct recruit EO/AAO three employees had to be reverted by respondent no.3. The petitioner being one of the three juniormost AAO/EO has to be perforce reverted. As regards the contention that Shri Laxmidhar Oram is junior to the present petitioner, it is submitted that in OA No. 384 of 1992 the Tribunal have restrained the respondents from passing any order of reversion without leave of the Court. In MA No. 425/92 arising out of OA No.384/92 the Tribunal have stayed reversion of Shri Oram. In view of this, it is stated that the respondents have reverted the applicant and Shri S.C.Lamai rightly and because of this they have opposed the prayer of the applicant.

5. The applicant has filed a rejoinder in which he has stated that Shri B.N.Mangal joined as APFC at Rourkela on 25.8.1992 and Shri J.S.Patra joined at Howrah Branch on 26.10.1992. The applicant has stated that even if it is taken for argument's sake that these two vacancies were not there originally, these vacancies have arisen on 25.8.992 and 26.10.1992. It is further stated that besides the above two persons, two other persons S/Shri A.C.Tripathy and D.Mohapatra have been transferred from the cadre of AAO/EO to the Internal Audit party in 1991 and

1992 and therefore, the total number of vacancies is four. The applicant has denied the assertion of the departmental authorities that there is only one vacancy when the counter was filed on 2.12.1992. He has also submitted that he has filed a representation which has been duly received in the office of Regional Provident Fund Commissioner on 23.9.1992. He has also stated that the practice in the office of RPFC is to give ad hoc promotion to the seniormost persons in the next lower cadre against temporary vacancies. It is also submitted that the total vacancies being eight in number, the direct recruitment quota is only two being 25% and the Central Provident Fund Commissioner has illegally given posting to three persons as direct recruits. The applicant has stated that subsequently three more vacancies have arisen and as such the applicant has the right to continue in the higher post. It has also been stated that keeping Shri Laxmidhar Oram in the post of AAO/EO and reverting the applicant is a clear instance of hostile discrimination and on the above ground, the applicant has reiterated his prayer in the OA.

6. Respondent no.4 Shri Laxmidhar Oram has filed a counter in which he has stated that he is senior to the applicant and Shri S.C.Lamai in service as also in the cadre of Head Clerk, now redesignated as Section Supervisor. But ignoring his claim, respondent nos. 2 and 3 promoted the applicant and Shri S.C.Lamai on ad hoc basis to the post of EO/AAO in the order dated 15.5.1991. For this respondent no.4 has filed OA No.384/92 where the applicant is one of the respondents. The averment made by the applicant that Laxmidhar Oram is junior to the applicant is not correct. Respondent no.4 has enclosed the seniority list of Head Clerks of Orissa Region as on 1.1.1991 from which it is seen that the name of respondent no.4 appears against serial no.13 whereas the name of the

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applicant is shown against serial no.24 and that of Shri Ss.C.Lamai against serial no.23. Respondent no.4 has stated that as he is senior to the applicant and Shri S.C.Lamai in the rank of Section Supervisor, he has the right to continue even when the applicant and Shri S.C.Lamai have been reverted.

7. We have heard Shri B.N.Rath, the learned counsel for the petitioner, Shri A.K.Mishra, the learned counsel for respondent no.4, and Shri U.B.Mohapatra, the learned Additional Standing Counsel. The learned Additional Standing Counsel has filed certain documents with copy to the other side. The learned counsel for the petitioner opposed filing of these documents. It was ordered by us that the prayer of the learned Additional Standing Counsel to take note of these documents and the objection of the learned counsel for the petitioner to acceptance of these documents would be dealt with by us at the time of passing final orders on this OA.

8. The aspect regarding filing of the documents by the learned Additional Standing Counsel can be taken up first. The learned Additional Standing Counsel has filed a Memo stating that in the order dated 27.4.1994 the Tribunal had directed the departmental respondents to file a statement relating to total number of sanctioned posts of AAO/EO and the total number of posts allotted to each of the categories mentioned above as well as a statement showing whether any of the juniors of the applicant are continuing in promotional post of AAO/EO against the 50% quota on ad hoc basis. Accordingly, a statement has been filed showing the total number of sanctioned posts available under different quotas like seniority quota, examination quota and direct recruitment quota; the total

persons in position and the present vacancies. It has also been stated in this Memo that no person junior to the petitioner is continuing in the cadre of AAO/EO against 50% quota to be filled up by promotion. As this statement has been filed in pursuance of the order dated 27.4.1994 which has been passed after hearing the learned counsels for both sides, the Tribunal is duty bound to take this memo into consideration. It is also seen that the petitioner has sufficient notice of this memo because a copy of the order dated 27.4.1994 in which the departmental respondents were directed to file the statement has also been given to the learned counsel for the petitioner.

9. From the above recital of facts by both sides it is clear that the petitioner has based his claim for continuing in the post of AAO/EO on ad hoc basis on three grounds. The first point made is that he has been reverted even though there are vacancies available though in direct recruitment or examination quota against which he could have been continued in the post of AAO/EO on ad hoc basis and therefore his reversion is illegal. This contention is wholly without any merit because it is well settled that ad hoc appointee to a higher post has no right to continue in that higher post, more so when the higher post, as in this case, falls within direct recruitment quota according to the respondents. Even granting for argument's sake the contention of the petitioner that there were vacancies, whether or not to give ad hoc promotion against such vacancies is a matter to be decided by the departmental authorities taking into account the need for manning the higher posts. The Tribunal cannot interpose its judgment in place of the decision taken by the departmental authorities. This contention of the learned counsel for the petitioner is therefore rejected.

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10. The second ground of attack is that while in the impugned order the applicant has been reverted, Shri Laxmidhar Oram, who, according to the applicant, is junior to the applicant in the promotional post of AAO/EO, has been retained in the higher post and therefore the reversion of the applicant is illegal. This contention is also without any merit because Shri Laxmidhar Oram (respondent no.4) has shown from the seniority list that he is much senior to the applicant in the rank of Head Clerk (redesignated as Section Supervisor). The fact that the applicant has been given ad hoc promotion earlier does not make him senior to respondent no.4 in the rank of EO/AAO. The order dated 15.5.1991 in which the applicant has been given ad hoc promotion to the post of AAO/EO specifically provides in paragraph 3 that the officiating ad hoc promotion of the applicant will not prejudice the seniority of other individuals in the cadre of Head Clerk and the period of ad hoc officiation will not count towards the applicant's probation or seniority in the event of his promotion to the post of EO/AAO on regular basis. From this it is clear that just because the applicant has been promoted on ad hoc basis earlier than his senior Shri Laxmidhar Oram (respondent no.4) he cannot claim seniority in the rank of AAO/EO on the basis of his earlier ad hoc promotion. This contention of the petitioner is accordingly rejected.

11. The third contention of the learned counsel for the petitioner is that against the direct recruitment quota there were two vacancies, but the Central Provident Fund Commissioner has appointed three persons out of UPSC examination for direct recruitment quota. The departmental respondents in paragraph 6 of the counter have pointed out that appointment to direct recruit candidates has been issued by Central Provident Fund Commissioner basing upon the information available with him. In UPSC

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examination, the number of vacancies has to be intimated to UPSC and basing on the number of vacancies intimated to UPSC, the Commission recommends names for appointment. The departmental respondents in their memo have clearly pointed out that the entire departmental promotion quota has been filled up and the applicant is continuing against direct recruitment quota. In view of this, as the applicant is continuing on ad hoc basis against a direct recruitment quota post, which has been admitted by him in his OA, this contention of the learned counsel for the petitioner is without any merit and is rejected. Had the Central Provident Fund Commissioner appointed only two direct recruits as AAO/EO, even then the applicant being the juniormost in the rank of Section Supervisors amongst the three persons who have been given ad hoc promotion, was liable to be reverted.

12. In consideration of all the above, we hold that the applicant has not been able to make out a case for the relief claimed by him. The Application is, therefore, held to be without any merit and is dismissed but, under the circumstances, without any order as to costs. The stay order stands vacated.

(G.NARASIMHAM)  
MEMBER(JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN  
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