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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.606 OF 1992
Cuttack, this the 7th day of April, 1998

Shri Bhim Charan Behera Applicant

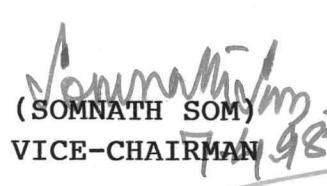
Vrs.

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.


(S.K. AGRAWAL) 7/4/98
MEMBER (JUDICIAL)


(SOMNATH SOM)
VICE-CHAIRMAN 7/4/98

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI S.K.AGRAWAL, MEMBER (JUDICIAL)

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By the Advocates - M/s P.C.Kar & J.Gupta.

Vrs.

1. Union of India,
represented by the Secretary,
Central Board of Excise & Customs,
New Delhi.
2. Collector, Central Excise & Customs,
Bhubaneswar, Rajaswa Bihar,
Bhubaneswar-4, Dist.Puri, Orissa.
3. Additional Collector (P&V),
now redesignated as Deputy Collector (P&V),
Central Excise & Customs, Rajaswa Bihar,
Bhubaneswar-4, Dist.Puri, Orissa ...Respondents
By the Advocate - Mr.Ashok Mohanty
Sr.C.G.Standing
Counsel

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O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the applicant has prayed for quashing the order dated 29.10.1992 (Annexure-2) reverting the applicant from the post of Administrative Officer to his earlier post of Deputy Office Superintendent and the order dated 29.10.1992 (Annexure-3) promoting him to the post of Office Superintendent and posting him in headquarters office, Central Excise &Customs, Bhubaneswar.

2. Facts of this case, according to the applicant, are that he was appointed as L.D.Clerk on 18.7.1964 in Calcutta and Orissa Central Excise Collectorate. He was promoted to the post of U.D.Clerk with effect from 13.1.1972. After bifurcation of Calcutta Zone in 1975 he was confirmed in the cadre of U.D.C. with effect from 15.2.1977 and promoted to the post of Deputy Office Superintendent (Level-II) on 20.12.1978 and confirmed in that post with effect from 1.8.1982. He was further promoted to the post of Deputy Office Superintendent (Level-I) on 31.5.1985 and was promoted to ^{the} grade of Administrative Officer/Examiner of Accounts/Assistant Chief Accounts Officer in order

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dated 1.11.1988. The applicant was informed in memo dated 22.1.1992 that "Kumbhar" has been excluded from the list of Scheduled Castes for which the applicant submitted an application stating that he belongs to the category of Other Backward Classes as per recent record of rights of Revenue Officer, Udala. But without verifying his claim and without giving him an opportunity of hearing, the respondents issued letter dated 24.1.1992 (Annexure-1). In this letter it was mentioned that consequent upon exclusion of "Kumbhar" community from the list of Scheduled Castes with effect from 22.6.1976, the petitioner is not entitled to facilities and benefits admissible to members of Scheduled Castes with effect from that date. The grievance of the petitioner is that he never belonged to the category of "Kumbhar" at any stage of time. He is "Kummary" by caste and the order of reversion has been passed on wrong basis and therefore, he has come up with the aforesaid prayers.

3. The respondents have filed a counter in which they have mentioned that the applicant joined as LDC on 18.7.1964 in the erstwhile Calcutta-Orissa West Bengal Collectorate of Central Excise & Customs. As per his own declaration, he claimed to be a member

of Scheduled Castes belonging to "Kumbhar" community and accordingly, it was so recorded in his Service Book on 30.7.1964 which was also duly certified by Deputy Collector, Central Excise & Customs, Cuttack, on 30.7.1964. Subsequently, the applicant submitted a certificate issued by Tahasildar, Udal, on 17.1.1970 pasted in the Service Book and certified by Superintendent of Headquarters Office on 6.2.1970 which showed that the petitioner belongs to S.C. KUMBHAR as certified by Tahasildar, Udal, in his certificate dated 17.1.1970. As he was taken to be a Scheduled Caste, he was considered for promotion to the post of Administrative Officer/Examiner of Accounts/Assistant Chief Accounts Officer, by the D.P.C. held on 26.2.1988 as an officer of S.C. category against vacancies reserved for S.C. Being found suitable by D.P.C., the applicant was promoted to the grade of Administrative Officer/Examiner of Accounts/Assistant Chief Accounts Officer against a vacancy reserved for Scheduled Caste and he joined as Administrative Officer on 1.11.1988. Respondents subsequently found that "Kumbhar" community has been excluded from the list of Scheduled Castes since 22.6.1976. Therefore, in order dated 22.1.1992 at Annexure R/1, the special facilities given to him as a

member of Scheduled Castes were withdrawn. As his promotion to the post of Administrative Officer was on the basis of his belonging to Scheduled Caste and as he was promoted against a post reserved for S.C., his case was reviewed by D.P.C. on 7th and 8th October 1992 and as per finding of the Review D.P.C., the applicant was reverted to the grade of Deputy Office Superintendent (Level-I) in the impugned order dated 29.10.1992. In the impugned order dated 29.10.1992 he was posted as Office Superintendent. He joined as Office Superintendent under protest on 14.12.1992. The respondents have further stated that the petitioner's present claim that he belongs to "Kummari" caste is an afterthought as he had all along maintained that he belongs to "Kumbhar" caste. He had earlier filed OA No.131 of 1990 in which he had admitted that he belongs to "Kumbhar" community and as such, a Scheduled Caste. In view of this, the respondents have stated that the applicant cannot change his stand and say that he does not belong to "Kumbhar" community and is "Kummari" by caste. On the above grounds, the respondents have opposed the prayer of the applicant.

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4. We have heard the learned lawyer for the applicant and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing on behalf of the

respondents, and have also perused the records. The written note of submissions filed by the learned lawyer for the applicant has also been taken note of.

5. It is not in dispute that "Kumbhar" community was excluded from the list of Scheduled Castes with effect from 22.6.1976 in Government of Orissa letter of the same date. It is also the admitted position that the applicant was promoted to the post of Administrative Officer on the assumption that he belongs to Scheduled Caste and he was so promoted against a post reserved for S.C. Only point for consideration is whether the applicant belongs to "Kumbhar" caste or, as he now claims in the O.A., "Kummar" caste. We find from the order dated 6.11.1992 in O.A.No.131/90 that the learned lawyer for the petitioner had also appeared for the petitioner in that case and had submitted that the petitioner is "Kumbhar" by caste which is a Scheduled Caste. The relevant portion of the order dated 6.11.1992 is quoted below:

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4. It was submitted by Mr.P.C.Kar, learned counsel for the petitioner that the petitioner is a "KUMBHAR" (Anarya) by caste and therefore he being a member of the scheduled caste, he should have got a faster promotion and should have been treated as senior to the Opposite Party Nos. 5 to 14....."

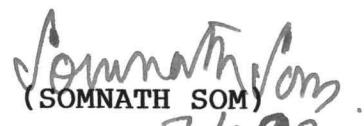
From the above, it is clear that in the earlier O.A., the applicant himself had taken the stand that he belongs to "Kumbhar" (Anarya) community and therefore, it is not possible for him now to take a stand that he does not belong to "Kumbhar" community but is "Kummarji" by caste, nor can he be allowed to change his stand in this fashion. Moreover, while in the earlier O.A. he had claimed that he belongs to Scheduled Caste, in paragraph 4.2 of the present application, he has mentioned that he submitted an application to respondent no.2 stating that he belongs to a Backward Class. Along with the written submissions, the petitioner has submitted a certificate from Tahasildar, Udal, stating that the petitioner's son is "Madia" tribe and belongs to Scheduled Tribe. It was argued by the learned lawyer for the petitioner at the time of hearing that the petitioner belongs to Scheduled Tribe. From the above, it is very clear that the petitioner is merely changing his stand. In any case, even if he is taken to be a Backward Class as mentioned in the O.A., he cannot get promotion as a Backward Class to a post reserved for Scheduled Caste. The order of his reversion from the post of Administrative Officer reserved for Scheduled Caste cannot, therefore, be

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found fault with. His late plea that he belongs to Scheduled Tribe on the basis of Scheduled Tribe Certificate issued by Tahasildar, Udal, to his son cannot be relied upon and in any case, in the O.A., he has nowhere claimed that he belongs to Scheduled Tribe.

6. In the result, therefore, the application fails and is rejected but, under the circumstances, without any order as to costs.


(S.K.AGRAWAL) 7/4/98
MEMBER (JUDICIAL)


(SOMNATH SOM) 7/4/98
VICE-CHAIRMAN

AN/PS