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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 574 OF 1993
Cuttack, this the 14th day of September, 1999

Jayadeep Nayak, IPS 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)
VICE-CHAIRMAN

14.9.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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ORIGINAL APPLICATION NO. 574 OF 1993
Cuttack, this the 14th day of September, 1999

CORAM:

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

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Jayadeep Nayak, IPS,
son of Jaganath Nayak of Nirmal Kuttira, Bangali Sahi,
Cuttack Applicant

Advocates for applicant - M/s GAR Dora
V.Narasingha
S.Udgata

Vrs.

1. Union of India, through Secretary, Ministry of Home Affairs, New Delhi.
2. State of Orissa, represented through Home Secretary, Government of Orissa, Secretariat Building, Bhubaneswar
3. Secretary, Ministry of Personnel, Training, Pension & Public Grievances, North Block, New Delhi-110 001.

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Respondents

Advocates for respondents - Mr.B.Dash
for R 1 & 2
&
Mr.K.C.Mohanty
GA for R-2

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

SCM.

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for a direction to the respondents to appoint/allot/depute/post the applicant either to Orissa or Maharashtra Cadre of Indian Police Service.

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2. The case of the applicant is that he appeared in All India Civil Service Examination in 1984 and was allotted to Indian Postal Service which he joined in 1985. While working as Senior Superintendent of Post Offices, he again took the Civil Service Examination in 1990 and was selected for Indian Police Service. He joined the training in September 1991 and was provisionally allotted to Manipur-Tripura Cadre in 1992. The applicant's case is that in the year 1990 Indian Police Service officers were appointed from the list of successful candidates in All India Merit List from serial no.94. One Debasis Panigrahi of the same batch secured the 96th position and the applicant secured 108th position. For both of them Orissa was the home State. Shri Panigrahi was allotted to his home State Orissa and two other officers Manoj Gupta and Y.Mudgal, serial nos. 197 and 209 respectively in the Merit List were allotted to Orissa Cadre. The applicant has stated that on the basis of principles of cadre allocation he should have been allotted either to Orissa or to Maharashtra Cadre. He has also mentioned that his wife is suffering from Bronchial Asthma due to climatic condition in Tripura. He accordingly represented for deputation to State of Orissa and Government of Orissa in letter dated 23.6.1993 at Annexure-8 recommended that the applicant's deputation to Orissa should be sanctioned. In the context of the above facts, the applicant has come up with the prayer referred to earlier.

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3. State of Orissa (respondent no.2) in their counter have stated that on the basis of Civil

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Service Examination 1990 three candidates were allotted to Orissa Cadre of Indian Police Service. Respondent no.2 has also stated that the applicant had submitted representation to Union Home Ministry to allow him to come to Orissa on deputation on the ground of health of his wife. On receipt of a copy of the representation Government of Orissa on their own wrote to Government of India to sanction deputation of the applicant to Orissa, but no orders of Government of India were received in this regard.

4. Government of India in their counter have taken the stand that under Rule 6 of Central Administrative Tribunal (Procedure) Rules, 1987, the applicant should have filed the application before the Guwahati Bench of the Tribunal or before the Principal Bench where the cause of action has arisen and the present application is not maintainable before the Cuttack Bench and should be dismissed on this ground alone. They have further stated that on the basis of rules and instructions dealing with cadre allocation the applicant has been rightly allotted to Manipur-Tripura Cadre and he cannot be allotted to Orissa Cadre or Maharashtra Cadre. On the above grounds, respondent nos. 1 and 3 have opposed the prayer of the applicant.

5. We have heard Shri G.A.R.Dora, the learned counsel for the petitioner, Shri K.C.Mohanty, the learned Government Advocate appearing for the State of Orissa, and Shri B.Dash, the learned Additional Standing Counsel for Government of India and have also perused the records.

6. As the question of jurisdiction of this Bench of the Tribunal to entertain this application has been raised, this point is taken up first. Rule 6 of Central Administrative Tribunal (Procedure) Rules, 1987

S. Som.

deals with place of filing application. This is quoted below:

"6. PLACE OF FILING APPLICATION-(1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen;

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

- (2) Notwithstanding anything contained in sub-rule (1) persons who have ceased to be in service by reason of retirement, dismissal or termination of service may at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

Thus, according to Rule 6, an application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction the applicant is posted for the time being or the cause of action, wholly or in part, has arisen. The applicant has been allocated to Manipur-Tripura Cadre and he is not posted in Orissa. In the OA in the verification the applicant has described himself as a resident of Bangali Sahi, Cuttack. He has not stated that he is posted in Orissa and therefore, Clause(i) of sub-rule (1) of Rule 6 is not attracted in this case. In this case, the cause of action cannot also be said to have arisen in Orissa

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either wholly or in part. Cadre allocation has been done by the Ministry of Home Affairs which is situated at Delhi. Government of Orissa has played no role in allocation of the applicant to Manipur-Tripura Cadre. Therefore, it cannot be said that the cause of action in this case has arisen either wholly or in part in Orissa. The proviso to sub-rule (1) of Rule 6 of the CAT (Procedure) Rules, 1987 deals with applications filed with the Registrar of the Principal Bench and sub-rule (2) deals with a person who has ceased to be in service by reason of retirement, dismissal or termination of service and we are not concerned in this case either with the proviso to sub-rule (1) or with sub-rule (2) of Rule 6. It has been submitted by the learned counsel for the petitioner that sub-rule (1) of Rule 6 provides that the application shall ordinarily be filed with the Registrar of the Bench within whose jurisdiction the applicant is posted for the time being or where the cause of action wholly or in part has arisen. It is further submitted that use of the word "ordinarily" would indicate that in special cases an applicant can file an Original Application before some other Bench. It has been mentioned by the applicant in paragraph 4(xiii) of the O.A. that under Rule 6 a particular Bench of the Tribunal has the discretion to entertain an OA for good and sufficient cause. It is further stated that State of Tripura with headquarters at Agartala comes under territorial jurisdiction of the Guwahati Bench of the Tribunal. Guwahati is about 1000 KM away from Agartala, the capital of Tripura and there is no direct rail communication between Agartala and Guwahati. There is also no direct air communication except via Calcutta and such mode of travel is prohibitively expensive. It is stated that the

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petitioner's father and relatives are staying at Cuttack and Bhubaneswar and they can look after and pursue the case at Cuttack Bench with less cost and that is how the application has been filed before this Bench. In support of his contention the learned counsel for the petitioner has relied on a Division Bench decision of Patna Bench of the Tribunal in the case of Mithilesh Kumar Singh vs. The Union of India and others, ATR 1992 (2) CAT 122. We have gone through this decision. Facts of that case are widely different. There the applicant, who belongs to the State of Bihar, applied for the post of Junior Telecommunication Officer in pursuance of an advertisement by Gujarat Telecommunication Circle. He was provisionally selected for the post. But his case was rejected for appointment to the said post on the ground that his registration in Employment Exchange in Gujarat Circle was not current. It was argued on behalf of the applicant in that case that as the result of his case was communicated to him at his Bihar address, part of the cause of action has arisen within the State of Bihar. In that case the Tribunal took the view that rules of procedure to be followed by the Tribunal are quite distinct from the rules of procedure followed by a civil court or by a High Court and the procedure with regard to territorial jurisdiction to be followed by the Tribunal cannot therefore be equated in all respects with the procedure regarding territorial jurisdiction to be exercised by a civil court or a High Court. The Tribunal also held that use of the word "ordinarily" connotes that ordinarily a Bench of the Tribunal should not entertain an application in respect of which cause of action wholly or in part has not arisen within its

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territorial jurisdiction, but in appropriate cases in exercise of best discretion of the Tribunal and in the interest of justice, an application can be entertained by a Bench even when the cause of action in respect of such application has not arisen wholly or in part within the territorial jurisdiction of that Bench. But this will depend upon special facts and circumstances of the case.

7. In the instant case, the only ground urged by the applicant is that he is posted in State of Tripura and the capital of State of Tripura, Agartala is 1000 KM away from Guwahati which is the seat of the Guwahati Bench and there is no direct communication by rail and air from Agartala to Guwahati. It is also submitted that the applicant's father and relatives are staying at Cuttack and Bhubaneswar and they can pursue the case of the applicant, if filed in Cuttack Bench. We have considered the above aspect carefully. The difficulty of an applicant in pursuing a litigation in a proper forum cannot be a ground for filing of the application before another Bench of the Tribunal. If the above contention is accepted, then depending upon similar difficulties of the applicants a particular Bench of the Tribunal can entertain applications which are required to be filed under Rule 6 ordinarily before any other Benches of the Tribunal. In that event, provisions of Rule 6 of the CAT (Procedure) Rules, 1987 will be largely frustrated.

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8. There is one more aspect of the matter which requires to be noticed. Respondent nos. 1 and 3 in page 11 of their counter have mentioned that the applicant had earlier filed OA No.2251/93 before the Principal Bench of the Tribunal seeking the same relief asking for a direction to allot the applicant to his home State Orissa or at least Maharashtra. A copy of the said application is at Annexure-R/VII. This application was dismissed for

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default in order dated 30.11.1993 which is at Annexure-R/VIII. From this it appears that the applicant knowing the provisions of Rule 6 of the CAT (Procedure) Rules, 1987, had earlier filed an application before the Principal Bench which was dismissed for default. But in paragraph 7 of the present application before us the applicant has made a declaration that he has not filed any previous application, writ petition or suit regarding the same matter before any Court or any other authority or any Bench of the Tribunal. Thus, the applicant has wilfully suppressed the fact of his earlier filing an application before the Principal Bench. This fact being brought on record in the counter of the respondents as above, the applicant in paragraph 13 of his rejoinder has mentioned that OA No. 2251/93 was dismissed by the Principal Bench due to default of the learned counsel and there was no decision on merit. From the above recital of facts, it is clear that the applicant has approached this Bench of the Tribunal after suppressing relevant facts and after giving the incorrect declaration and he is thus not even deserving of any equity.

9. In view of the above, we hold that the difficulty, if any, of the applicant to pursue his petition, if filed before Guwahati Bench of the Tribunal, cannot be a ground for this Bench to entertain the application. We therefore hold that this Bench has no jurisdiction to entertain the Application which is dismissed for not being maintainable. There would be no order as to costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

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(Signature)
(SOMNATH SOM)

14.9.99
VICE-CHAIRMAN