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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 56 Of 1993
Cuttack, this the 17th day of October, 2000

Shri Jugal Charan Mohanty 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.
(SOMNATH SOM)
VICE-CHAIRMAN
11.10.2000

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 56 OF 1993
Cuttack this the 17th day of October, 2000

CORAM:

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

Shri Jugal Charan Mohanty, son of Sri Damodar Kanar, Superintendent, R.M.S., Sub-Division, Siliguri, East Bengal, though the applicant's name was Jugal Charan Kanar but by virtue of the affidavit sworn to before the Executive Magistrate, Cuttack, his name has been corrected as Jugal Charan Mohanty, for all purposes

.... ...Applicant

Advocate for applicant - Mr.S.K.Dash

Vrs.

1. Union of India, represented through its Secretary, Ministry of Communication, Posts & Telegraphs, New Delhi and Director General of Posts.
2. The Chief Post Master General, Orissa Circle, Bhubaneswar.
3. Shri Niranjan Behera, Asst. Superintendent, R.m.S., Postal Stores Depot, Bhubaneswar.
4. Shri N.C.Bhoi, Assistant Superintendent R.M.S., Bhubaneswar, District-Puri... Respondents

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

O R D E R

S. Som.
SOMNATH SOM, VICE-CHAIRMAN

In this Petition the applicant has prayed for a direction to respondent nos. 1 and 2 to consider the case of the petitioner for regular appointment to the post of Assistant Superintendent of R.M.S. and for quashing the order dated 3.3.1986 (Annexure-2) and the order dated 12.5.1986 (Annexure-4) and the order dated 15.9.1992 (Annexure-6) rejecting his representation. He has also prayed to declare regularisation of respondent nos. 3 and 4

as illegal and to treat the petitioner as regular Assistant Superintendent, R.m.S. since 8.7.1982 along with arrear financial and other benefits with 12% interest.

2. The case of the petitioner is that he joined Postal Department as Sorting Assistant in October 1960 and after qualifying in the Inspectors Examination held in August 1973, joined as Inspector, R.M.S., Rourkela on 11.1.1974. The petitioner has stated that the post of Assistant Superintendent, R.M.S. is filled up by promotion from amongst the eligible Inspectors on the basis of seniority-cum-fitness. The petitioner was allowed to officiate on ad hoc basis in the post of Assistant Superintendent, R.M.S. on 8.7.1982. According to the petitioner, this order was issued against a clear vacancy on recommendation of the Departmental Promotion Committee. In 1983 D.P.C. was held and name of N.C.Bhoi (respondent no.4) was recommended for ad hoc promotion in May 1983. In the DPC of 1984 ad hoc appointment of Shri Bhoi was approved, but the ad hoc appointment of the petitioner was not approved. It is stated that the petitioner was never reverted and continued as Assistant Superintendent, R.M.S. He was allowed to continue on ad hoc basis upto 3.3.1986. He submitted a representation for giving him regular appointment but without any result. No meeting of DPC was held in 1985. In the DPC meeting held in February 1986 the petitioner's name was not recommended, but Niranjan Behera, a scheduled caste candidate (respondent no.3) was allowed to be promoted as Assistant Superintendent, R.M.S. and in the order at Annexure-2 Niranjan Behera was posted as Assistant Superintendent of Post Offices in the office of Post Master General, Bhubaneswar, in place of the applicant

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and the applicant was transferred and posted as Office Supervisor in the office of Senior Superintendent, R.M.S., North Division, Cuttack, the post held by Shri Behera. Against this order he filed representation but without any result. He has stated that his juniors have been retained in the rank of Assistant Superintendent, R.M.S. and he has been reverted. He has further stated that reservation of post in favour of N.C.Bhoi was illegal and both the private respondent nos. 3 and 4 have been wrongly promoted against reserved vacancies even though according to the roster point there were no reserved vacancies. He had approached the Tribunal in OA No.108 of 1986 which was disposed of in order dated 19.1.1990 (Annexure-5) directing the departmental respondents to prepare a roster point register properly taking into account the actual years of appointment after the rules relating to roster point came into force and determine the question of promotion of SC, ST and other category of persons to the post of Assistant Superintendent, R.M.S. The Tribunal also directed that this should be done within a period of three months from the date of receipt of copy of the order. The applicant has further stated that after receipt of copy of the judgment, the departmental respondents issued the impugned order dated 15.9.1992 at Annexure-6 rejecting his representation and holding that the roster point has been correctly maintained. On the above grounds, he has come up with the prayers referred to earlier.

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3. Private respondent nos. 3 and 4 were issued with notice but they have not entered appearance or filed any counter.

4. The departmental respondents in their counter have opposed the prayers of the applicant. They

have stated that the applicant was appointed on ad hoc basis and on that basis he cannot claim seniority or regular appointment. The departmental respondents have stated that N.C.Bhoi (respondent no.4) and Niranjan Behera (respondent no.3) have been rightly promoted in accordance with correct maintenance of roster point. As these vacancies are reserved vacancies, the petitioner cannot claim appointment against such post. It is also stated that the applicant was given ad hoc appointment against a deputation vacancy of the seniormost Assistant Superintendent, R.M.S. who was officiating in the higher grade of PSS Group-B cadre for long period and that is why he could not be promoted on regular basis and the vacancies which came later had to be filled up by reserved candidates according to the roster point. On the above grounds the departmental respondents have opposed the prayers of the applicant.

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5. The applicant in his rejoinder has stated that even though the Tribunal had directed checking up of roster point within three months, the departmental authorities have taken two and half years to review the matter. He has made further averment in his rejoinder stating that the roster points have not been correctly worked out while giving appointment to private respondent nos. 3 and 4.

6. We have heard Shri S.K.Dash, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the departmental respondents and have also perused the records. We have also gone through the decision of the Tribunal in OA No.108/86 which is at Annexure-5.

6. From the above pleadings it is clear that the sole point for consideration in this case is whether at the time of giving regular appointment to respondent no.4 N.C.Bhoi and respondent no.3 Niranjan Behera, roster point has been correctly maintained. The Tribunal in their earlier order had directed the departmental authorities to check up about the maintenance of the roster point afresh. After doing that the departmental authorities have issued the impugned order dated 15.9.1992 stating that the matter has been checked up and respondent nos.3 and 4 have been correctly promoted against roster points meant for reserved candidates and there is no ground for changing or recasting the roster. From the pleadings it appears that in 1978 there were six vacancies and roster point no.1 was meant for SC. But as there was no SC candidate, this was filled up by a general candidate. These assertions have been made by the departmental respondents in their earlier OA and in this petition the applicant has not stated anything about it. In view of this, it must be taken that one unfilled SC vacancy against roster point no.1 was carried forward from 1978. The next three recruitment years were 1980, 1981 and 1983.. The fact that the next three recruitment years were 1980, 1981 and 1983 has also not been denied by the applicant. In view of this, it is obvious that the above SC vacancy has been rightly carried forward to 1983 and N.C.Bhoi (respondent no.4) has been rightly appointed to that post as it is a reserved post. The applicant being a person belonging to General Category cannot claim that he should have been promoted against that reserved vacancy. There is also no case for quashing the appointment of respondent no.4.

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7. As regards Niranjan Behera (respondent no.3), the departmental respondents havestated that a regular vacancy occurred in 1985 and this vacancy went to roster point no.14 meant for SC. There was also a carried forward vacancy of point no.8 meant for SC of 1980 against which one B.Sahoo of General Category was appointed. This carried forward vacancy for SC against point no.8 was filled in and regularised by giving appointment to respondent no.3 who belongs to SC. The applicant in his rejoinder has pointed out that the departmental respondents in paragraph 7 of their counter have mentioned that Niranjan Behera (respondent no.3) was appointed against the SC roster point no.8 of 1980 whereas in paragraph 14 they have mentioned that Niranjan Behera has been appointed against roster point no.8 of 1983. Because of mentioning of two different years, the applicant has stated that the departmental respondents have made confusing averments in the counter. This point is not valid because whether the roster point belongs to 1980 or 1983 is not material. What is material is that the vacancy related to roster point no.8 which is a SC vacancy. If it is taken that it is a vacancy of 1983 which came in 1983, even then the appointment of respondent no.3 against that vacancy in 1986 would be perfectly valid. In view of the above we hold that the applicant's assertion that private respondent nos.3 and 4 have been appointed without correctly following the roster point is without any merit.

8. The second point urged by the learned counsel for the petitioner is that admittedly the applicant has continued as Assistant Superintendent from 1982 to 1986.

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 It is submitted that ad hoc appointment is made only for a temporary period and cannot continue indefinitely for long four years. The Tribunal in their earlier order had noted that even though the departmental respondents before them had stated that the applicant was appointed against a deputation vacancy, they had not given the details of that. In the present counter this point has been clarified and the departmental respondents have clearly stated that the seniormost Assistant Superintendent, R.M.S. was officiating in a higher grade of P.S.S. Group-B cadre for long period and because of long period of vacancy due to long deputation of regular incumbent, the applicant continued on ad hoc basis for four years. In any case, merely because of long continuation on ad hoc basis in a post a person cannot claim regularisation since regularisation has to be done against a regular vacancy. In this case, in the two vacancies which came up SC candidates were appointed correctly according to the roster point and therefore the applicant cannot claim that he should have been regularly appointed against one of those posts.

9. In consideration of all the above, we hold that the application is without any merit and the same is rejected. No costs.

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 (G.NARASIMHAM)
 MEMBER (JUDICIAL)

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 VICE-CHAIRMAN
 10.2000