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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 671 OF 1993
Cuttack, this the 24th day of November, 1999

Pradyumna Kumar Mohapatra 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.

24.11.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
24.11.99

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CORAM:

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

.....
Pradyumna Kumar Mohapatra, aged about 54 years, son of late Prafulla Chandra Mohapatra, At-Rajabagicha, PO-Cuttack-753 009, PS-Purighat, Town/District-Cuttack, at present working as Assistant Technical Officer (Tech) in the Air Traffic Control, Aviation Research Centre, At/PO-Charbatia, District-Cuttack....Applicant

Advocates for applicant-M/s R.B.Mohapatra,
N.J.Singh
S.K.Nayak.

Vrs.

1. Union of India, represented by Director General of Security, Aviation Research Centre, Cabinet Secretariat, East Block-B, R.K.Puram, New Delhi-100 066.
2. Director, Aviation Research Centre, East Block-V, R.K.Puram, New Delhi-100 066.
2. Deputy Director (Administration), Aviation Research Centre, At/PO-Charbatia-754 028, District-Cuttack.

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Respondents

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 23.2.1980 at Annexure-R/1 for keeping the post of Technical Officer in abeyance and creation of post of Assistant Meteorologist in lieu thereof. The second prayer is for a direction to the respondents to promote the applicant to the post of Technical Officer with effect from February 1988 with all consequential financial and service benefits.

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2. The applicant's case is that after completion of eleven years of service in Indian Naval Force he was appointed through a process of selection as temporary Radio Technician under the respondents in the order dated 8.11.1971 at Annexure-A/1. At that time there was no Service Rule with regard to recruitment and conditions of Aviation Research Centre Staff (Air Wing). While working as Radio Technician he appeared at the interview/selection for the post of Technical Assistant and on being found suitable he was promoted to the rank of Technical Assistant in order dated 11.1.1974 at Annexure-A/2. The Aviation Research Centre (Air Wing) Staff Recruitment Rules, 1977 came into force with effect from 15.3.1977. ^{In} accordance with these Rules, which are at Annexure-A/3, a fresh appointment order dated 31.3.1981 was issued to the applicant appointing him as Technical Assistant with effect from 15.3.1977. This order is at Annexure-A/4. The post of Assistant Technical Officer was created in 1987 by Director General, Security (Cabinet Secretariat), respondent no.1 in his order dated 25.10.87. Selection for the post of Assistant Technical Officer was made in 1988 and the Selection Committee having found the applicant suitable, he was promoted to the post of Assistant Technical Officer (Technical), Air Traffic Control in order dated 19.7.1990 at Annexure-A/5. The applicant has stated that according to ARC (AW) Staff Recruitment Rules, 1977 he became eligible for promotion to the post of Technical Officer since 1982. The Recruitment Rules 1977 contemplate that the post of Technical Officer shall be filled up by way of promotion as first preference. Though the applicant was eligible

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for promotion he could not ventilate his grievance before the respondents with regard to their inaction in not promoting him in view of the instructions dated 1.7.1978 at Annexure-A/6 which prohibited filing of representation for promotion. On 7.2.1987 the Officer-in-charge, Air Traffic Control submitted a statement, which is at Annexure-a/7, showing the names of officials who are eligible for promotion to the next higher grade. By that time the applicant was due and eligible to be promoted to the post of Technical Officer. Respondent no.2 in his letter dated 6.5.1987 at Annexure-A/8 informed that the post of Technical Officer has already been abolished. This was in connection with the representation of one C.R.Bhattacharya, Technical Assistant, for the post of Assistant Technical Officer (Tech.). After this the applicant came to know that the post of Technical Officer has been abolished and his future promotion is also blocked. The applicant has stated that one P.K.Rath, Aerodrome Operator Grade-I was promoted as Assistant Aerodrome Officer in pursuance of the judgment dated 21.4.1988 of the Tribunal. Similarly, Chief Administrative Officer issued a memo on 30.9.1988 regarding promotion of one R.N.Panda, Aerodrome Operator to the post of Assistant Aerodrome Officer. These two orders relating to P.K.Rath and R.N.Panda are at Annexures A/10 and A/11. The applicant has also stated that respondent no.2 directed respondent no.3 to fill up the post of Technical Officer on deputation from suitable Junior Engineering Officers of Indian Air Force to look after the Air Traffic Control Complex before induction of

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Computer. The applicant made a representation on 30.8.1993 for promotion to the post of Technical Officer instead of getting the post filled up by deputation. This representation is at Annexure-A/12. In response, in Annexure-13, the applicant was informed that the post of Technical Officer was abolished in order dated 6.3.1987 and no recruitment to the post of Technical officer can be made as per ARC Headquarters' order dated 11.3.1987. In this letter it was also mentioned that the departmental qualifying examination is necessary for promotion to the post of Technical Officer. The applicant submitted a representation on 5.10.1993 explaining that as per Recruitment Rules of 1977 no departmental qualifying examination has been prescribed. The post of Technical Officer has merely been kept in abeyance and not abolished. This letter of the applicant at Annexure-A/14 was duly forwarded to the ARC Headquarters but without any response. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. The respondents have filed a counter and an additional counter, and the applicant has filed a rejoinder.

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4. In their counter the respondents have stated that the post of Technical Officer has been kept in abeyance and a post of Assistant Meteorologist has been created in lieu thereof in Cabinet Secretariat's order dated 23.2.1980. Therefore the question of promotion of the applicant to the post of Technical Officer does not arise. The respondents have stated that the applicant has however been promoted to the post of Assistant Technical Officer on 28.7.1990. The order of the Cabinet

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Secretariat dated 23.2.1980 keeping in abeyance the post of Technical Officer is at Annexure-R/1 which has been impugned by the petitioner. The respondents have stated that the cases of P.K.Rath and R.N.Panda who are now holding the posts of Assistant Aerodrome Officer and Aerodrome Assistant are not identical to the case of the applicant as the applicant holds the post which is different from the posts which were earlier held by Shri Rath and Shri Panda. The respondents have pointed out that R.N.Panda is holding the post of Aerodrome Assistant and not the Assistant Aerodrome Officer, as mentioned by the applicant. The respondents have also stated that no message was issued by respondent no.2 to respondent no.3 for filling up of the post of Technical Officer by taking officer on deputation from Indian Air Force. No such correspondence has been made between respondent no.2 and respondent no.3, according to the respondents. It is stated that the post of Technical officer, ATC, Charbatia, has been kept in abeyance since 23.2.1980. The representation dated 30.8.1992 of the applicant has been disposed of and orders communicated ^{J Som.} to the applicant. The respondents have also stated that keeping the post of Technical Officer in abeyance for creation of a post of Assistant Meteorologist has been done in operational necessity. On the above grounds, they have opposed the prayers of the applicant.

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5. In the additional counter the respondents have repeated their averments made in the counter that the post of Technical Officer has been kept in abeyance for creation of a post of Assistant Meteorologist in operational interest of the organisation and the promotion of the applicant therefore to the post

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of Technical Officer is not possible. It is further stated that when the post of Assistant Meteorologist was created on 23.2.1980 by keeping the post of Technical Officer in abeyance the applicant was only a Technical Assistant. His next promotion was to the post of Assistant Technical Officer to which post he was promoted on 28.7.1990.

5. The applicant in his rejoinder has stated that without any amendment of the Recruitment Rules of 1977 the decision/order keeping the post of Technical Officer in abeyance and creating a post of Assistant Meteorologist in lieu thereof is illegal and without jurisdiction as it is violative of the statutory recruitment rules. It is also stated that the Recruitment Rules framed under Article 309 of the Constitution cannot be changed by executive instructions. It is also stated that by this order dated 23.2.1980 the chances of promotion of the applicant have been blocked and his service conditions have been varied to his disadvantage. It is further stated that the Hon'ble Supreme Court in various decisions have held that reasonable promotional opportunity should be available in every wing of public service. In this case the applicant was eligible to be considered for promotion to the post of Technical Officer. But that post has been abolished and no provision has been made for promotion of the applicant to the post of Assistant Meteorologist. In this way the applicant's chances of promotion have been blocked completely. It is also stated that in the case of P.K.Rath v. Union of India, OA No.98 of 1996, Gauhati Bench ordered on 27.8.1998 for creation of the post as early as possible or at any rate within a period of three

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months. Copy of this judgment is at Annexure-A/15. On the above grounds the applicant has reiterated his prayers in his rejoinder.

7. The respondents have filed a counter to the rejoinder. They have stated that the applicant was not issued with fresh appointment letter appointing him as Technical Assistant as averred by him. He was initially appointed as Radio Technician on 8.11.1971 and was subsequently promoted to the rank of Technical Assistant on 11.1.1974. He reported at Doom Dooma as Technical assistant on 29.1.1974. On completion of three years probation he was appointed against a permanent post with effect from 15.3.1977 in order dated 31.3.1981. This was appointment in a substantive capacity and not a fresh appointment. The respondents have also denied the averment of the applicant that on the analogy of National Airports Authority of India the post of Technical Officer is required. The respondents have stated that NAAI is a Corporate Body having vast network of aerodromes whereas Aviation Research Centre has only two Aerodromes under its control. The organisational structure and personnel requirement of NAAI are larger than A.R.C. and comparison cannot be made with NAAI in justification of his case by the applicant. The respondents have also stated that the case of P.K.Rath, now holding the post of Assistant Aerodrome Officer is different from the case of the applicant and therefore the judgment of the Guwahati Bench is of no application to the case of the applicant.

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8. We have heard Shri R.B.Mohapatra, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The

learned counsel for the petitioner has filed a date chart with copy to the other side which has also been taken note of.

9. The first prayer of the applicant is to quash the order of the Cabinet Secretariat, dated 23.2.1980 at Annexure-R/1 keeping in abeyance the post of Technical Officer and creating a post of Assistant Meteorologist in lieu thereof. The respondents have stated that this has been done for operational requirement and in public service. The learned counsel for the petitioner has prayed for quashing this order on two grounds. The first reason urged is that the post having been mentioned in the statutory Recruitment Rules of 1977 could not have been kept in abeyance by an executive order. The petitioner has enclosed the Recruitment Rules of 1977 at Annexure-A/3. Rule 3 of these Rules provides that the number of posts, classification and scale of pay shall be as mentioned in columns 3 to 5 of the Schedule hereto annexed. In the Schedule to the Recruitment Rules enclosed at Annexure-A/3 the post of Technical Officer is not there. But apparently there was a Technical Officer's post which has been admitted by the respondents and which, according to the respondents, was kept in abeyance for the purpose of creating the post of Assistant Meteorologist. It is always open for the departmental authorities to keep a post in abeyance depending upon departmental requirement. The fact that a post has been mentioned in the relevant Recruitment Rules does not mean that the post must necessarily be filled up. This only means that when the post is filled up, it should be

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filled up in the manner prescribed in the Recruitment Rules and the qualification laid down for the post and the scale of pay would be as mentioned in the Recruitment Rules. The mention of a post in the Recruitment Rules does not preclude the departmental authorities to abolish a post or to keep a post in abeyance. For such action it is not necessary that the Recruitment Rules must necessarily be amended before the post is kept in abeyance or abolished. The Recruitment Rule is a statutory Rule which cannot be amended frequently whereas the operational requirements in an organisation like Aviation Research Centre may vary from time to time and therefore it cannot be urged that so long a post is mentioned in the Recruitment Rules, the same post cannot be kept in abeyance. It is always possible for the departmental authorities not to fill up a post and when it is anticipated that the post will not be filled up for some time to come, it is open for them to keep the post in abeyance and create another post in lieu thereof. This is what has been done here and this cannot be found fault with.

10. The second contention of the learned counsel for the petitioner is that by keeping in abeyance the post of Technical Officer, the chances of promotion of the applicant have been adversely affected. It is difficult to accept this contention because the applicant's case is that he originally joined as Radio Technician in 1971 and was promoted to the post of Technical Assistant in 1974 and was given substantive appointment in the post of Technical Assistant in 1981.

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Thus by the time the applicant got substantive appointment to the post of Technical Assistant in 1981, the post of Technical Officer had already been kept in abeyance in order dated 23.2.1980. Moreover, the respondents have pointed out that from the post of Technical Assistant the promotion is not to the post of Technical Officer but to the post of Assistant Technical Officer to which post the applicant has been promoted in order dated 19.7.1990. In view of that, it is seen that the applicant has got promotion from the post of Technical Assistant to the post of Assistant Technical Officer long after ^{in abeyance} keeping/ of the post of Technical Officer in 1980. Therefore, on the ground of lack of promotional opportunity of the applicant the order dated 23.2.1980 keeping the post of Technical Officer in abeyance cannot be interfered with. Lastly, the applicant has come up only in 1993 questioning an order of 1980. On this ground also we are unable to quash the order dated 23.2.1980. This contention is therefore held to be without any merit and is rejected.

11. The second prayer of the applicant is for giving him promotion to the post of Technical Officer with effect from February 1988. As the post of Technical Officer has not been in existence from 1980, obviously the applicant cannot be promoted to the post of Technical Officer with effect from February 1988, as prayed for by him. This prayer of the applicant is therefore held to be without any merit.

12. In support of his contention claiming promotion to the post of Technical Officer, the learned counsel for the petitioner has relied on the

the decision of the Guwahati Bench of the Tribunal in OA No.98 of 1996, decided on 27.8.1998 (P.K.Rath v. Union of India and others). In that case the applicant, who was an Assistant Aerodrome Officer, claimed promotion to the post of Aerodrome Officer on the ground that as against the three posts of Assistant Aerodrome Officer there was one post of Aerodrome Officer. But in order dated 14.8.1995 the post of Aerodrome Officer was surrendered without any reason. In that case the respondents in their counter submitted that the Department has undertaken a re-examination of the entire structure of the Air Traffic Control and a proposal has been sent for creation of one post of Aerodrome Officer. In consideration of this submission, the Tribunal recorded a direction for creation of the post of Aerodrome Officer. In paragraph 4 of the judgment in the above case the Tribunal had extracted the submissions made by the respondents in the above case in their counter. The relevant portion of the averment of the respondents in their counter in the above case, as extracted by the Tribunal in their order, is quoted below:

"Again, in para 4 the said respondents have also stated that:

".....however, the Department after making suitable examination has projected for creation of post like Aerodrome Officer, Technical Officer in the latest cadre so that the applicant and other ATOs etc. can get promotion."

From the above it appears that the Department has projected for creation of post of Technical Officer in the latest cadre. In the instant case in the counter filed by the respondents to the rejoinder of the applicant the respondents have stated that the post of

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Assistant Aerodrome Officer is not identical to the post of the applicant and therefore the order of the Guwahati Bench of the Tribunal is not applicable to the present case. While we accept the above contention we note the averment made by the respondents in their counter in the above case before the Guwahati Bench of the Tribunal that post of Technical Officer is also under contemplation for creation. There is nothing in the pleadings of the parties as to whether the proposal for creation of a post of Technical Officer is still pending or has been allowed or rejected. In case the same is still pending, we direct the respondents to take a view on this proposal within a period of 120 days from the date of receipt of copy of this order. If the post of Technical Officer has again been revived or has again been created, then the case of the applicant should be considered while filling up of the post along with other eligible candidates.

13. In the result, therefore, the Original Application is disposed of with the observation and direction as above but under the circumstances without any order as to costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
24.11.99
VICE-CHAIRMAN