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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH:CUTTACK.

ORIGINAL APPLICATION NO. 743 OF 1993

Cuttack, this the 15th day of November, 1999

Rabindranath Pati Applicant

Vrs.

Union of India and another 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
(SOMNATH SOM)
VICE-CHAIRMAN
15.11.99

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CORAM:

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

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Rabindranath Pati, son of Gangadhar Pati,
Village-Naraharipur, P.S/Dist.Jajpur Applicant

Advocates for applicant - M/s S.Mishra-1,
S.N.Misra
A.N.Mishra
S.K.Nayak-2.

Vrs.

1. Union of India, represented through the Controller & Auditor General of India,
At-10 Bahadur Saha Zaformang,
New Delhi-110 002.
2. Accountant General (A&E), Orissa, Bhubaneswar,
At/PO/PS-Bhubaneswar, District-Khurda

.....respondents

Advocate for respondents - Mr.U.B.Mohapatra,
ACGSC

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ORDER
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner
has prayed that he be given promotion to the post of
Senior Accountant from 1.7.1975 and to the post of

Supervisor from 9.10.1991 and be allowed to cross the Efficiency Bar (EB) from 1.5.1979.

2. Facts of this case, according to the petitioner, are that he was originally appointed as LDC in the office of Accountant General, Orissa, on 2.3.1959 and was appointed as Caretaker on 1.12.1962. He was allowed to draw the higher pay of UDC during officiating period upto 23.2.1964 and was promoted as UDC, subsequently redesignated as Auditor on 21.6.1965. He was due to be promoted to the post of Senior Grade Auditor on 1.7.1975 and the date of crossing of E.B. was 1.5.1979. The applicant was placed under suspension on 26.2.1976 on the charge of misappropriation of Government money. Two court cases were instituted in the court of Additional Chief Judicial Magistrate, Bhubaneswar. In one of the cases, numbered as S.P.E.No.7/78 the petitioner was acquitted on 25.1.1980. After acquittal the suspension was revoked in order dated 7.9.1981 and the period of suspension from 27.2.1976 to 13.9.1981 was treated as on duty. In the other case, GR No.342 of 1976 the applicant was acquitted on 16.4.1990. Two departmental proceedings were initiated against him, one for disproportionate assets and the other for procedural mistake and misappropriation of Government money. The applicant has stated that in the departmental enquiry for disproportionate assets the charges could not be proved. The Accountant General ordered that the pay of the applicant shall be reduced by one stage for a period of one year from 1.6.1968. On appeal by the applicant, the appellate authority reduced the penalty from one year to six months from 1.6.1968 without any cumulative effect.

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The applicant has stated that his due date of promotion was 1.7.1975 prior to institution of departmental proceeding and he was entitled to full pay and all the benefits when the suspension was revoked by the authorities and the period of suspension was treated as such. The applicant was informed that his promotion was kept in sealed cover which would be opened after closing of the enquiry. The final order in the disciplinary proceeding was passed on 16.9.1992. But instead of opening the sealed cover the authorities passed an order for promotion of the applicant to the post of Senior Accountant from 1.1.1993 instead of 1.7.1975. The applicant has stated that due date of his promotion was 22.12.1977, the date on which his immediate junior was promoted. The applicant represented to Comptroller & Auditor General for consideration of his promotion from due date and other benefits, but without any result. It is further stated that he was due to cross EB from 1.5.1979 but he was allowed to cross EB only on 1.12.1988. Thus his increment has been stopped for about 10 years. He also represented for allowing him to cross the EB from the due date but without any result. The applicant has stated that he was retired in the year 1994 and therefore he should be allowed all due promotion and financial benefits for the period from 26.2.1976 to 13.9.1981, but no consideration has been shown and that is why he has come up in this petition with the prayers referred to earlier.

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3. The respondents have taken the stand that the prayer of the applicant for promotion to Senior

Senior Auditor from 1975 and Supervisor from 9.10.1991 is barred by limitation. On the selfsame ground they have also opposed his claim for being allowed to cross EB. It has been stated that there were two disciplinary proceedings against the applicant. The first proceeding for possession of disproportionate assets was finalised on 12.5.1988 and the appellate order was passed thereafter. The second proceeding was decided on 16.6.1992. In both the cases punishments were imposed which were also confirmed by the appellate authority. After completion of the proceedings the applicant was allowed to cross EB from the date of completion of major penalty proceeding and the promotion was given after conclusion of the second disciplinary proceeding. The respondents have also stated that the applicant claims promotion from 1.7.1975 which was nearly 10 years prior to establishment of the Tribunal and therefore this claim cannot be entertained under Section 21(2)(a) of Administrative Tribunals Act, 1985. As regards the claim for promotion, the respondents have stated that as per Recruitment Rules in force at that time, an Auditor/Accountant who has put in ten years of service can be considered for promotion to the post of Selection Grade Accountant. For the promotion, merit/seniority is the main criterion and promotion cannot be given to the applicant automatically. It is also stated that immediate juniors and seniors of the applicant got their promotion in 1977 and as disciplinary proceeding was pending against the applicant, his case was considered and kept in the sealed cover as per rules. It is stated that

in the disciplinary proceedings relating to disproportionate assets a major penalty of reduction of time scale for a period of one year which was subsequently reduced to six months was imposed on the applicant. After finalisation of both the proceedings, sealed cover was opened and as per the finding of the Departmental Promotion Committee the applicant was promoted to the post of Senior Accountant with effect from 1.1.1993. As regards crossing of EB, the respondents have pointed out that according to the instructions, EB cases of officials against whom proceedings are pending have to be kept in sealed cover which can be opened after completion of enquiry and if the delinquent is fully exonerated the recommendation of DPC in the sealed cover may be considered by the competent authority. But in the case of the officials who have undergone punishment, they may be cleared for crossing the EB if they are otherwise considered fit by the D.P.C., but the actual effect of crossing the EB would be given only after the period of punishment is over. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri S.N.Mishra, the learned counsel for the petitioner and Shri U.B.Mohapatra, the learned Additional Standing Counsel for the respondents and have also perused the records.

5. The first point to be noted in this case is that in the two departmental proceedings punishments were imposed against the applicant and the applicant has not challenged the punishments imposed in the disciplinary proceedings against him. His prayer for retrospective promotion

and crossing of EB has to be considered in the above context. The first prayer of the applicant is for promotion to the rank of Senior Accountant from 1.7.1975. The respondents have pointed out that his case for promotion to the rank of Senior Accountant fell due in 1977 when his juniors and seniors were promoted. At that time he was considered and his case was kept in the sealed cover. After completion of the departmental enquiry, in which punishment was imposed on him and one of the punishments was a major penalty, the sealed cover was opened and on the basis of the finding of the Departmental Promotion Committee he was promoted with effect from 1.1.1993. From the above, it is clear that the case of the applicant was considered when his juniors were considered for promotion and his case was kept in sealed cover. In the departmental proceedings penalty was imposed upon him and he was not fully exonerated and thereafter promotion was given after opening the sealed cover. The action taken by the respondents has been strictly in accordance with rules. It is also to be noted that the applicant's prayer for getting promotion from 1.7.1975 is both barred by limitation and also not maintainable because it relates to a period prior to three years preceding the establishment of the Tribunal. On the same ground his prayer for promotion to the post of Supervisor is also without any merit. His prayer for promotion to the post of Supervisor from October 1991 is without any merit as he has been rightly promoted to the post of Senior Accountant from 1.1.1993. As regards crossing of E.B., the

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respondents have allowed him to cross the EB with effect from 1.12.1988. This is because the major penalty of reduction of time scale was imposed on 1.6.1988 for a period of six months and on expiry of this period of six months he was allowed to cross EB from 1.12.1988. This has also been done strictly in accordance with rules. In view of the above, we hold that the applicant is not entitled to the reliefs claimed by him which are also barred by limitation.

6. In the result, therefore, the Application is held to be without any merit and is rejected but without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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VICE-CHAIRMAN
13/11/99

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