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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 3 OF 1994
Cuttack, this the 10th day of July, 2000

Shri Jayant Kumar Bhattacharjee 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

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CORAM:

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

.....
Shri Jayant Kumar Bhattacharjee, aged about 43 years, son of
Dr.H.K.Bhattacharjee, at present working as Sub-Inspector,
Central Storage Depot, 3R/72, Aviation Research Centre,
Charbatia, P.S-Choudwar, Dist.Cuttack...Applicant

Advocates for applicant - M/s R.N.Naik
A.Deo
B.S.Tripathy
P.Panda
D.K.Sahoo

Vrs.

1. Union of India, represented by its Cabinet Secretary,
Cabinet Secretariat, Room 8B, South Block, New Delhi-110
001.
2. Director, Aviation Research Centre, East Block 5, Level
V., R.K.Puram, New Delhi-110066
3. Deputy Director (Administration),
Aviation Research Centre,
Charbatia, P.S-Choudwar, Dist.Cuttack.
4. M.D.Mohapatra, at present working as Inspector
5. S.Amrita Ganeshan, at present working as Inspector
6. S.N.Samal, at present working as Inspector
7. Mathurananda Sethy, at present working as Sub-Inspector
8. S.K.Mishra, at present working as Sub-Inspector

Sl.Nos. 4 to 8 are at Central Storage Depot, Aviation
Research Centre, Charbatia, P.S-Choudwar, District-Cuttack.

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Respondents

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Advocates for respondents -Mr.Ashok Mohanty
Sr.CGSC
&
M/s C.A.Rao
S.K.Behera
P.K.Sahoo
C.R.Dash
D.N.Mohapatra
R.K.Patnaik
A.S.Naidu
P.K.Mohapatra
B.Patnaik
B.Satpathy

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O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application the petitioner has prayed for quashing the order dated 15.11.1993 promoting private respondent nos. 4 to 8 to the rank of Inspector. The second prayer is for a direction to the departmental respondents to convene a review DPC to consider the case of the applicant.

2. The petitioner's case is that he was appointed as a Havildar in Aviation Research Centre, Charbatia, on 13.12.1970. He was transferred and posted as LDC with effect from 1.7.1971. He was re-transferred to the post of Havildar on 22.5.1976 and was promoted to the post of Sub-Inspector on 1.12.1976. S.N. Samal (respondent no. 6) filed writ petition before the Hon'ble High Court of Orissa which was allowed declaring Shri Samal as senior to the petitioner, but direction was given not to disturb the appointment of the applicant. On 28.1.1985 the applicant was promoted to the post of Inspector against a clear permanent vacancy. While the applicant was continuing in the post of Inspector, respondent nos. 7 and 8 filed writ application which was transferred to the Tribunal and ultimately they were declared senior to the applicant in the cadre of Sub-Inspector. As these respondents were declared senior to the applicant and the petitioner had been promoted earlier to the post of Inspector with effect from 28.1.1985 on the basis of his earlier seniority, an order was passed by the departmental authorities reverting the applicant from the post of Inspector on 25.3.1992. This was challenged by the applicant in OA No. 138 of 1992. The Tribunal did not interfere with the order of reversion on the ground that the applicant was given promotion on ad hoc basis and he could

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not have marched over his seniors. While dealing with other aspects, in their order the Tribunal held that the rules which were prevalent on 20.12.1983 will govern the number of incumbents who would come within the zone of consideration and the DPC would be required to adjudicate the suitability of different incumbents for all the five posts of Inspector. The applicant has stated that the Tribunal also came to the conclusion that DPC which sat on 31.8.1992 adopted a wrong and erroneous procedure by considering the cases of different incumbents on two different dates and further observed that all the officers in the zone of consideration should be considered at one and the same time so that there would not be any room for grievance that their cases had not been considered in compliance with the principles of natural justice. Accordingly, the Tribunal quashed the recommendation of the DPC and directed the respondents to review the list containing the names of different incumbents who would come within the zone of consideration and place the same before the DPC for further consideration. It was also ordered that in the event of the case of the applicant being excluded from consideration, a reasoned order has to be passed by the concerned authority. The applicant has stated that during the pendency of OA No.138 of 1992 the Tribunal vacated the order of stay and as such the applicant continued to function as Sub-Inspector. The applicant has further stated that he was hoping that his case would be considered in proper perspective and his experience of seven years would be taken into consideration by the authorities. But in the impugned order dated 15.11.1993 at Annexure-2 the private respondent

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nos. 4 to 6 have been promoted to the post of Inspector on regular basis and respondent nos. 7 and 8 have been promoted as Inspectors to be on probation. The applicant has stated that he has outstanding CCRs and has been functioning as Inspector on ad hoc basis. He has also stated that during the period he was working as Inspector he got awards and commendation certificates. It is stated that the post of Inspector is a selection grade post and has to be filled up on the basis of merit-cum-seniority. But the DPC has promoted the private respondents on the principle of seniority-cum-fitness and not on the basis of merit-cum-seniority. In other words, the applicant's grievance is that the DPC should have promoted him over his seniors to the rank of Inspector, taking into consideration his relative better service records.

3. Before referring to the counter filed by the respondents it is necessary to note that in order dated 9.7.1997 MA nos. 178 and 179 of 1993 were allowed permitting the applicants in these two MAs to be impleaded as intervenors. Batakrushna Rout, Pitambar Samal, Laxman Samal, Maheswar Lenka, Sunakar Behera, Surendra Nayak and Birendra Kumar Sinha, who were applicants in OA No. 178 of 1997 and Lingaraj Dash who was applicant in OA No. 179 of 1997 were allowed to intervene in the matter. Similarly, in orders dated 21.7.1997 and 1.9.1997 P.K.Das, the applicant in MA No. 233 of 1997 and N.K.Bhuyan the applicant in MA No. 411 of 1997 were allowed to get themselves impleaded as intervenors.

4. Intervenor L.R.Das in his counter has opposed the prayers of the applicant. He has referred to the

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decision of the Tribunal in OA No.138 of 1992 and has stated that during the pendency of OA No.1 38 of 1992 he was promoted to the rank of Inspector. The applicant has deliberately not impleaded him in the present proceeding. He has furtherstated that he is senior to the applicant. He has also stated that the DPC has committed a mistake by considering the case of the applicant to the rank of Inspector. Accoding to this intervenor there were five vacancies and 15 persons would have come within the zone of considerastion and should have been considered. At that time the applicant's name was against serial no.16 of the seniority list of Sub-Inspectors and therefore, he could not have been considered at all by the DPC. This intervenor has also stated that the other seven intervenors, applicants in MA No.178 of 1997 had approached the Tribunal in OA Nos.389 and 390 of 1994 for their seniority and promotion. The Tribunal allowed those two O.As. directing the departmental authorities to promote these intervenor-respondent nos. 9 to 15 from the date their juniors were promoted and further directed to give them all consequential benefits as well as promotion. The orders of the Tribunal in OA Nos. 389 and 390 of 1994 were implemented by the departmental authorities and after such implementation the applicant's seniority position was 18 in the rank of Sub-Inspector. This intervenor has also
J. Sum, stated that he is much senior to the applicant and the case of the applicant is liable to be dismissed on the grounds urged by him.

5. The departmental respondents have filed counter opposing the prayers of the applicant. They have referred to the decision of the Tribunal in OA No. 138 of 1992 and have mentioned that in their order dated 13.8.1993

in OA No. 138 of 1992 the Tribunal quashed the recommendation of the DPC held on 31.8.1992 and 1.9.1992 and directed the departmental authorities to draw up a list of incumbents who would come within the zone of consideration and place their cases before the DPC for promotion to the rank of Inspector. It is stated that in obedience to the above directive of the Tribunal a DPC was convened on 8.11.1993. There were five vacancies in the rank of Inspector and in conformity with the order of the Tribunal a list of eligible incumbents was prepared and placed before the DPC. The list of fifteen eligible candidates who were considered by the DPC is at Annexure-R/1. The applicant's name was included in this, but the DPC did not recommend the name of the applicant. As regards the applicant's averment of his better service record and experience the departmental authorities have stated that all these factors have been taken note of by the DPC. They have further stated that challenging the seniority of the applicant S.N.Samal, private respondent no.6 filed OJC No.1018 of 1977 before the Hon'ble High Court who held that respondent no.6 is senior to the present applicant in the cadre of Senior Armourer. Another eleven Senior Armourers filed writ petitions in the Hon'ble High Court of Orissa which were transferred to the Tribunal and registered as T.A.Nos. 12,15,31,35,36,42, 56 and 57 of 1987. These T.As. were disposed of in order dated 29.4.1988 and all these eleven Senior Armourers were declared senior to the applicant. The Hon'ble Supreme Court in their judgment dated 20.3.1991 have upheld the decision of the Tribunal and thereafter the departmental respondents secured sanction of the competent authority for creation of supernumerary posts of Sub-Inspector to accommodate all those applicants and the

present applicant, who was holding the post of Inspector on ad hoc basis was reverted. The Tribunal in their order dated 13.8.1993 in OA No.138 of 1992 have dismissed the claim of the applicant for seniority over other Sub-Inspectors and have not quashed his reversion. The departmental respondents have stated that as the DPC considered the case of the applicant and had not recommended him but recommended five other persons who are senior to the applicant in the cadre of Sub-Inspector, the petition is without any merit.

6. The applicant in his rejoinder has reiterated his averments made in his OA and though we have taken note of the same it is not necessary to refer to the same in our order.

7. We have heard Shri B.S.Tripathy, the learned counsel for the petitioner; Shri Ashok Mohanty, the learned Senior Standing Counsel for the departmental respondents; Shri B.B.Patnaik, Shri C.A.Rao and Shri P.K.Mohapatra, the learned counsels appearing on behalf of the private respondents and intervenor-respondents and have also perused the records. The learned counsel for the petitioner has filed written note of submissions which has also been taken note of.

8. From the above recital of pleadings of the parties it appears that even though the present applicant and the private respondents and intervenor-respondents have been agitating over their rights before the Tribunal and the Hon'ble High Court of Orissa for a number of years in different applications, the controversy with which we are concerned in the present case is very limited. The applicant has admitted in his petition that the private respondent nos. 4 to 8 are senior to him. The question of their seniority

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vis-a-vis the applicant was agitated before the Tribunal and the order of the Tribunal declaring them as senior to the applicant was upheld by the Hon'ble Supreme Court as has also been mentioned by the departmental respondents in their counter. In OA No.1 38 of 1992 the Tribunal in their order dated 13.8.1993 quashed the earlier DPC proceedings and ordered for holding a fresh DPC for considering the cases of eligible candidates. The Tribunal also directed that in case the applicant's candidature is not placed before the DPC, then a reasoned order should be passed.

9. The private respondents have stated that according to the seniority of the applicant, his case should not have been placed before the D.P.C. The departmental respondents have, however, stated that there were five vacancies in the rank of Inspector and zone of consideration was 15. The applicant's name was in the 15th position and accordingly the name of the applicant was placed before the DPC. The departmental respondents have enclosed to their counter a list of 15 persons at Annexure-R/1 whose cases were placed before the DPC. For the present purpose it is not necessary for us to determine whether the case of the applicant was rightly placed before the DPC or not in view of the fact that his case was actually considered by the DPC and therefore he can have no grievance on this score.

10. The applicant's case is that in consideration of his service record and also in consideration of his ad hoc appointment and continuance as Inspector for long years, the DPC should have recommended his name for promotion over his seniors, the private respondent nos. 4 to 8 who have been promoted as Inspector in the impugned order

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at Annexure-2. We do not find any merit in the above contention because the case of the applicant was before the DPC along with his seniors, and the DPC in consideration of the service records of all the persons before them, have recommended the five candidates of which four are the seniormost amongst the 15 candidates. The fifth person (private respondent no.7) is also senior to the applicant but he has been included over others apparently on the ground of his belonging to SC. Law is well settled that it is not open for the Tribunal to re-evaluate the CRs considered by the DPC and come to a finding different from what has been arrived at by the DPC. In consideration of the fact that the applicant's case was considered by the DPC and the DPC did not recommend him and he was the juniormost amongst the persons whose cases were considered, we find no merit in his prayer to upset the recommendation of the DPC, quash the promotion order at Annexure-2 of private respondent nos. 4 to 8, and order for a fresh meeting of the DPC.

11. The applicant has filed MA No.412 of 2000 enclosing order dated 29.6.2000 directing him to attend a course of training in the College of Material Management, Jabalpur under Army Ordnance Corps. He has stated that he has already worked as Inspector for a period of more than seven years after obtaining necessary training for Inspector in CSD, Bhopal in 1986. Moreover, because of his daughter's examination and his wife's illness, it is difficult for him to attend the training and therefore the prayer in the MA is for keeping the order deputing the applicant in abeyance. This MA is not connected with the subject-matter of the OA. In case the applicant has any personal difficulty in

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attending the training, he has to file representation before the appropriate authority which has apparently done on 29.6.2000. It is for the departmental authorities to pass appropriate orders on the representation and the Tribunal cannot entertain the prayer in the MA as this does not affect the service conditions of the applicant in any way.

12. In the result, therefore, the Original Application and MA No.412 of 2000 are held to be without any merit and the same are rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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10.7.2000
VICE-CHAIRMAN