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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 174 OF 1995  
Cuttack, this the 17th day of April, 2001

Rabindra Paul

...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

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(G.NARASIMHAM)  
MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*174/2001*

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 174 OF 1995  
Cuttack this the 17th day of April, 2001

CORAM:

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

.....  
Rabindra Paul, son of Jogeswar Chandra Paul, General  
Stores Section, Proof & Experimental Establishment,  
Chandipur, Balasore .... Applicant

Advocate for applicant - M/s B.K.Sahoo  
K.C.Sahoo

Vrs.

1. Union of India, represented by the Scientific Advisor to the Minister of Defence & Director General, Research & Development, Director of Administration (R.D.24), Research & Development Organisation, Ministry of Defence, New Delhi-110 011.
2. The Commandar, Proof & Experimental Establishment, Chandipur, Balasore... Respondents

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

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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The applicant in this petition has prayed  
for a direction to the respondents to consider him for  
promotion to the post of Senior Stores Superintendent  
with effect from 17.10.1994. He has also asked for the  
scale of pay of Senior Stores Superintendent with  
effect from 28.5.1992.

2. The applicant's case is that he joined  
as Senior Store Keeper under Director, Defence Research  
Laboratory, Tezpur in Assam. On recommendation of the  
DPC he was promoted to the post of Stores  
Superintendent in order dated 25.6.1991 and was posted

at Chandipur, Orissa, under respondent no.2. Seniority of the applicant in the post of Stores Superintendent was counted from 15.4.1991 as per order dated 28.5.1991 at Annexure-2. In 1992 one post of Senior Stores Superintendent was temporarily brought from Defence Research Laboratory (DRL), Tezpur, to the establishment of respondent no.2 with effect from 15.4.1992 and the petitioner was held against the post with effect from 28.5.1992. But he was not given the pay scale of Senior Stores Superintendent with effect from 28.5.1992 which is one of his grievances. He has further stated that next promotion from the post of Stores Superintendent is to the post of Senior Stores Superintendent. According to him, he held the post of Senior Stores Superintendent on the recommendation of the DPC as is evident from the order dated 20.5.1992 at Annexure-3. While he was holding the higher post of Senior Stores Superintendent, his substantive post of Stores Superintendent was filled up by giving promotion to a reserved candidate Ananta Majhi who was promoted from the post of Senior Store Keeper to the post of Stores Superintendent. In 1994 the petitioner was eligible to be considered for promotion to the post of Senior Stores Superintendent, but his case was not considered by the DPC in the meeting held on 17.10.1994 though the place of the petitioner in the higher post of Senior Stores Superintendent was extended in order dated 20.4.1994 at Annexure-4 for a period of one year from 15.4.1994. He filed representation at Annexure-5 which was rejected in the order at Annexure-6 on the wrong

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ground that there is no vacant post of Senior Stores Superintendent. The applicant has stated that at that time and even at the time of filing of the OA he was holding the higher post of Senior Stores Superintendent. But the respondents are planning to promote Ananta Majhi to the post of Senior Stores Superintendent ignoring the case of the applicant who is senior to Ananta Majhi and in the context of the above the applicant has come up with the prayers referred to earlier.

3. Respondents have filed counter opposing the prayers of the applicant. For the present purpose it is not necessary to record all the averments made by the respondents in their counter because these will be referred to while considering the submissions made by the learned counsel of both sides.

4. We have heard Shri B.K.Sahoo, 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 second grievance of the applicant is that he has been working in the post of Senior Stores Superintendent from 28.5.1992 and he should get the scale of pay of that post. The respondents have pointed out that the applicant has admitted in his petition that he was promoted to the post of Stores Superintendent in order dated 25.6.1991 and his seniority was counted from 15.4.1991. On promotion to the post of Stores Superintendent on 25.6.1991 he was to be on probation for a period of two years and

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therefore, he could not have been given ad hoc promotion to the post of Senior Stores Superintendent. The respondents, on the other hand, have stated that on transfer of the post of Senior Stores Superintendent from Tezpur to Chandipur, the applicant was shown against the post against the substantive grade of Stores Superintendent. The applicant has not enclosed any order showing that he was given ad hoc promotion to the post of Senior Stores Superintendent. The order dated 20.5.1992 at Annexure-3 clearly mentions that the applicant was held against the higher post of Senior Stores Superintendent for a period of one year as Officiating Stores Superintendent. Under Rule 77 of General Financial Rules, in the non-gazetted establishment, a person can be shown against a higher post. Rule 77 provides that in the case of non-gazetted establishments divided into separate units or cadres carrying different scales of pay, an authority competent to make appointments in that establishment on both the units or cadres may make excess appointments in a lower unit or cadre against an equal or greater number of vacancies left unfilled in the higher unit or cadre. From this it is clear that under the rules against the higher post of Senior Stores Superintendent the applicant could have been and has been shown as Stores Superintendent which is his substantive post. His ad hoc appointment for one year was further extended in the order at Annexure-4 and here also it is clearly mentioned that as Officiating Stores Superintendent he has been shown against the higher post of Senior Stores Superintendent. But that would

not mean that he had been given promotion to the post of Senior Stores Superintendent on ad hoc basis. As he has not worked in the post of Senior Stores Superintendent, it is clear that he is not entitled to the scale of pay of that post. This prayer of the applicant is, therefore, held to be without any merit and is rejected.

6. The first prayer of the applicant is for promotion to the post of Senior Stores Superintendent. He has stated that ignoring his claim the departmental authorities are going to promote Ananta Majhi who is junior to him in the rank of Stores Superintendent and who was given promotion much after him on the applicant vacating his substantive post of Stores Superintendent by being shown against the higher post of Senior Stores Superintendent. The admitted position between the parties is that Ananta Majhi is junior to the applicant in the rank of Stores Superintendent. The respondents have mentioned that this vacancy falls under carry forward SC point of 1987. They have stated that the petitioner, who belongs to General Category, though eligible for consideration for promotion to the post of Senior Stores Superintendent during October 1994, could not be considered because of non-availability of vacancy in General Category. Derelegation of the post was also not recommended because one SC candidate presumably Ananta Majhi would have become available for consideration in April 1995. The learned counsel for the petitioner has put much emphasis on the letter

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dated 15.3.1995 issued by the departmental authorities at Annexure-8. In this letter it has been informed that the representation of the applicant was examined in detail in consultation with SC/ST Cell of the Headquarters office and it was found that one vacancy in the rank of Senior Stores Superintendent was available on 15.10.1994. It is further mentioned that though the vacancy was falling UR point, an earlier reservation point, which was treated as unreserve because of being a single vacancy, was filled up by an unreserved candidate and therefore, that reserve vacancy was carried forward and as a reserve candidate was ~~requiring~~ <sup>from</sup> eligibility in April 1995, it was decided that the reserve post will not be dereserved. From the above pleadings of the parties and the documents filed by them, it is clear that the post of Senior Stores Superintendent, which was brought from Tezpur to Chandipur, was in the unreserve category originally, but it was treated as reserve category because of a carried forward reserve vacancy which was earlier filled up by an unreserved candidate. In view of this, the departmental authorities have been right in treating the vacancy as a reserve vacancy and therefore, the applicant cannot claim that he should be considered for promotion against the reserve vacancy being a General Category candidate.

7. In view of our discussions above, we hold that the Application is without any merit and the same is rejected but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

April 17, 2001/AN/PS

*SOMNATH SOMY*  
SOMNATH SOMY  
VICE-CHAIRMAN  
17/4/2001