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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

O.A.NO. 310 OF 1995

Cuttack, this the 16th day of May, 2001

Surendra Nath Samal 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
16.5.2001

Cuttack, this the 16th day of May, 2001

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

Surendra Nath Samal, aged about 50 years,
son of late Bhramarbar Samal, Inspector, Central
Storage Deptt., Aviation Research Centre, Charbatia,
Cuttack

.... Applicant

-versus-

- ... Respondents

ORDER

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In this Original Application, the petitioner has prayed for quashing the order dated 1.5.1995 at Annexure-5. The second prayer is for a direction to the

respondents to consider the applicant for promotion counting his period of service in the grade of Inspector from 28.1.1985. The third prayer is for a direction to treat the applicant as senior to the fresh recruits, if any, as the applicant is a promotee. Lastly, he has asked for consequential service and pecuniary benefits as admissible.

2. The applicant's case is that while working as Sub-Inspector, he was considered by the Departmental Promotion Committee and promoted to the post of Inspector (C.S.D.) on ad hoc basis in order dated 29.1.1985 enclosed by the respondents as Annexure-R/1 to their counter. The applicant has stated that he joined duty in the promotional post on 28.1.1985. He continued in the post of Inspector on ad hoc basis for a number of years and was regularised in that post on 15.11.1993 (Annexure-2). He has stated that there was no break in his service as Inspector during the period of ad hoc service. He has stated that two posts of Assistant Commandant have fallen vacant and according to the rules the posts are required to be filled up by promotion from the post of Inspector for which three years service in the grade is required. Deputy Superintendent of Police, J.C.O. in Indian Army and Inspector of Police on approved list for promotion can also be come on deputation/transfer. Rules also provide that ex-serving personnel within the age limit of 55 years also can be appointed. The applicant's grievance is that in the meeting of D.P.C. held on 9.3.1995 his case has not been considered and his representation dated 10.3.1995 at Annexure-4 has been rejected in the impugned order dated 1.5.1995

(Annexure-5) on the ground that he has not completed qualifying service of three years in the grade of Inspector. The applicant has stated that under the law as laid down by the Hon'ble Supreme Court, ad hoc service of an employee in a post against a substantive vacancy followed by regularisation has to be computed for the purpose of seniority and therefore he has been unlawfully denied consideration for promotion. In the context of the above, the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that Assistant Commandant is a selection post to be filled up by promotion of Inspectors having three years of regular service. As the petitioner has been appointed as Inspector on regular basis with effect from 15.11.1993 he is not eligible for consideration. It is admitted that the petitioner was holding the post of Inspector with effect from 28.1.1985 on ad hoc basis. Such ad hoc appointment was given because of pending court cases and in the order itself it was clearly written that such ad hoc appointment will not count for the purpose of seniority in the grade and for eligibility for promotion. It is further stated that filling up of the vacancies in the post of Assistant Commandant was considered very urgent and in public interest and therefore it was decided to go in for re-employment of retired Army personnel and a Selection Board meeting was held for selection of retired Army personnel. No DPC was held for promotion of Inspectors as none of the Inspectors was eligible for promotion.

It is further stated that consequent on the order dated 13.8.1993 of the Tribunal in OANo.138 of 1992 in the case of J.K.Bhattacharya v. Union of India, the applicant was promoted on regular basis after consideration in the meeting of the DPC held on 8.11.1993. The earlier DPC held for the purpose was quashed by the above order of the Tribunal and therefore regular promotion was given to the applicant in order dated 15.11.1993. The respondents have further stated that ad hoc service cannot be counted as regular service and in the context of the above, they have opposed the prayers of the applicant.

4. No rejoinder has been filed by the applicant.

5. We have heard Shri C.A.Rao, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have also perused the records. The learned counsel for the petitioner has relied on the decisions of the Hon'ble Supreme Court in the case of Rajbir Singh and others v. Union of India and others, AIR 1991 SC 518, and the case of T.Vijayan and others v. Divisional Railway Manager and others, 2000(3) AISLJ 325. We have gone through these decisions as also the earlier decision of the Tribunal in their order dated 13.8.1993 in OA No.138/92. The learned Senior Standing Counsel has filed with a memo on 19.4.2001 copies of the two orders promoting the applicant to the post of Assistant Commandant in order dated 29.9.1997 and the order accepting his joining as Assistant Commandant with effect from 13.10.1997. In the memo an endorsement has been made that the

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learned counsel for the petitioner refused to receive copies of the memo and the above order. We have, therefore, taken note of these.

6. Admittedly, the applicant was promoted to the rank of Inspector on ad hoc basis and he joined the post on 29.1.1985. The applicant has stated and the respondents have not denied that such ad hoc promotion was given after he was considered by the D.P.C. From the order of promotion enclosed by the respondents at Annexure-R/1 to the counter it also appears that such promotion of the applicant to the post of Inspector was against a clear vacancy. In the context of the above, it has been submitted by the learned counsel for the petitioner that going by the decision of the Hon'ble Supreme Court in Direct Recruit Class-II Engineering Officers Association and others v. State of Maharashtra and others, (1990)2 SCC 715, his ad hoc period of service from 29.1.1985 should count towards seniority and he must be taken to have acquired three years of service in the post of Inspector to be considered for promotion to the rank of Assistant Commandant. The respondents have pointed out that appointment of the applicant to the rank of Inspector was made on ad hoc basis because of pending court cases. In their counter the respondents have not given any details about nature of the pending cases and the interim orders, if any, in those cases because of which the applicant could not be given regular appointment. But admittedly this ad hoc appointment continued for long eight and half years and was followed by his regular appointment as Inspector on 15.11.1993. In view of this, the applicant's service as ad hoc Inspector must count towards his seniority as Inspector in pursuance of the decision of the Hon'ble Supreme Court in Maharashtra Engineering's

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case (supra) as also the more recent decision in T.Vijayan's case (supra), and it is ordered accordingly. It is also to be noted that in the order of ad hoc appointment, several other persons were given ad hoc appointment along with the applicant. While working out the seniority of the applicant in the rank of Inspector taking into account his ad hoc period of service, similarly the other persons, who were given ad hoc appointment along with the applicant and who were similarly placed, should also be given seniority in the same manner.

7. The applicant has prayed for a direction to the respondents to consider him for promotion to the rank of Assistant Commandant counting his service in the grade of Inspector since 28.1.1985. The applicant has not made any averment that while the respondents have wrongly considered him to be ineligible, they have given promotion to or made direct recruitment of other persons. A Government servant has no right to promotion. He has only a right to be considered for promotion. The applicant has not stated that any of his juniors has been considered while he was excluded from consideration. In view of this, mere fact that he was not considered even though he was eligible would not entitle him to retrospective consideration for promotion. This prayer is accordingly rejected, along with the prayer for consequential service benefits.

J/S

8. The applicant has made a further prayer that he should be treated senior to fresh recruits, if any. This prayer is also without any merit because he has not even

mentioned that any direct recruits were inducted in the rank of Assistant Commandant. He has also not made such persons, if any, as respondents and without hearing such persons, if any, no order detrimental to their interest can be passed. This prayer is accordingly rejected.

9. In the result, therefore, the Original Application is disposed of in terms of observation and direction above but without any order as to costs.

(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
15.5.2001
VICE-CHAIRMAN

CAT/CB/ 16th May, 2001/AN/PS