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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 637 OF 1995.
Cuttack, this the 18th day of July, 2000.

TAPAN KUMAR PATNAIK.

....

APPLICANT.

VRS.

UNION OF INDIA & OTHERS.

....

RESPONDENTS.

FOR INSTRUCTIONS.

1. Whether it be referred to the reporters or not? 25-
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 25-

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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Cuttack, this the 18th day of July, 2000.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

....

TAPAN KUMAR PATNAIK,
Aged about 39 years,
Son of Sudam Charan Das,
At present working as Demonstrator/
Laboratory Assistant in the Institute
of Hotel Management Catering Technology
and Applied Nutrition, Bhubaneswar-4.

.... APPLICANT.

By legal practitioner: M/s. Ganeswar Rath, S.N. Mishra, A.K. Panda,
Advocates.

- VRS. -

1. Union of India represented by Secretary,
Ministry of Tourism, Government of India,
Transport Bhawan, 1, Parliament Street,
New Delhi-1.
2. Secretary Cum Principal,
Institute of Hotel Management, Catering
Technology & Applied Nutrition,
VSS Nagar, Bhubaneswar-4.

.... RESPONDENTS.

By legal practitioner : Mr. U.B. Mohapatra, Additional Standing
Counsel (Central).

.....

O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL) :

The applicant, Tapan Kumar Patnaik, serving as Laboratory Assistant/Demonstrator in the Institute of Hotel Management, Catering Technology and Applied Nutrition, Bhubaneswar, filed this Original Application for his promotion as Assistant Lecturer in the Institute w.e.f. 11-03-1983 with all consequential benefits.

2. Applicant was appointed as Laboratory Assistant/Demonstrator on 28-04-1980 in Bakery and Confectionery Department of the Food Craft Institute, Orissa, Bhubaneswar which was jointly sponsored by Government of India and the Government of Orissa. The Management of the Food Craft Institute was completely taken over by the Government of India with effect from 1.1.1984 and its nomenclature was changed to Institute of Hotel Management Catering Technology and Applied Nutrition, Bhubaneswar. In the year 1984 Recruitment Rules were framed w.e.f. 1-1-1984. The Institute stationed at Bhubaneswar from 1.1.1984 is thus, styled as Institute of Hotel Management, Catering Technology and Applied Nutrition, Bhubaneswar.

3. The case of the applicant is that after passing H.S.C. Examination, he completed the Craft course in Bakery in the year 1974. He has further completed two years apprenticeship Training Course in the trade of Bakery and Confectionery and was awarded National Apprenticeship Certificate from the Ministry of Labour, Government of India in the year 1977. Prior

to 1.1.1984, there was no Recruitment Rule and the posts were filled up by promotion/direct recruitment. In the absence of any Recruitment Rules, promotions were being given as per the whims and pleasure of the Respondent No.2. In this way, one Thomas who passed only one year course in Bakery and Confectionery Trade was appointed as Laboratory Assistant/Demonstrator in the Institute on 08-05-1974, was promoted as Assistant Lecturer on 1-4-1979 and lecturer on 11.3.1983. without having any technical qualifications. Similar are the cases of M/s. SM Sidique, Rohit Kumar Nayak and Miss. Premalata Panda. Mr. Rohit Kumar Nayak was promoted as Assistant Lect. on 11.3.1983 without having any additional technical qualification for the post. However, applicant has been continuing as such. on 4-4-1983 as against the advertisement for direct recruitment to the Post of Asst. Lect., though the applicant applied, the same was not entertained. Thereafter, on 24.11.1984 and 19.12.1987, he submitted applications for appointment/promotion as Asst. Lect but the same were not considered favourably. However, on the basis of the oral assurance of the Principal to promote him as Asst. Lect. he has discharged his duties as Lecturer/HOD of Bakery and Confectionery Department from 5-8-1987 till 19-8-1987, 23-10-1987 to 18-11-1987 and 9-9-1989 to 2-3-1990. He submitted a representation to the Secretary/Principal of the Institute on 14-3-1995 for his promotion as Assistant Lect. under Annexure-A/5 but the same was not considered. On the other hand, ignoring his representation, Respondent No.2, i.e. the Principal, issued notification

on 11.9.1995 inviting applications to fillup two vacant posts of Asst.Lecturer in the Institute, under Annexure-A/1. In response to this notification, applicant sent another representation on 17.10.1995 under Annexure-A/6 but without any response. As his junior and unqualified persons like Rohit Kumar Nayak was promoted as Asst.Lect.w.e.f. 11.3.83 applicant prays for his promotion to that post w.e.f. 11.3.1983 with all consequential service benefits.

4. Respondents in their counter filed on 11.12.1995 challenged the jurisdiction of this Tribunal in entertaining this original Application. According to them u/s.14(2) of the AT Act, this Tribunal can assume jurisdiction over a public sector Undertakings or any other authority pursuant to a notification issued in that turn. There being no such notification by the time the application was filed, this Tribunal lacks jurisdiction to entertain and deal with this application. Respondents also urge that this application is barred by limitation since the cause of action arose w.e.f. 11.3.1983 and the application was filed on 19.10.1995 i.e. more than 12 years thereafter. In fact he had not represented claiming promotion to the post of Asst.Lect. at any time prior to 14.3.1995 on which date for the first time he represented under Annexure-A/7.

In regard to the facts, the case of the Respondents is that since Mr. Thomas, Lecturer, Ms. Premala Panda, Lect. Mr. SM Sidique, Lect and Shri RK Nayak Lect., possessed more qualifications, than the applicant their cases were considered and they were promoted. Thus, they deny the averments of the applicant that the applicant

possessed better qualification than these persons who do not have qualifications to be appointed as Assistant Lecturer. As per the Recruitment Rules, under Annexure-R/3 w.e.f. 1.1.1984 posts of Asst. Lect. is not a promotional post and is to be filled up by direct recruitment having necessary qualification mentioned in those rules. Accordingly, advertisement was published to fill up the vacancies in the posts of Asst. Lect. Had the applicant applied for the post in response to the advertisement, his case would have been considered. On these averments, the Respondents have prayed for dismissal of this Original Application.

5. On 30.10.1995, Department was directed not to publish the result of the selection made in response to the Advertisement. This order was made absolute on 15.11.1995. However, on 10.10.1996 the order was modified and the Department was directed not to fill up one post of Asst. Lect in General quota till final disposal of this Original Application.

6. We have heard Mr. G. Rath, learned counsel for the Applicant and Mr. U. B. Mohapatra, learned Additional Standing Counsel (Central) appearing for the Respondents and have also perused the records.

7. During hearing it was brought to our notice that for the first time in November, 1999 notification was issued by the Union Government under section 14(2) of the AT Act conferring jurisdiction on this Tribunal in respect of the Institute of Hotel Management. U/s. 14(2) the Central Government by notification, apply with effect

from such date as may be specified in the Notification the provisions of sub-section 3 to local or other Authorities within the territory of India or under the control of the Government of India and to corporations (or Societies) owned or controlled by Government, not being a local or other authority or corporation (or society) controlled or owned by a State Government. Sub-section-3 of Section-14 further makes it clear that the Central Administrative Tribunal shall also exercise jurisdiction and powers on and from the date with effect from which the provisions of this sub section apply to any local or other authority or Corporation or societies.

Question now arises whether this Tribunal still lacks jurisdiction to decide this O.A. Though pleadings are complete long prior to November, 1999, this case for various reasons could not be heard. By the time of hearing, this notification of November, 1999 had come into force. It comes to this that when the application was registered in the year 1995, this Tribunal is lack of jurisdiction but when the case was ripe for hearing this Tribunal have been vested with the powers to decide service problems of employees of this Institution. If at this stage this application is returned to the applicant to be filed before the appropriate forum on the ground that on 19th October, 1995, when the application was filed and registered this Tribunal lack jurisdiction, the applicant will have to knock the door of the Hon'ble High Court of Orissa by filing the very same application in which case the Hon'ble High Court may not entertain the same because of the Notification of November, 1999 and in that case, the applicant will unnecessarily

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come back to this Tribunal with ^{fresh} ~~a~~fresh application containing the very same facts and rules. We are, therefore, not inclined to turn down this application at this stage on the ground of lack jurisdiction by the time it was entertained in the year 1995 and since it was pending for hearing by the time when notification of November, 1999 was issued, we are inclined to proceed with the case on other points.

8. As per Recruitment Rules of the Institute in force from 1.1.1984 (Annexure-A/3), the Posts of Asst. Lect. are filled up by direct recruitment and not by promotion. Prior to 1.1.1984 the Institute was jointly managed by the Govt. of India and the State Govt. of Orissa. Applicant's grievance is that prior to 1.1.1984, Rohit Ku. Nayak not having requisite qualification was promoted to the post of Asst. Lect. (which fact has been denied by the Department in the counter) and as such he should also be promoted to the post of Asst. Lect. from the date when Shri Nayak was given promotion. In view of the specific recruitment rules, which came into force w.e.f. 1.1.1984 debaring promotion to the post of Asst. Lect. from lower level the prayer of the applicant can not be entertained specially when he has not challenged the vires of the 1984 Recruitment Rules.

This apart, the cause of action in this Original Application, as per his own averment arose sometime in the year 1983 when Shri Nayak was promoted yet he filed this application more than ^{four} ~~four~~ years thereafter though this application should have been filed soon after constitution and functioning of the CAT as per Sec. 21(2)(b) of the AT

Act, 1985. Thus, there is abnormal delay beyond the prescribed period of limitation in filing this Original Application. The Departmental Respondents have denied any representation having been received from the applicant prior to 1995 in this connection. Even the representation under Annexure-A/7 dated 14.3.1995 nowhere reveals about any previous representations, if any, and ^{as to} when the applicant got the oral assurance from his authority at any time regarding his promotion. In other words, the Original Application u/s. 19 of the AT Act is also not clear as to the ^{cause of the} abnormal delay in filing this OA. Even no application for condonation of delay as required under Rule-8(4) of CAT Procedure Rules, 1987 has been filed. Hence there is no sufficient justification to consider even for condonation of this abnormal delay in filing this Original Application. In the case of Ramesh Chandra vrs. Union of India and others reported in AIR 1999 SC 3837, an applicant challenged the order of non promotion by filing an application beyond the prescribed period of limitation without any application for condonation of delay. The Hon'ble Apex Court held that the Tribunal was not right ⁱⁿ for deciding the O.A. on merits overlooking the statutory provision under section 21 of the Act.

9. In view of the discussions made above, the Original Application fails being barred by limitation. No costs.

Somnath Singh
(SOMNATH SINGH)
VICE-CHAIRMAN

G. Narasimham
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.