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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 654 OF 1995
Cuttack, this the 10th day of April, 2001

Basanta Kumar Dey ... 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
10.4.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 654 OF 1995
Cuttack, this the 10th day of April, 2001

CORAM:

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

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Basanta Kumar Dey, aged about 51 years, son of late
Satish Chandra Dey, at present working as Air Craft
Assistant, Aviation Research Centre, At/PO-Charbatia,
District-Cuttack....
Applicant

Advocates for applicant - M/s C.A.Rao
S.K.Behera

Vrs.

1. Union of India, represented by the Secretary,
Department of Cabinet Affairs, Cabinet Secretariat,
New Delhi.
2. Director, Aviation Research Centre, East Block-V,
R.K.Puram, New Delhi, Pin No.110066.
3. Deputy Director, Aviation Research Centre, Charbatia,
District-Cuttack.....
Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.CGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application the petitioner has
prayed for setting aside the order dated 7.9.1995
(Annexure-4) cancelling the promotion of the applicant.
The respondents have filed counter opposing the prayer of
the applicant. No rejoinder has been filed.

2. By way of interim relief the applicant
had prayed that the order at Annexure-4 cancelling his
promotion should be stayed. On the date of admission on
14.11.1995 the impugned order was stayed, but the stay

order was vacated in order dated 30.11.1995. For the purpose of considering the petition it is not necessary to go into too many facts of the case.

3. The admitted position is that the applicant was initially appointed on 19.3.1966 as Air Craft Cleaner which post was redesignated as Air Craft Assistant. He continued in that post and was getting the scale of Rs.825-1200/- when the Government of India's scheme of career advancement for Groups C and D employees at Annexure-1 was introduced. This scheme provided that it would come into force with effect from 1.4.1991. It was provided that the Scheme would be applicable to employees who are directly recruited to Group-C or to Group-D post and to such employees whose pay on appointment to such a post is fixed at the minimum of the scale. The third condition is that employees who have not been promoted on regular basis even after one year on reaching the maximum of the scale of such post would be covered under the scheme. It was provided that Group-C and Group-D employees, who fulfil the above three conditions will be considered for promotion insitu to the next higher scale. Such promotion will be allowed after following the process of promotion with reference to seniority-cum-fitness. It is also the admitted position that in pursuance of the scheme, in order dated 2.6.1995 at Annexure-2, the applicant was promoted from the scale of Rs.825-1200/- to the scale of Rs.950-1400/- with effect from 1.1.1993. In this promotion order it is also mentioned in paragraph 2 that pay of Air Craft Assistants is fixed at the minimum of the scale and they have not been promoted on regular basis even after one year on

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reaching the maximum of the scale of Rs.825-1200/- From this it appears that the applicant was fully covered under the scheme for getting promotion with effect from 1.1.1993. In another order at Annexure-3 it was indicated that the applicant's pay before the date of promotion was Rs.1200/- and his pay was fixed on insitu promotion to the scale of Rs.950-1400/- at the level of Rs.1250/- and his date of next increment was fixed as 1.1.1994. In the impugned order dated 7.9.1995 (Annexure-4) the promotion granted to the applicant in order dated 2.6.1995 at Annexure-2 was cancelled. That is why the applicant has come up in this petition with the prayer referred to earlier.

4. The respondents in their counter have mentioned that the applicant was not fulfilling all the conditions envisaged in the scheme dated 13.9.1991 at Annexure-1 and therefore, his claim for insitu promotion was liable to be rejected. They have mentioned that on 21.4.1993 the petitioner was caught by security personnel red handed with copper cable weighing 8 Kg. while he was leaving his duty place in the air field. He was placed under suspension on 28.5.1993 and disciplinary proceedings were initiated against him. During the disciplinary proceedings, the petitioner filed a statement dated 13.6.1993 at Annexure-R/1 unconditionally confessing his guilt. The inquiring officer found him guilty and the petitioner was awarded the punishment of reduction of his pay by two stages from Rs.1200/- to Rs.1160/- in the time scale of Rs.825-1200/- for a period of three years with effect from 1.12.1993. In view of this, it is stated that the applicant had not

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reached the maximum of the scale and therefore, the insitu promotion was given to him erroneously and in the impugned order, the error was corrected.

5. We have heard Shri A.B.Tripathy, Advocate, on behalf of Shri C.A.Rao, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The learned counsel for the petitioner has relied on the decision of the Hon'ble High Court of Orissa in the case of M/s Meridian Steels, etc. v. Commissioner of Commercial Taxes, Orissa, Cuttack and others, 1997(II) OLR 348 and we have gone through this decision.

6. From the above recital of facts, it is clear that admittedly the career advancement scheme came into force with effect from 1.4.1991 as mentioned in paragraph 4 of the scheme at Annexure-1. It is also the admitted position that the applicant was given insitu promotion from the scale of Rs.825-1200/- to the scale of Rs.950-1400/- with effect from 1.1.1993. He was caught taking away copper cable on 21.4.1993 according to the respondents themselves and the punishment order reducing his pay was with effect from 1.12.1993. Thus, the punishment order was given effect to after the date of his promotion from 1.1.1993. This promotion order was issued after a delay of two years in order dated 2.6.1995. But that does not mean that while issuing the order of promotion on 2.6.1995, the respondents could have taken note of the punishment imposed on him reducing his pay from 1.12.1993. According to the scheme, the eligibility for insitu promotion has to be considered after the concerned Government employee has reached the

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maximum of his scale of pay and has not got a regular promotion even after one year of that. According to these criteria, the applicant's promotion was due on 1.1.1993 on which date no proceedings were initiated or were in contemplation against him. The punishment order was also imposed with effect from 1.12.1993. In view of this, we hold that as the applicant's eligibility for promotion was due to be considered as on 1.1.1993 on which date no punishment order was imposed on him and no proceeding was also pending or under contemplation against him, he was rightly promoted with effect from 1.1.1993. The very fact that promotion was given to him with effect from 1.1.1993 shows that the applicant was found suitable on the ground of seniority-cum-fitness as on 1.1.1993. In view of this, we hold that the impugned order cancelling his promotion is not legally sustainable. As the applicant had qualified to get insitu promotion with effect from 1.1.1993, the respondents should have given him insitu promotion on or around that date. Because of their delay by more than two years, the applicant cannot be made to suffer. In view of all the above, we hold that the order cancelling the applicant's insitu promotion is not legally sustainable and is accordingly quashed.

7. In the result, therefore, the Original Application is allowed. No costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
104.2001

CAT/CB/10th April, 2001/AN/PS