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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 655 OF 1995  
cuttack, this the 6<sup>th</sup> day of September, 2002.

GOKULANANDA MAJHI.

....

APPLICANT.

-Versus-

UNION OF INDIA & ORS.

....

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.

*For let 06/09/2002*  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

*V. Srikantan*  
(V. SRIKANTAN)  
MEMBER (ADMINISTRATIVE)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 655 OF 1995  
Cuttack this the 6<sup>th</sup> day of September/2002

CORAM:

THE HON'BLE MR. V. SRIKANTAN, MEMBER (ADMINISTRATIVE)

AND

THE HON'BLE MR. M. R. MOHANTY, MEMBER (JUDICIAL)

...

Sri Gokulananda Majhi,  
S/o. Late Govinda Majhi,  
At/PO-Sundhal, via/Katipada,  
Dist-Mayurbhanj - at present  
working as "Group D"  
At/PO-Cuttack G.P.O., Dist-Cuttack

...

By the Legal Practitioners

Applicant

Mr. P. K. Padhi

-VERSUS-

1. Union of India represented through its Secretary, Ministry of Communication, Dak Bhawan, New Delhi-110001
2. Chief Post Master General (Orissa Circle) At/PO, Bhubaneswar, Dist-Khurda-751 001
3. Sr. Superintendent of Post Offices, Cuttack City Division, At: P.K. Parija Marg PO-Cuttack G.P.O., Dist-Cuttack-753001
4. Sr. Postmaster, Cuttack G.P.O., At/PO-Cuttack G.P.O., Dist-Cuttack-753001
5. Sub Divisional Inspector (Postal) Cuttack North Sub Division, Cuttack-4 Dist-Cuttack-753 004

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By the Legal Practitioners;

Respondents

Mr. A. K. Bose,  
Sr. Standing Counsel  
(Central)

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O R D E R

MR. V. SRIKANTAN, MEMBER (ADMINISTRATIVE) :-

Heard Mr.P.K. Padhi, Learned Counsel for the Applicant , and Mr.A.K. Bose, Learned Senior Standing Counsel (Central) appearing for the Respondents and perused the records.

2. The Applicant was appointed as Extra Departmental Packer of Chhatrabazar Non Delivery Town and Sub post Office in the year 1990/ was promoted to the cadre of Gr.'D' on the basis of seniority through a duly constituted Selection Committee vide order dated 10-5-1994 (Annexure-3). Subsequently on 29-12-1994 (Annexure-4), Respondent No.4 issued a show cause notice to the Applicant proposing to cancel the selection and appointment of the Applicant to the Gr.D Cadre and the Applicant was asked to make representation. Applicant on receipt of such show cause notice, under Annexure-4, submitted his representation to the Respondent No.4 with a copy to Respondent No.3 but he had not received any reply to the same. The contention of the Applicant is that before issuing the show cause notice to the Applicant, no enquiry was made, nor the applicant was chargesheeted or he has been informed about the lapses on his part. However, his promotion to Gr.D cadre was made on the basis of the recommendations of a regularly

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constituted Selection Committee and that, having been promoted to the Gr.'D' cadre, the Applicant cannot go back to the post of ED Packer as some other person would have been appointed to that post. Moreover, the Applicant had already rendered about seven months service and has acquired a claim/right over that post. Finally, the only ground on which the appointment/promotion of the Applicant to the cadre of Gr.D was/is sought to be cancelled is that the applicant is a Scheduled Caste candidate and has wrongly been promoted against a ST vacancy. But this is not the fault of the Applicant and this being so, the Applicant is no way responsible and the promotion order cannot therefore, be cancelled. On the above grounds, the Applicant, in this Original Application prayed for quashing of the show cause notice at Annexure-4.

3. Respondents contention is that after the applicant was selected and promoted to the cadre of Gr.D, a reference was received from the Divisional Office on 17-10-1994 stating that the Applicant belongs to the SC Community and has been irregularly selected/promoted by the Selection Committee against the vacancy reserved for ST Community and therefore, the appointment/promotion is to be cancelled and it was directed that a show cause notice be issued on the proposed action of cancellation and action was accordingly taken.

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4. No doubt, the Applicant was wrongly promoted against a ST vacancy treating him to be a ST candidate and it has been admitted by the Respondents that it occurred because of the mistake on their part. However, it is their contention that if the Applicant is allowed to continue in the said post, it would deprive a ST candidate of being promoted to the said vacancy, and as such, the Applicant does not have any right to hold this post which is meant for ST candidate.

5. A similar case had come up before the Hon'ble High Court of Orissa in OJC NO.5254 of 1998 in the case of MAHENDRA TANTY VRS. UNION OF INDIA AND OTHERS and Their Lordships of the Hon'ble High Court of Orissa in its order dated 15-11-1999 have been pleased to hold that the Petitioner in that case, being in no way responsible for it, he cannot be allowed to suffer, particularly when he has already rendered service for about two years and it was directed that the Department is, therefore, clearly estopped from raising such a plea. It was further held that on the facts and circumstances, the equity is clearly in favour of the petitioner and have allowed the prayer of the petitioner with a direction that the next vacancy in that particular case to be given to SC candidate.

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6. In another case before this Tribunal in O.A.No.306 of 1993 (disposed of on 14-7-1993) in the case of MAHAKUL BAURI VRS. UNION OF INDIA AND OTHERS, this Tribunal had also taken the similar view and the order cancelling the entire selection was quashed. In this case, the Applicant was promoted to Gr.D cadre on 10-5-1994, show cause notice was issued on 29-12-1994 and the Applicant, had therefore, been allowed to work in the Gr. 'D' cadre for about 7 months. It cannot therefore, be said that the Applicant has not acquired any right. The Respondents are estopped from cancelling his appointment.

7. We, therefore, find merit in this Original Application and accordingly, quash the show cause notice dated 29-12-1994 under Annexure-A/4 with a direction to the Respondents to allow the Applicant to continue in the promoted cadre of Gr.D. It is further directed that since the SC/ST posts/vacancies are interchangeable, as per the Rules, the Respondents are directed to reserve the next SC vacancy for the ST candidate in order to meet the percentage of ST community.

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

*Manoranjan Mohanty*  
06/09/2002  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

*V. Srikanth*  
(V. SRIKANTAN)  
MEMBER (ADMINISTRATIVE)

KNM/CM.