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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO.302 OF 1998
Cuttack, this the 1st day of September, 1998

Shri Sushil Kumar Mohapatra Applicant

Vrs.

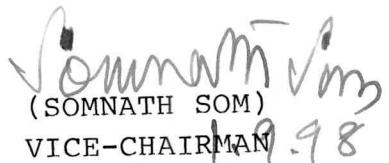
Union of India and others Respondents

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)
VICE-CHAIRMAN
19.9.98

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

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Shri Sushil Kumar Mohapatra,
aged about 45 years,
s/o Sri Harihar Mohapatra,
Plot No.1102, Back side Chilli Pokhari,
Shiva Nagar, Tankapani Road,
Bhubaneswar, District-Khurda Applicant

By the Advocates - M/s.S.K.Padhi,
S.Parida &
B.K.Sahoo.

Vrs.

1. Union of India, represented through the Secretary, Ministry of Personnel, North Block, New Delhi.
2. State of Orissa, represented through the Secretary, Home Department, Bhubaneswar.
3. Director of C.B.I., C.G.O.Complex, Lodhi Road, New Delhi.
4. Deputy Director (admn.), C.B.I., C.G.O.Complex, Lodhi Road, New Delhi.
5. Director General of Police, Orissa, Cuttack.
6. Superintendent of Police, C.B.I., Unit-VIII, Bhubaneswar.....Respondents.

By the Advocates - **Mr.Ashok Mohanty,**
Sr.C.G.S.C.
(for Respondents 1,3,4 and
6)

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 24.2.1998 (Annexure-11) for repatriation to his parent Department in the State Police cadre. There is also a prayer for a direction to the respondents to absorb the applicant in the rank of Sub-Inspector of Police, C.B.I., with effect from 12.11.1991 and to give him all consequential benefits. By way of interim relief, it was prayed that the operation of order at Annexure-11 should be stayed. The respondents in their counter have mentioned that the applicant has already been relieved from C.B.I. on 15.6.1998 in the forenoon and the interim prayer has become infructuous. The applicant is apparently on leave.

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2. Facts of this case, according to the petitioner, are that he is a Matriculate and joined as Constable in the Orissa State Police on 19.12.1972. He was deputed to Central Bureau of Investigation as Constable in April 1974. In the year 1979 he was promoted to the rank of Assistant Sub-Inspector in the State Police and Head Constable in the Central Bureau of Investigation. In 1980 he joined as Assistant Sub-Inspector of Police in the State Police and continued till 1986. Again on 19.7.1986 he joined as A.S.I. in C.B.I., Bhubaneswar Branch. On 1.10.1987 he was promoted to the rank of Sub-Inspector of Police in C.B.I. While the applicant was continuing as S.I. of Police in C.B.I., the C.B.I. authorities considered his case for permanent absorption with effect from 12.11.1991. In the letter dated 20.4.1992 (Annexure-1) the C.B.I. Headquarters at Delhi sought for concurrence of Director General of Police, Orissa, for the applicant's permanent absorption as S.I. of Police in Delhi Special Police Establishment, C.B.I., with effect from 12.11.1991 so that formal orders could be accordingly issued. From Annexure-1 it further appears that consent of the applicant to

termination of his lien in the parent cadre was also obtained and was sent to the State Police authorities. In reply, Government of Orissa in their letter dated 20.11.1992 (Annexure-2) informed Director General of Police, Orissa and C.B.I. that the Government have no objection to permanent absorption of the applicant in C.B.I. with effect from 12.11.1991. It is submitted by the applicant that before a formal order of his absorption as Sub-Inspector in C.B.I. could be issued, he was appointed as Inspector of Police on deputation basis in order dated 12.1.1993 (Annexure-3). In the memo to this order, Director General of Police, Orissa, was requested by the C.B.I. authorities to convey concurrence of Government to the appointment of the applicant as Inspector of Police on deputation basis in C.B.I. In reply, Director General of Police in his letter dated 26.3.1993 (Annexure-4) indicated that sanction for permanent absorption of the applicant in C.B.I. with effect from 12.11.1991 has been accorded by the State Government and the same has been conveyed in letter dated 13.11.1991. As such no further concurrence was considered necessary for his promotion to the rank of Inspector in C.B.I. But no formal order of applicant's absorption as Sub-Inspector in C.B.I. was issued and again on 23.6.1995 (Annexure-5) a letter was sent to Director General of Police stating that the applicant would be formally absorbed in C.B.I. from a prospective date on receipt of "No Objection Certificate" from the State Government. The exact date of absorption will be intimated separately at an appropriate time. Director General of Police was asked in this letter that formal concurrence to consider the case of the applicant for absorption in C.B.I. should be conveyed. In reply, Director General of Police in his letter dated 19.7.1995 (Annexure-6) indicated that Government have already furnished "No Objection Certificate" in favour of the applicant for his permanent absorption in C.B.I. with effect from 12.11.1991. It

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was also stated that it is not possible to allow the applicant to continue on deputation for more than six years and as such he may be either absorbed permanently with effect from 12.11.1991 as suggested by the C.B.I. earlier or he may be repatriated. Again in another letter dated 5.8.1995 D.I.G.of Police (Administration), Orissa, wrote to C.B.I. Headquarters at Delhi (Annexure-7) that State Police have no objection if the applicant is absorbed permanently in C.B.I. At Annexure-8 is a Fax Message dated 9.5.1997, i.e., after two years, from the C.B.I. in which it has been mentioned that the matter of absorption of the applicant in C.B.I. is under consideration and the same will be communicated as soon as a decision is taken by the competent authority. While the matter stood as such, on 17.12.1997 a circular was issued (Annexure-9) in which it was mentioned that Inspectors who have come on deputation do not have any inherent right of absorption and the discretion to absorb rests solely with the C.B.I. It was also mentioned that Inspectors who have come on deputation to C.B.I. can stay for five years which is extendable upto a maximum period of ten years. Under the Recruitment Rules, there is no provision for extension of deputation after ten years. In case an Inspector is not absorbed before his deputation period, he must repatriate to his parent organisation on expiry of his deputation period and no request for any extension would be entertained. It was further laid down in this circular that Inspectors who have completed maximum deputation period of ten years and those who are not considered suitable for absorption should be repatriated and the Inspectors who came on deputation in 1987 and earlier should be repatriated by April positively. It was also laid down that in future for selecting Inspectors for absorption an examination will be held and those who pass the examination will have to appear at an interview for being selected for absorption. The minimum qualification for absorption of Inspector is Bachelor Degree from a recognised University or equivalent standard. It was also laid down

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that Director of C.B.I. will be the final authority for deciding absorption/non-absorption of Inspectors and may relax any of the prescribed conditions for absorption as Inspector in C.B.I. The applicant further states that this circular is for the purpose of absorption in the rank of Inspector and not Sub-Inspector and is not applicable to his case. It is further stated that his case for absorption was recommended by D.I.G., C.B.I., Calcutta Region, in his letter dated 24.1.1997 at Annexure-10. Thereafter on 24.2.1998, the impugned order at Annexure-11 was passed, which is from C.B.I. Headquarters to Superintendent of Police, C.B.I., Bhubaneswar. The relevant portion of this letter is quoted below:

"Since the earlier proposal for absorption of Shri S.K.Mahapatra, Inspector is not forthcoming and he has already completed his maximum tenure of deputation in C.B.I., he may be repatriated to his parent department immediately under intimation to Head Office."

The petitioner submitted a representation dated 1.5.1998 to Director of C.B.I. for his permanent absorption in C.B.I. in the rank of Inspector. But no orders were passed on this and in the meantime he has already been relieved from Bhubaneswar Office of C.B.I. and as already noted, he is currently on leave. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. Respondents 1,3,4 and 6, i.e., C.B.I. authorities in their counter have pointed out that the applicant initially came on deputation to C.B.I. as Constable on 25.7.1974 and he was promoted as A.S.I. in his parent organisation in 1983. He again came on deputation in the rank of A.S.I. to C.B.I. on 8.10.1986. He was appointed as S.I. in C.B.I. on deputation basis on 1.10.1987 and was promoted to the rank of Inspector in C.B.I. on 13.1.1993 on deputation basis. The respondents have further stated that while he was holding the post of S.I. in C.B.I., the applicant applied for absorption in the rank of S.I. The matter was examined

and his absorption as Sub-Inspector was approved by Junior Board on 12.11.1991. The State Government's "No Objection" was sought for and State Government's "No Objection" was received in letter dated 20.10.1992 which is at Annexure-A/1. The respondents have further stated that in the meantime the applicant was promoted as Inspector in C.B.I. under the deputation quota as he had completed five years of service as Sub-Inspector. It is further submitted that the applicant was asked about his willingness to be promoted as Inspector on deputation basis. The respondents have further stated that had he been absorbed as Sub-Inspector, he would not have been entitled for promotion as Inspector on deputation basis. But as he exercised his willingness to be promoted as Inspector on deputation basis, he was so promoted and the case for his absorption as Sub-Inspector, which was approved earlier on 12.11.1991, became infructuous and it was deemed that the applicant was not interested to be absorbed as Sub-Inspector in C.B.I. The respondents have enclosed the letter of the applicant at Annexure-B/1 praying for his promotion to the rank of Inspector. It is further submitted that Director-General of Police, Orissa, was informed in letter dated 14.6.1993 at Annexure-C/1 that as the applicant has been appointed as Inspector of Police under deputation quota, he has not been absorbed in C.B.I. in the rank of Sub-Inspector. In this letter, as earlier noted, the concurrence of the parent Department was sought for his promotion to the rank of Inspector in the C.B.I. The respondents have further stated that a deputationist has no vested right to be absorbed in the borrowing Department and it is because of his willingness to be promoted as Inspector on deputation basis in ^{Sub-Inspector in} C.B.I. that his absorption as C.B.I. was not considered. The respondents have stated that the question of non-consideration or delayed consideration of his case for absorption as Sub-Inspector does not arise. The respondents have further stated that in view of the circular at Annexure-9 where the minimum educational

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qualification for absorption as Inspector in C.B.I. has been mentioned as Bachelor Degree, the question of absorption of the applicant as Inspector in C.B.I. does not arise. In the context of the above facts, the respondents have opposed the prayers of the petitioner.

4. We have heard Shri S.K.Padhi, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Standing Counsel appearing for the C.B.I. Respondent nos. 2 and 5, i.e., the State of Orissa and Director General of Police have not appeared and filed counter. Learned Senior Standing Counsel appearing for the C.B.I. has filed a memo along with copy of judgment of the Hon'ble High Court of Delhi in C.W.P.No. 1721 of 1997, with copy to the other side, which has been taken note of.

5. It has been submitted by the learned Senior Standing Counsel that the legal position is well settled that a deputationist has no right to be absorbed in the borrowing Department. It is entirely for the borrowing authority to decide on his absorption and this cannot be claimed as a matter of right. In support of his contention, the learned Senior Standing Counsel has relied on the decision of the Hon'ble Supreme in the case of Ratilal B.Soni and others v. State of Gujarat and others, AIR 1990 SC 1132. In that case the appellants were Patwaries in the Panchayat Service of the State of Gujarat. In 1982/83 they were sent on deputation to the higher cadre of Circle Inspectors in the State Service. In January 1986 qualified officials became available for promotion to the post of Circle Inspectors in the State cadre and as such the appellants were reverted to their parent cadre of Talaties in the Panchayat service. Their writ petition challenging reversion was rejected by the Hon'ble High Court of Gujarat on the ground that being on deputation, they have no legal right to be absorbed in the State service. On appeal before the Hon'ble Supreme Court, it was held that the appellants being on deputation could be reverted to their parent cadre at any

time and they do not get any right to be absorbed in the deputation post. In C.W.P.No. 1721/97 (Union of India and another v. Central Administrative Tribunal and others) decided by their Lordships of the Hon'ble High Court of Delhi, the same view was taken. In that case 157 Constables approached the Central Administrative Tribunal, Principal Bench, Delhi, for redressal of their grievances against Standing Order No.28/96 issued by Director, C.B.I. The Tribunal quashed the impugned Standing Order and directed that Constable-deputationists in C.B.I. shall not be repatriated before they are considered by appropriate Selection Committee for absorption against 60% quota available for those appointed against transfer on deputation/transfer. On the matter being taken to the Hon'ble High Court, it was held that the order of the Tribunal is not sustainable in law as it runs counter to the basic principle of service jurisprudence that a deputationist does not get any right to continue on deputation or claim to be absorbed and on termination of the term of deputation, the deputationist has no option except to revert back to the parent Department. A similar matter has also come up before the Hon'ble Supreme Court recently in the case of State of Punjab and others v. Inder Singh and others, etc., AIR 1998 SC 7, where the respondents were Constables in the Police Department, who were deputed to Criminal Investigation Department for long years and on expiry of their deputation, they were reverted back to the District Cadres. In that case, after analysing several earlier decisions, their Lordships of the Hon'ble Supreme Court came to the conclusion that law on deputation and repatriation is quite settled and there is no escape for the deputationist to go back to his parent Department and work there in the lower post as Constable or Head Constable, as the case may be. But in view of the undoubted hardship, which would be caused to the eighteen respondents by such repatriation, the Hon'ble Supreme Court upheld the direction of the Hon'ble High Court of Punjab & Haryana to allow such of the respondents, who had put in 20 years of qualifying service to take voluntary retirement from the ranks

they were holding in C.I.D. We have referred to these cases to bring out the point that the position of law is well settled that a deputationist has no right to get absorbed in the borrowing Department and on completion of his period of deputation, he has to revert to his parent Department. In the instant case, the petitioner was working as Inspector in C.B.I. on deputation basis and because of the circular at Annexure-9, according to which for absorption as Inspector the minimum educational qualification is Bachelor Degree which the applicant does not have, the applicant cannot be considered for absorption as Inspector in C.B.I. The circular at Annexure-9 no doubt speaks of the power of Director of C.B.I. to relax any of the qualifications, but such relaxation cannot also be claimed as a matter of right. In any case, in the present petition the applicant has not asked for his absorption in that the rank of Inspector even though he has prayed for in his representation dated 1.5.1998. The prayer of the applicant in the present application is for his absorption as Sub-Inspector in C.B.I. with effect from 12.11.1991. Here again it goes without saying that the applicant has no right to get absorbed even as Sub-Inspector in C.B.I. But in the case of the petitioner, apparently a decision was taken to absorb him as Sub-Inspector. It is clear from letter dated 20.4.1992 at Annexure-1 from C.B.I. Headquarters, Delhi, to the Director General of Police, Orissa, that the applicant has been approved for permanent absorption in C.B.I. as Sub-Inspector of Police with effect from 12.11.1991. In this letter concurrence of Orissa State Police for permanent absorption of the applicant as Sub-Inspector of Police was sought for "so that formal orders could be accordingly issued." The petitioner also gave his consent for termination of his lien in his parent State Police Cadre and this was enclosed to the above letter. In reply, vide letter dated 20.10.1992 at Annexure-A/1 filed by the respondents, Government of Orissa communicated their no objection for permanent absorption of the applicant in C.B.I.

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with effect from 12.11.1991. The respondents have also stated in paragraph 7 of the counter that the petitioner applied for absorption in C.B.I. in the rank of Sub-Inspector. The matter was examined and the same was approved by the Junior Board on 12.11.1991. That is how in the letter at Annexure-1 C.B.I. Headquarters have mentioned that absorption of the applicant as Sub-Inspector in C.B.I. has been decided with effect from 12.11.1991. Even though a decision was taken on 12.11.1991, the C.B.I. had written to the State Government after 5 months on 20.4.1992 (Annexure-1). The State Government's concurrence came after another six months in letter dated 20.10.1992 (Annexure-A/1). After the concurrence of the State Government was obtained, there was no hindrance in absorbing the petitioner in the rank of Sub-Inspector in C.B.I. because a decision had already been taken by the Junior Board on 12.11.1991. The petitioner has given his consent and the State Government and Director General of Police had also given their no objection. But this was not done, according to the respondents, on the ground that on 13.1.1993 the applicant was appointed to the rank of Inspector in C.B.I. on deputation basis. It is also stated in paragraph 8 of the counter that the applicant was asked about his willingness to be promoted as Inspector on deputation basis and the applicant in his letter at Annexure-B/1 prayed for considering his case for promotion to the rank of Inspector. It is submitted by the learned counsel for the petitioner that the applicant's prayer for promoting him as Inspector was without prejudice to his absorption as Sub-Inspector in C.B.I. As a matter of fact, in the letter at Annexure-B/1 he has mentioned that his representation for being permanently absorbed in C.B.I. has been approved by C.B.I. with effect from 12.11.1991 and final concurrence of Orissa Government is awaited which, as we have noted earlier, came in October 1992. As the C.B.I. authorities had already decided to absorb him with effect from 12.11.1991 in the rank of Sub-Inspector, it was incumbent on them to make it clear to the petitioner that in case he gives his

willingness to be promoted as Inspector on deputation basis, he cannot be absorbed as Sub-Inspector. This apparently the C.B.I. authorities did not do. They have merely mentioned in the counter that because of his promotion to the rank of Inspector, his case of absorption as Sub-Inspector became infructuous. But after the concurrence of State Government had been obtained in October 1992, if the C.B.I. had absorbed him as Sub-Inspector, the question of his further promotion to the rank of Inspector would not have arisen. Once a decision had already been taken by the C.B.I. authorities to absorb the petitioner as Sub-Inspector from 12.11.1991, the matter cannot be allowed to become infructuous indirectly because of his promotion to the rank of Inspector. It is also seen from the impugned order at Annexure-11 that the C.B.I. Headquarters have mentioned that earlier proposal for his absorption is not forthcoming and therefore, he should be repatriated to his parent Department. It is difficult to accept this contention that the earlier proposal of his absorption in C.B.I. was not forthcoming when the respondents in their counter have specifically mentioned that the Junior Board had approved of his absorption on 12.11.1991. Apparently, these papers are available at C.B.I. Headquarters which have not been looked into at the time of issuing the order dated 24.2.1998 at Annexure-11. Subsequently, the C.B.I. authorities had taken up the question of absorption of the applicant as Inspector. This is apparent from the letter dated 23.6.1995 at Annexure-5. This letter from C.B.I. Headquarters states that the applicant will be formally absorbed in C.B.I. from a prospective date on receipt of N.O.C. from the State Government. This obviously would mean that his absorption will be from a future date and this absorption, therefore, would have been in the rank of Inspector. Letter heading of Annexure-5 also speaks of "Permanent absorption of Shri S.K.Mohapatra, Inspector of Police in C.B.I. set-up." As we have already noted

his absorption as Inspector is not possible because he does not have the minimum qualification and the applicant has also not prayed for his absorption as Inspector. But so far as his absorption as Sub-Inspector is concerned, all formalities have already been gone into in the year 1991 and the decision has already been taken on 12.11.1991, as per the counter, to absorb him in the rank of Sub-Inspector in C.B.I. The applicant has worked as Sub-Inspector in C.B.I. from 1.10.1987 and from 13.1.1993 he has been working as Inspector in C.B.I. After his repatriation he has to come and join as Assistant Sub-Inspector in the State Police. As has been laid down by the Hon'ble Supreme Court in **Inder Singh's case (supra)**, on repatriation, he has to come back and take position in the parent cadre according to his seniority. But this will involve considerable hardship to him. In consideration of this and in view of the fact that the respondents had already taken a decision in November 1991 to absorb the applicant as Sub-Inspector with effect from 12.11.1991, we see no reason why that decision should not be worked out even though belatedly. Just because it has been mentioned in Annexure-II that the previous papers are not forthcoming, his case should not go by default. In view of the above, respondent no.3 is directed to consider the case of the applicant for his absorption as Sub-Inspector in C.B.I. in pursuance of the decision taken by the Junior Board with effect from 12.11.1991. It has been submitted by the learned counsel for the petitioner that in the meantime the petitioner has been promoted to the rank of Inspector in C.B.I. but that was on deputation basis. It was conceded by the learned counsel for the petitioner that if the petitioner is absorbed as Sub-Inspector, he will not claim any equity for his continuance as Inspector after the date of his absorption as Sub-Inspector.

6. In the result, therefore, the Original

Application is disposed of in terms of the observation and direction given in paragraph 5 of this order, but, under the circumstances without any order as to costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
19.9.98

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