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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 473 OF 1999
Cuttack, this the 18th day of April, 2000

Dilip Kumar Mohapatra Applicant

Vrs.

State of Orissa and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? ✓
2. Whether it be circulated to all the benches of the Central Administrative Tribunal or not? ✓

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.4.2000

18.4.2000
(G.NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 473 OF 1999
Cuttack, this the 18th day of April, 2000

CORAM:

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

.....
Dilip Kumar Mohapatra, aged about 57 years, son of late
Brajamohan Mohapatra, At-CB-16, Cantonment Road, Cuttack-753
001.....
Applicant

Advocates for applicant - M/s Sanjit Mohanty
S.C.Samantray
A.K.Patnaik
S.Patnaik

Vrs.

1. State of Orissa represented by
Commissioner-cum-Secretary, General Administration
Department, Orissa, At/PO-Bhubaneswar, District-Khurda.
2. Commissioner-cum-Secretary, Hoem Department, Orissa
Secretariat, At/PO-Bhubaneswar, District-Khurda.
3. Union of India, represented by the Secretary, Ministry
of Home Affairs, North Block, New Delhi
.....
Respondents

Advocates for respondents - M/s Aswini
Ku.Mishra, PRJ
Dash, for R 1
and 2
Mr.A.Ku.Bose
Mr.K.Ch.Mohanty

O R D E R

G.NARASIMHAM, MEMBER(JUDICIAL)

This O.A. was filed on 9.9.1999 challenging
the State Government notification dated 4.9.1999 reverting
the applicant to the post of Additional Director General and
Inspector General of Police. This Tribunal stayed the
operation of that notification till 24.9.1999. Again by
order dated 24.9.1999 while staying the operation of the
notification dated 10.10.1999, we have observed that the
State Government would be free to revert the petitioner to
the post of Additional Director General of Police after

10.10.1999 and in that event, such reversion shall be subject to the result of this O.A. In OJC No.12634 of 1999 preferred by the petitioner challenging our order dated 24.9.1999, the Hon'ble High Court of Orissa, while staying the operation of the notification dated 4.9.1999 till disposal of this OA, observed that the State Government would be at liberty to post the petitioner in any post in the rank of Director General & InspectorGeneral of Police without prejudice to the rights and contentions of the parties in this OA. While disposing of the OJC, the Hon'ble Court expressed hope that this Tribunal will dispose of the main application as early as possible and that the problem involved can be satisfactorily solved if the State Government and the Central Government act in a concerted manner to find out the solution.

Again in another OJC No.736 of 2000 the Hon'ble High Court allowed the prayer to amend the OA to include another prayer. When this OA stood posted to 29.3.2000 for peremptory hearing, the petitioner filed two Misc.Applications, one for further amendment and another to issue direction to the respondents to indicate what steps they have taken in arriving at the solution to the question pursuant to the order dated 13.10.1999 of the Hon'ble High Court in OJC No.12634 of 1999. After hearing the learned counsels of both sides, it was ordered that orders on these two M.As. would be passed along with the order in OA.

2. One MA is for further amendment of the OA challenging the Home Department's notification dated 7.3.2000 involving posting and transfer of two officers in the rank of Director General-cum-Inspector General of Police. We do not see any justification to amend the OA pursuant to this notification because the petitioner has not been reverted from the rank of Director General & Inspector General of Police in this notification. We therefore disallow the prayer for amendment of the OA.

The other M.A. is based on the observation of the Hon'ble High Court in the order dated 13.10.1999 that the problem involved can be satisfactorily solved if the State Government and Central Government act in a concerted manner to find out the solution. The petitioner in this MA expects this Tribunal to direct the respondents to file a statement as to what steps have been taken in arriving at the solution to the question. Even if the respondents, i.e., the State Government or the Central Government have not taken any steps to arrive at a solution to the problem involved in this OA, the legality of the impugned notification dated 4.9.1999 of the State Government can be examined on the basis of materials available on record. Moreover, the Hon'ble High Court through that observation did not direct the State Government or the Union Government to arrive at a solution. The observation of the Hon'ble High Court only amounts to their fond hope, non-observance of which will not give rise to any adverse inference against them. This MA is also without any merit and is accordingly disallowed.

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3. We now come to OA No.473 of 1999. The O.A. was allowed to be amended by the Hon'ble High Court in their order dated 15.2.2000 in OJC No. 736 of 2000 and accordingly the applicant has filed a consolidated amended petition which is being referred to for the present purpose. In the OA the petitioner has prayed for quashing the notification dated 4.9.1999 (Annexure-3) of the unamended O.A. and for a declaration that he should be allowed to continue as Director General and Inspector-General of Police, Orissa, as per notification dated 4.3.1999 at Annexure-1. He has also prayed that the notification dated 11.10.1999 at Annexure-5 enclosed to the application for amendment, MA No. 724 of 1999 filed before the Tribunal, should be quashed and the applicant be posted in the rank of Director General and Inspector General of Police. Even though both sides have filed voluminous papers and pleadings, the scope of controversy in this case is very limited. The averments made by the applicant and the respondents in their OA and the counter and rejoinder and subsequent counter filed after the O.A. was allowed to be amended will be considered while we will discuss the submissions of the counsels of both sides. In view of this, it is not necessary to record all the submissions of both sides at this stage.

4. The admitted position is that the three seniormost officers in the IPS Cadre in Orissa are the following in order of seniority:

(i) Shri B.B.Panda (Year of allotment 1963)

(ii) Shri S.K.Chaterjee (Year of allotment
1964)

(iii) Shri D.K.Mohapatra (Year of allotment
1966)

In the IPS Cadre there is only one cadre post of DG and Inspector General of Police in the rank of Director General of Police and under the Rules one ex-cadre post in the same rank can be operated and that post is Commandant General, Home Guards in the rank of Director General of Police. Prior to 4.3.1999 Shri B.B.Panda was Director and Inspector General of Police, and Shri S.K.Chatterjee was Commandant General, Home Guards. The applicant was Director, Intelligence in the rank of Additional Director General of Police. This is apparent from Annexure-2. In order dated 4.3.1999 which is at Annexure-A of the counter of respondent nos.1 and 2, State Government created a second ex-cadre post of Director General and Inspector General of Police, Vigilance, in the Director General of Police's scale of pay of Rs.24050-26000/- keeping in abeyance the post of Additional Director General of Police (Vigilance), for a period of six months. The ex-cadre post of Director General & Inspector General of Police (Vigilance) was declared equivalent in status and responsibility to the post of Director General & Inspector General of Police provided in the IPS Cadre. A copy of this order was also endorsed to Director General & Inspector General of Police, Orissa. With creation of this third post the applicant was promoted to the rank of Director General & Inspector General of Police in order dated 4.3.1999 of General Administration Department indicating that place of posting of the applicant will be notified by the Home Department. The Home Department in their order at Annexure-2 to the OA transferred Shri B.B.Panda to the first ex-cadre post of Commandant General, Home Guards and Shri S.K.Chatterjee, Commandant

General Home Guards, was transferred to the newly created ex-cadre post of Director General & Inspector General of Police (Vigilance), and the applicant who was then Director & Additional Director General of Police (Intelligence) was appointed on promotion to the rank of Director General and Inspector General of Police and posted as Director General & Inspector General of Police, Orissa. The respondent nos.1 and 2 have stated that they had moved Government of India for according their approval to the creation of the second ex-cadre post in the rank of Director General & Inspector General of Police. In pursuance of our direction, the concerned file of the Department has been produced before us. From this we find that the State Government moved the Government of India for creation of the second ex-cadre post in the rank of Director General & Inspector General of Police in letter No. 7391, dated 12.3.1999 of General Administration Department. Government of India in their letter dated 5.4.1999 pointed out that under Rule 9(7) of IPS (Pay) Rules, 1954, no apex level post in the IPS Cadre, i.e., a post in the rank of Director General and Inspector General of Police can be created by State Government over and above the prescribed ratio without the approval of the Central Government. In this connection, it is necessary to note that Rule 9(7) of IPS (Pay) Rules, 1954 requires prior approval of the Central Government in such a case. Government of India in their above letter also indicated that as per the guidelines prescribed by the Department of Personnel & Training such requests are required to be placed before the Civil Services Board for consideration and to enable the Board to make its recommendations to the Government, full functional justification for creation of

the ex-cadre post over and above the prescribed ratio is required to be given. They also wanted that position of utilisation of State Deputation Reserve and Central Deputation Reserve should be indicated and functional justification for creation of the second ex-cadre post and third post in the rank of Director General and Inspector General of Police which is the third post in the rank of Director General & Inspector General of Police should be given. This was provided to Government of India in G.A. Department's letter No.21388, dated 19.7.1999. The State Government have taken the stand that as the Government of India in their letter dated 2.9.1999 did not agree to the creation of the third post, they had no other option except to revert the applicant from the post of Director General of Police. The factual position as is revealed from the file is somewhat different. From a perusal of the file it appears that even before the letter of Government of India rejecting the proposal of the State Government for creation of the third post and second ex-cadre post was received on 7.9.1999, a decision was taken to revert the applicant to the rank of Additional Director General of Police and to post Shri B.B.Panda in the post of Director General and Inspector General of Police, Orissa. On 4.9.1999 a FAX message was sent to Chief Election Commissioner in which it was mentioned that Government of India's approval for the third post has not been received. Moreover, Government of India have intimated that no apex level post in the IPS Cadre can be created over and above the prescribed ratio without the approval of the Central Government. In view of this, the State Government reported to Chief Election Commissioner that continuation of the third post in the rank of Director General and Inspector

General of Police is therefore not permissible. It was also indicated that the State Government have therefore decided to revert the applicant to the rank of Additional Director General of Police and post Shri B.B.Panda to the post of Director General and Inspector General of Police. As at that time election was on the Commission was moved for according necessary approval to this proposal or to give any other suitable advice if considered necessary since the entire police force including the Director General of Police has been placed at the disposal of the Election Commission since 30.8.1999 for conduct of election. The Election Commission in their letter dated 5.9.1999 indicated that as the State is in the midst of election which will end by 10th October, the applicant should not be shifted from the post of Director General of Police till 10.10.1999 and the Government of India can be requested on behalf of the Election Commission to regularise this short extension. The Commission also made it clear that key functionaries like Director General of Police, Home Secretary and Chief Secretary should not be disturbed in any manner. We have mentioned about these correspondences in detail because these messages were exchanged between State Government and Election Commission on 4.9.1999 and 5.9.1999 prior to receipt of the letter dated 2.9.1999 of Government of India rejecting the proposal which as we have already noted was received on 7.9.1999. In the message sent by State Government to Electioin Commission reference has been made to Government of India's letter dated 5.4.1999 which has been referred to earlier by us. Even before the Election Commission was moved, the then Chief Minister recorded a minute on 3.9.1999 in which he made a reference

to the letter dated 5.4.1999 and ordered that the third post should not be continued. In this minute Shri B.B.panda was appointed as Director General and Inspector General of Police and the applicant was reverted to the cadre post of Additional Director General of Police. From this it is clear that a decision was taken on 3.9.1999 to revert the applicant from the post of Director General and Inspector General of Police on the basis of the letter dated 5.4.1999 of Government of India in which Government of India had stated that for creation of apex level post beyond the prescribed ratio, prior approval of Government of India is necessary under Rule 9(7) of IPS (Pay) Rules, 1954. This view of the Government of India was known to the State Government on 13.4.1999 when this letter dated 5.4.1999 has been diarised. Notwithstanding this the applicant was continued in the post of Director General & Inspector General of Police till 4.9.1999 and the third post of Director General & Inspector General of Police (Vigilance) was operated.These facts are brought on record for the purpose of the background material against which the submissions made bythe learned counsel for the petitioner have to be examined. Before that it must be noted that from Rule 9(7) of IPS (Pay) Rules, 1954 it is clear that apex level post can be created beyond the prescribed ratio only with prior approval of Central Government. A stand was taken bythe learned counsel for the petitioner at the time of pressing the prayer for interim relief that Rule 9(7) of IPS (Pay) Rules, 1954 renders Rule 4(2) of IPS (Cadre) Rules nugatory. The second proviso to Rule 4(2) of IPS (Cadre) Rules provides that State Government concerned may add, for a period not exceeding one year and with the approval of the Central

Government for a further period not exceeding two years, cadre to a State one or more posts carrying duties and responsibilities of a like nature to cadre posts. In our order dated 9.9.1999 on the date of admission of this application, we had rejected this contention by holding that there is no contradiction between the second proviso to Rule 4(2) of IPS (Cadre) Rules, 1954 and Rule 9(7) of IPS (Pay) Rules, 1954 because while the State Government have the power to add to the cadre posts under the second proviso to Rule 4(2) of IPS (Cadre) Rules, Rule 9(7) of the IPS (Pay) Rules, 1954 makes a special provision of requirement of prior approval of the Central Government for apex level post only in the IPS Cadre and these two provisions have been held as not contradictory. But as the applicant was continuing in the post of Director General & Inspector General of Police, Orissa, till 10.10.1999 because of the order of the Election Commission not to shift him from the post of DG & IG of Police, Orissa and as while holding the post of DG & IG of Police, Orissa, the applicant was holding a cadre post, in our order dated 24.9.1999 we had stated that after 10.10.1999 the State Government would be free to revert him. Obviously a person while holding the cadre post in the rank of DG & IG of Police, cannot be reverted to a lower level post and that is why Annexure-3 of the OA was stayed till 10.10.1999. Against our order the applicant had moved the Tribunal praying that the stay order has been extended till 10.10.1999 and in the meantime the pleadings had been complete and therefore the stay order should be continued beyond 10.10.1999 till the OA is disposed of. This prayer was rejected in our order dated 1.10.1999. Against this order the applicant approached the Hon'ble High Court

in OJC No. 12634 of 1999 in which their Lordships in their order dated 13.10.1999 stayed the order reverting the applicant from the rank of Director General & Inspector General of Police to the rank of Additional Director General of Police till the disposal of the OA. Hon'ble High Court also observed that the State Government of Orissa would be at liberty to post the petitioner in any post in the rank of Director General & Inspector General of Police without prejudice to the rights and contentions of the parties in the main application.

5. The first point urged by the learned counsel for the petitioner is that at the time of promotion of the applicant on 4.3.1999 the promotion order or the posting order did not show that the post had been created for six months or the promotion was only for six months and therefore the reversion after the period of six months is mala fide. The applicant was well aware that the third post was created only for six months. We have already noted that a copy of the order creating the third post for six months was sent to the Director General & Inspector General of Police and the applicant was Director General & Inspector General of Police at that time. It cannot therefore be said that he was unaware of the fact that the third post was created for a period of six months. It is no doubt true that in the promotion order it was not mentioned that the promotion was for six months. Normally in no promotion order the period of promotion is mentioned. Had the Government of India agreed to the third post, then the applicant would have continued either in the post of Director General & Inspector General of Police, Orissa or in any of the other two posts which would have then been in existence. As the

third post is in clear violation of the statutory provisions of Rule 9(7) of Indian Police Service (Pay) Rules, which clearly provide for obtaining prior approval of Government of India, the applicant cannot say that because the period of promotion for six months to the rank of Director General & Inspector General of Police not having been mentioned, he cannot be reverted. This contention of the applicant is wholly without any merit and is rejected.

6. The next contention of the petitioner is that under the second proviso to sub-rule (2) of Rule 4 of the IPS (Cadre) rules, the State Government have the power to create a cadre post for one year and beyond one year with the approval of the Central Government and as the applicant was holding the cadre post of Director General & Inspector General of Police, Orissa, it was not open to the Government to revert him to the rank of additional Director General of Police. It is also stated that the petitioner having come to the rank of Director General of Police cannot be reverted to the lower grade. This contention is also wholly without any merit. We have already taken a view with regard to the alleged contradiction urged by the learned counsel for the petitioner between the second proviso to rule 4(2) of the IPS (Cadre) Rules and Rule 9(7) of IPS(Pay) Rules and it is not necessary to deal with this ground again.

7. The other contention of the applicant that once he has been promoted to the rank of Director General of Police he cannot be reverted to the lower grade. It is also not correct. The position of law ^{is} well settled that he cannot be reverted to a lower grade by way of punishment without going through the requirements of Article 311 of the Constitution. But if one post is abolished, then naturally of the three persons holding the posts in the

rank of Director General of Police, the juniormost person has to be reverted.

8. It has been further contended that once the post has been created by exercising the power under second proviso to Rule 4(2) of the IPS (Cadre)Rules, the State Government cannot invoke the provisions of Rule 9(7) of the IPS (Pay) Rules. This contention is also without any merit because as we have already held these provisions are not contradictory and the fact that the State Government have created the post in violation of the provisions of Rule 9(7) of the IPS(Pay) Rules cannot act as an estoppel against the State Government because there cannot be estoppel against a statutory provision.

9. It is further submitted that the order of reversion is in violation of the principles of natural justice because no showcause notice was given to the applicant. This contention is again without any merit because from the order itself it is clear that the applicant was not reverted on account of any deficiency in his work. The minute recorded by the then Chief Minister referred to by us also does not mention that the applicant has been reverted because of any shortcoming on his part in the post of Director General & Inspector General of Police, orissa. The only ground of reversion is that the State Government apparently decided to follow the statutory provisions after the period of six months which incidentally is long after the receipt of Government of India's first letter dated 5.4.1999 pointing out that the approval of Government of India is necessary for creation of the apex level post beyond the prescribed ratio. In the OA it has been mentioned

that Shri B.B.Panda expressed his inability to continue in the post of D.G. & IG of Police, Orissa on health grounds and requested for a lighter posting. The next officer in the cadre Shri S.K.Chatterjee also expressed his inability to work as DG & IG of Police, Orissa. These facts are totally irrelevant for the simple reason that these two officers, Shri B.B.Panda and Shri S.K.Chatterjee were at the relevant point of time holding the posts in the rank of Director General of Police, i.e., one was DG & IG of Police, Orissa and the other one was Commandant General, Home Guards. As they were already holding the posts in the rank of Director General of Police, their unwillingness to work as DG & IG of Police, Orissa, is merely an unwillingness to go on transfer to a particular post. A Government servant can refuse promotion to a higher post. But even in such cases he has no absolute right to refuse such promotion and it is well settled that notwithstanding a Government servant's refusal for promotion, it is open for the Government to give him promotion if there are sufficient objective grounds to do so. A Government servant does not even have an absolute right to resign. Resignation given by a Government servant can be refused by the Government on the ground that disciplinary proceedings are pending or contemplated against him. Therefore it does not require any emphasis that a Government servant has no right to refuse to work in a post. Therefore, refusal of Shri B.B.Panda and Shri S.K.Chatterjee to continue ^{or work} in the post of DG & IG of Police, Orissa, does not invest with the applicant any right to continue in the post of Director General & Inspector General of Police, Orissa, even after the third post has ceased to exist.

10. Another contention of the learned counsel for the petitioner is that review of strength of IPS cadre is under way. This is done under sub-rule (2) of Rule 4 of IPS (Cadre) rules. The applicant has stated that 1% of the senior duty posts has to be in the rank of Director General of Police in the cadre. Against the proposed cadre strength of 209 posts, 186 have been proposed to be categorised as senior duty posts and 1% of that comes to 1.86 post or rather 2 posts which should be in the rank of Director General of Police and two more ex-cadre posts can also be operated, making four posts in the rank of Director General of Police. Therefore, there ought to be two posts in the rank of Director General of Police in the cadre and two ex-cadre posts totalling four posts. It has also been submitted by the petitioner that though cadre strength in the rank of Director General of Police is one right from 1989, two or more ex-cadre posts have been operated and the applicant has enclosed a list at Annexure-4 showing the incumbents in the rank of Director General & Inspector General of Police. This list shows that in the past three or sometimes even four posts had been operated in the rank of Director General of Police taking into account the cadre and ex-cadre posts. The first contention about need for having two cadre posts of Director General of Police on the ratio of 1% of senior duty posts is a matter for future. The cadre review is a long drawn process. After a cadre review is done this has to be placed before Government of India and thereafter the strength of the cadre would be enhanced. Just because cadre review is under way it cannot be said that the State Government is authorised to operate more than one cadre posts in the rank of Director General of Police.

Similarly the fact that in the past the State Government had operated more than two posts, i.e., three or sometimes four posts in the rank of Director General of Police taking into account the cadre posts and equal number of ex-cadre posts does not also go to support the case of the petitioner. It is well settled that it is for the executive Government to decide as to the need for having certain number of posts at a particular level and it is not open for the Tribunal to direct the Government to create any new post and in any case in this case the applicant himself has indicated that the cadre review is being taken up and it is clear that the cadre review has not been completed. These contention is also therefore held to be without any merit and is rejected.

11. Similarly the contention that in the past the State Government had operated more than two posts by taking into account the cadre posts and ex-cadre posts cannot be a ground to direct the State Government to operate more than two posts. In any case from Annexure-4 given by the applicant himself we find that in 1998 the State Government have operated only two posts, one cadre and one ex-cadre post. Just because the cadre strength is under review the applicant cannot claim that his reversion is illegal on the ground of the ongoing cadre review. This contention is therefore held to be without any merit and is rejected.

12. Having dealt with the above submissions of the learned counsel for the petitioner, we have to look into certain other aspects of the matter. We have already noted that a decision to revert the applicant was taken on 3.9.1999 even before the letter of Government of India dated 2.9.1999 was received by the State Government on 7.9.1999.

Moreover in the minute dated 3.9.1999 recorded by the then Chief Minister, no reference has been made nor could it have been made about the refusal of Government of India to agree to the proposal of the State Government communicated in their letter dated 2.9.1999. Reference on the other hand has been made to the letter dated 5.4.1999 in which Government of India have pointed out that for creating apex level post beyond the permissible ratio, Government of India's approval is necessary. We have also noted that Rule 9(7) of IPS (Pay) Rules speaks of prior approval of Government of India in this regard. This advice of Government of India communicated in their letter dated 5.4.1999 was with the State Government at least on 13.4.1999 and in any case the provision of Rule 9(7) of IPS (Pay) Rules which is unequivocal was already therefore. Therefore, it is clear that reversion of the applicant has been ordered on the basis of the earlier advice of the Government of India communicated in their letter dated 5.4.1999 and not on the basis of their letter dated 2.9.1999.

13. The next aspect of the matter is that on 4.9.1999 the applicant was holding the cadre post of DG & IG of Police, Orissa. Even after the order of reversion was passed he continued to hold that post because General Election was going on and the Election Commission did not agree to the proposal of the State Government to transfer the applicant from the post of DG & IG of Police, Orissa. It is also to be noted that by operation of law during the period of election more particularly from 30.8.1999 the entire police force engaged in election work including the post of Director General & Inspector General of Police, Orissa, held by the petitioner was placed at the disposal of

Election Commission of India. As the applicant was holding the cadre post of Director General & Inspector General of Police, Orissa, beyond 4.9.1999 and the Election Commission had directed in their letter dated 5.9.1999 that the applicant should not be shifted from the post of Director General & Inspector General of Police, Orissa, till 10.10.1999, the applicant was holding the post of DG & IG of Police, Orissa till 10.10.1999 under orders of Election Commission of India with whom his services had been placed. As a matter of fact the Commission had written a letter to the State Government on 9.9.1999 stating that the Commission had a word on the subject with the Union Home Secretary who assured the Commission that the State Government's request for extension of the ex-cadre post till 15.10.1999 would be considered sympathetically. From the file it however does not appear that if any further proposal was sent to the Union Government for creation and extension of the post till 15.10.1999. Whatever it may be the indisputable position is that while the applicant was duly promoted to the rank of Director General of Police and was holding the cadre post of DG & IG of Police, Orissa, he cannot be reverted from the rank of DG of Police so long as he holds the cadre post. After the Tribunal's refusal to grant interim stay of the order at Annexure-3 the applicant had approached the Hon'ble High Court who had in their order dated 13.10.1999 directed that the order at Annexure-3 is stayed till the disposal of the OA, but the State of Orissa will be at liberty to post the petitioner in any post in the rank of DG & IG of Police. Thereafter the State Government in their order dated 11.10.1999 transferred the applicant to the post of Chairman, Orissa Police Housing and Welfare Corporation on deputation basis in compliance with the order

dated 13.10.1999 of the Hon'ble High Court in OJC No. 12634 of 1999. In the same order in the next notification the post of Chairman, Orissa Police Housing & Welfare Corporation was declared equivalent, as a special case in compliance with the order of the Hon'ble High Court, in status and responsibility to the rank of DG & IG of Police until further orders. Thus, it is clear that on the date of issuing of the order of reversion dated 4.9.1999 the applicant was holding the cadre post of DG & IG of Police, Orissa and he continued in that post till 11.10.1999 under orders of the Election Commission of India with whom his services had been placed. In view of this, while he was holding the cadre post in the rank of DG of Police, the applicant could not have been reverted to the rank of Additional Director General of Police. Therefore, the notification dated 4.9.1999 reverting the applicant to the rank of Additional Director General of Police is held illegal and is accordingly quashed.

14. In his amendment petition, which was allowed by the Hon'ble High Court, the applicant has prayed that the notification No.56869, dated 11.10.1999 should be quashed. The applicant has mentioned in paragraph 4(n) of the consolidated amended petition that the post of Chairman, Orissa Police Housing & Welfare Corporation is not a post equivalent in status and responsibility to the rank of DG & IG of Police more so when ex-cadre post of Commandant General, Home Guards, held by Shri B.B.Panda was available and kept vacant. The State Government, on the other hand, have mentioned in their additional counter that they have the power under the rules to declare a post equivalent in status and responsibility to a post in the cadre and that has

been done in the case of the post of Chairman, Orissa Police Housing & Welfare Corporation. They have also stated that in the past, officers in the rank of DG of Police have been holding this post. They have also mentioned the names of four such officers. Hon'ble Supreme Court has held in the case of E.P.Rayappa v. State of Tamil Nadu, AIR 1974 SC 555, that when a cadre officer is posted to a non-cadre post after declaring it equivalent to a cadre post, it is open for the officer who is posted to such non-cadre post declared equivalent to a cadre post, to question such equivalence on the ground that the post is not actually equivalent to the cadre post with which equivalence has been done. But the Hon'ble Supreme Court have also held in the above case that it is primarily a matter for the Government to decide and the burden on the person who challenges such equivalence is heavy. In this case the applicant has not shown any ground as to why the post of Chairman, Orissa Police Housing & Welfare Corporation is not actually equivalent to the cadre post of Director General of Police. The only ground urged by him is that the cadre post of Commandant General, Home Guards, has been kept vacant while transferring him to the post of Chairman, Orissa Police Housing & Welfare Corporation. This obviously cannot be a ground for challenging the equivalence. Moreover, the State Government have pointed out that in the past several officers in the rank of DG of Police have held this post. In view of this the contention of the applicant that the post of Chairman, Orissa Police Housing & Welfare Corporation is not equivalent to the cadre post of D.G. of Police is held to be without any merit and is rejected.

15. Next comes the question of legality of the action of the State Government in transferring the applicant to the post of Chairman, Orissa Police Housing & Welfare Corporation. The Hon'ble High Court in their order dated 13.10.1999 have clearly mentioned that the State Government will be at liberty to post the petitioner in any post in the rank of DG & IG of Police without prejudice to the rights and contentions of the parties in the main application before the Tribunal. It is also obvious that no Government servant has a right to hold a particular post and if he is transferred to another post in the same rank without any loss to his emoluments, he can have no grievance. Therefore, the prayer of the petitioner to quash the notification No.56869 dated 11.10.1999 at Annexure-5 is held to be without any merit and is rejected.

16. One last point is also to be noted before we part with this case. The Government of India had not agreed to the proposal of the State Government to create the third post in the rank of DG of Police, i.e., the post of DG & IG of Police (Vigilance). At the relevant point of time Shri S.K.Chatterjee was holding that post. Notwithstanding the rejection of the proposal of the State Government by the Government of India, the State Government did actually operate that post and Shri S.K.Chatterjee continued in the post of Director General & Inspector General of Police (Vigilance) till 7.3.2000 when in notification No. 11708, dated 7.3.2000, Shri Chatterjee was transferred and posted as DG & IG of Police, Orissa and Shri B.B.Panda, who was holding that post, was posted as Commandant General, Home Guards. We had enquired from the learned special

counsel for the State Government as to whether by allowing Shri Chatterjee to continue in the post of DG & IG of Police (Vigilance) even after rejection of the proposal of the State Government to create that post, the State government have operated the second ex-cadre post. It was explained by the learned Special Counsel for the State Government that as per rules the permissible limit is one cadre post and one ex-cadre post in the rank of DG of Police. At the time when Shri Chatterjee was holding the post of DG & IG of Police (Vigilance) the State Government did not operate the post of Commandant General, Home Guards and therefore in all they have operated one cadre post of DG & IG of Police and one ex-cadre post of DG & IG of Police (Vigilance). The State Government have also stated and this has been followed up by filing a memo of arguments on this point that in the past in the Indian Police Service as also in the Indian Administrative Service the State Government have been operating different ex-cadre posts at the apex level by limiting these to the number prescribed. In view of this, it is clear that when Shri Chatterjee was holding the post of DG & IG of Police (Vigilance) till 7.3.2000 the State Government did not operate the post of Commandant General, Home Guards and this was according to the rules.

17. In the resultant situation, we quash the notification dated 4.9.1999 (Annexure-3) reverting the applicant to the rank of Additional Director General of Police. At present the applicant is continuing as Chairman, Orissa Police Housing & Welfare Corporation, a post which is declared equivalent in status and responsibility to that of DG of Police. So long as the applicant holds that post he cannot be reverted to the rank of Additional Director General of Police. But if and when the State Government

decide to operate only one cadre post of DG of Police and one ex-cadre post in the same rank, there being two posts and the applicant being the juniormost amongst the three officers, he is liable to be reverted and he can have no grievance in the matter. The Original Application is therefore allowed with the above observations. No costs.

Somnath Som
(SOMNATH SOM)

18.4.2021
VICE-CHAIRMAN

18.4.2021
(G.NARASIMHAM)

MEMBER (JUDICIAL)

AN/PS