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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 305 OF 2000
Cuttack, this the 17th day of October 2001

Sri Suresh Chandra NayakApplicant

Vrs.

The Director General of Foreign Trade and
others.. Respondents

FOR INSTRUCTIONS



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 SONI
VICE-CHAIRMAN
17.10.2001

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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COURT:

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

Sri Suresh Chandra Nayak, aged about 43 years, son of Sri Dasaratha Nayak, At-Fulcoup (Dhatiki Sahi), P.O-Denuan, Dist. Mayurbhanj, at present working as Licensing Assistant, Office of Joint Director General of Foreign Trade, At-Link Road, Maitri Vihar, Cuttack-12....
Applicant

Advocates for applicant - M/s S.K.Nayak-2
M.K.Jena
B.K.Sahoo
Miss.P.Misra

Vrs.

1. The Director General of Foreign Trade, Ministry of Commerce, Government of India, Udyoga Bhavan, Moulana Azad Road, New Delhi-110 011.
2. The Zonal Joint Director, General of Foreign Trade, 4 Esplanade East, Calcutta-700 069.
3. The Joint Director General of Foreign Trade, At-Maitri Vihar, Link Road, Cuttack-12.

..... Respondents

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

ORDER
SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a direction to the respondents to confirm the promotion of the applicant to the post of Licensing Assistant from the date of his promotion with effect from 19.2.1991 and to count the seniority of the petitioner in the cadre of Licensing Assistant from the date of his promotion. He has also prayed for a direction to the respondents to fill up the Section Head lying vacant in the office of respondent no.3, the Joint Director General of Foreign Trade, Cuttack and to consider the case of

the petitioner for promotion to the said vacant post of Section Head. The last prayer is for quashing the order dated 3.4.2001(Annexure-5) reverting the applicant from the post of Licensing Assistant to the post of UDC.

2. The applicant's case is that he was working as UDC in the office of respondent no.3 and in order dated 19.2.1991 he was given ad hoc promotion to the post of Licensing Assistant against the vacant post of Licensing Assistant in Cuttack office. He continued as ad hoc Licensing Assistant. After filing of this O.A. with the prayers referred to earlier he was reverted to his regular post of UDC in the order dated 3.4.2001 at Annexure-5. The applicant has stated that he belongs to SC community. He has further stated that he was given ad hoc promotion to the post of Licensing Assistant because persons senior to him refused to come to Cuttack as Licensing Assistant. It is stated that by their refusal to come to Cuttack office on promotion, these seniors have lost their chances and the applicant should not have been kept on ad hoc appointment for long ten years and therefore, his appointment as Licensing Assistant must be taken to be on regular basis. In the context of the above, the applicant has come up with the prayers referred to earlier.



3. Respondents in their counter have stated that in the Eastern Zone comprising of offices at Calcutta, Patna, Guwahati, Shillong and Cuttack there are 37 posts of Licensing Assistant and earlier 25% of the posts of Licensing Assistant, i.e., 9 posts were kept reserved for direct recruitment. For promotion to the post of Licensing Assistant three years service in the rank of

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Upper Division Clerk is required. The respondents have stated that the applicant was declared as regular UDC on 30.6.1989, but because of exigencies of work he was given ad hoc promotion to the post of Licensing Assistant even before completion of three years. It is further stated that there are many persons who are senior to the applicant in the rank of Upper Division Clerk, but they were not prepared to come to Cuttack on ad hoc promotion and that is how the applicant continued as Licensing Assistant on ad hoc basis. It is further stated that on 28.12.1998 direct recruitment quota was abolished and the condition of eligibility for promotion from the rank of UDC to the rank of Licensing Assistant was changed to at least 8 years regular service in the grade of UDC. It is stated that DPC meetings for regular promotion to the rank of Licensing Assistant were held on 26.8.1992, 26.8.1993, 26.8.1994 and 9.1.1997 and the applicant's case could not be considered because his turn did not come up according to seniority in the rank of UDC. It is stated that on 24.12.1990 a circular was issued asking regular UDCs to give willingness to be given ad hoc promotion as Licensing Assistant. But nobody opted except one Mr. Ismail Murmu who agreed to come to Cuttack on ad hoc promotion as Licensing Assistant. But Mr. Murmu was not cleared from vigilance angle and he could not be posted at Cuttack as Licensing Assistant on ad hoc basis. The applicant represented on 25.1.1991 to consider his case and accordingly he was allowed ad hoc promotion in Cuttack office with effect from 19.2.1991. It is stated that the post of Licensing Assistant in Cuttack Office is one of the nine posts under direct recruitment quota and therefore, the applicant could not have been regularised.

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On the above grounds the respondents have opposed the prayers of the applicant.

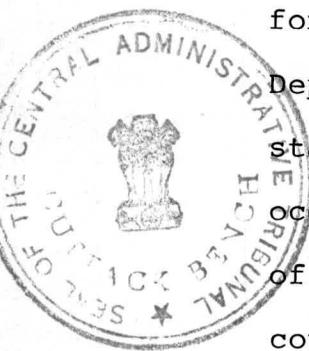
4. We have heard Shri S.K.Nayak-2, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents. The learned counsel for the petitioner has relied on the decision of the Hon'ble High Court of Orissa in the case of S.K.Mohanty v. Union of India and others, 49(1980) CLT 382, and the case of D.B.Jena v. Union of India and others, 55(1983) CLT 290. We have gone through these decisions.

5. It has been submitted by the learned counsel for the petitioner that the respondents have enclosed no orders indicating that the particular post of Licensing Assistant in Cuttack office is earmarked for direct recruitment quota. From the counter of the respondents also we find that except the bland assertion that the post of Licensing Assistant at Cuttack is meant for direct recruitment quota, the respondents have not enclosed any document in support of their above assertion. In view of this, it is not possible to accept this contention of the respondents. It has been submitted by the learned counsel for the petitioner that there is only one post of Licensing Assistant at Cuttack. It, therefore, stands to reason that where direct recruit candidates are not being made available, the lone post could not have been shown against direct recruitment quota.

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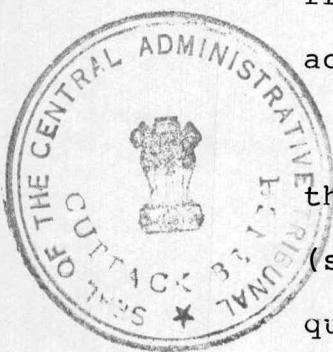


6. The second aspect of the matter is that the applicant continued for long ten years as ad hoc Licensing Assistant. Admittedly, the applicant became regular Upper Division Clerk on 30.6.1989 and was given ad hoc promotion to the post of Licensing Assistant in the order dated 19.2.1991. Admittedly, for the post of Licensing Assistant, the requirement is three years of regular service as Upper Division Clerk. In the exigency of service he was given ad hoc promotion as Licensing Assistant in February 1991 when he did not have the regular service required as U.D.C. for being promoted to the post of Licensing Assistant. He was also not selected for promotion to the post of Licensing Assistant through Departmental Promotion Committee. The respondents have stated that the D.P.C. meetings were held on four occasions for considering regular promotion to the post of Licensing Assistant, but the case of the applicant could not be considered because of his low seniority position in the rank of Upper Division Clerk. Law is well settled that ad hoc promotion does not confer on the person so promoted any right to get confirmed in the post. Hon'ble Supreme Court in Direct Recruit Class-II Engineering Officers' Association v. State of Maharashtra and others, AIR 1990 SC 1607, have held that where continuous ad hoc appointment is followed by regularisation, the period of ad hoc service would count towards seniority. But in this case the applicant has not yet been regularised in the post of Licensing Assistant. Moreover, the Hon'ble Supreme Court in a subsequent decision in the case of State of West Bengal and others, etc. etc. v. Aghore Nath Dev and others, etc. etc.



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(1993) 3 SCC 371, have observed that where appointment is otherwise regular and has been made on ad hoc basis merely because of non-fulfilment of some procedural formalities, the benefit of ad hoc service can be given subsequent regularisation. In the instant case the applicant did not have the requisite service as Upper Division Clerk on the date of his ad hoc promotion to the post of Licensing Assistant. In view of this, he cannot claim confirmation in the post of Licensing Assistant from the date of his ad hoc promotion. This prayer is accordingly held to be without any merit and is rejected.



7. We have gone through the decision of the Hon'ble High Court of Orissa in D.B.Jena's case (supra). There the question for consideration was the qualification of Sanitary(Health) Inspector Grade-III and the Hon'ble High Court have held that the qualifications prescribed in Indian Railways Establishment Manual, Volume I, govern only direct recruits and not the promotees who are appointed by way of promotion to the reserved quota from the lower rank. This decision is in no way relevant to the case of the applicant. In S.K.Mohanty's case (supra) the Hon'ble High Court of Orissa considered the circular of Railway Board with regard to persons who have officiated in higher post for more than eighteen months. This decision is also not applicable because it has not been the case of the applicant that in the establishment of the respondents there is any such circular similar to the circular of the Railway Board. It is also to be noted that admittedly the applicant is much lower in seniority in the rank of Upper Division Clerk and therefore, his ad hoc promotion

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as Licensing Assistant cannot be regularised over the head of his seniors who have not been made respondents in this case.

8. As the applicant's prayer for confirmation in the post of Licensing Assistant is rejected, his second prayer for a direction to the respondents to promote him to the post of Section Head also necessarily fails.

9. The other aspect of the matter is that the applicant admittedly has continued as ad hoc Licensing Assistant for ten years. During this period D.P.C. meetings have been held four times and presumably regular appointments have been made to the post of Licensing Assistant. But no such regular appointee has been posted in place of the applicant over these ten years during which he continued as ad hoc Licensing Assistant. The applicant has filed this O.A. On 29.6.2000 and only thereafter in order dated 3.4.2001 he has been reverted from the post of ad hoc Licensing Assistant to the post of U.D.C. There is no averment by the respondents that the applicant has been replaced by a regularly appointed Licensing Assistant. In view of this, while we reject the two prayers of the applicant as above, we direct that the applicant should be allowed to continue as Adhoc Licensing Assistant till he is replaced, if not already done, by a regularly appointed Licensing Assistant. It is also ordered that the applicant should be continued as Adhoc Licensing Assistant, if any person junior to him has been given ad hoc promotion as Licensing Assistant and is continuing as such till date.

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10. With the above observation and



direction, the Original Application is disposed of. No costs.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
VICE-CHAIRMAN
17/10/2001

AN/PS

