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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 391 OF 2000
Cuttack, this the 25th day of July 2001

Harekrushna Sahoo 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)

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(SO INATH SON)
VICE-CHAIRMAN
25.7.2001

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 391 OF 2000

Cuttack, this the 25th day of July 2001

CORAM:

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

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Harekrushna Sahoo, c/o Balakrushna Sahoo, Office of the
Chief Commissioner, Income Tax, Central Revenue Building,
Rajaswa Vihar, Bhubaneswar

..... Applicant

Advocate for applicant - Mr.B.B.Mohanty

Vrs.

1. Union of India, represented through its Secretary,
Department of Personnel & Training, Ministry of
Personnel, Public Grievances & Pension, Block No.12,
Kendriya Karyalaya Parisar, Lodhi Road, New Delhi.
2. Chairman, Staff Selection Commission Headquarters,
C.G.O. Complex, Lodhi Road, New Delhi.
3. Regional Director, Staff Selection Commission, 5
Esplanade Row West, Calcutta-700 001.
4. Superintendent of Police, Central Bureau of
Investigation, Orissa Branch, Bhubaneswar-12, Khurda

..... Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for a
direction quashing the nomination of petitioner's name to
Central Bureau of Investigation. The second prayer is for a
direction to the respondents to consider allocation of the
applicant treating him as a reserved category person as per
the reserved merit list. Chairman, Staff Selection
Commission and Regional Director, Staff Selection Commission
(respondent nos. 2 and 3) have filed counter opposing the
prayer of the applicant. Superintendent of Police, Central
Bureau of Investigation, Bhubaneswar (respondent no.4) to

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whose office the name of the applicant was forwarded for appointment has also filed a separate counter. No rejoinder has been filed.

2. The case of the applicant is that Staff Selection Commission in their advertisement at Annexure-1 called for applications for filling up posts of LDC divided into two groups, Group X and Group Y. The posts under Group-X are in the Ministries and Departments of Central Government and are mostly located at Delhi. The posts under Group-Y are mostly in subordinate and other offices of the Central Government located in different States and Union Territories. The intending applicants were asked to specifically indicate in their application whether they are competing for Group X or Group-Y. It was also mentioned that no change in the option for Group would be entertained after the written examination. The petitioner belongs to OBC category and he applied specifically for competing for Group Y services. It is stated by him that his sole intention to opt for Group Y was for the purpose of staying anywhere inside Orissa precluding the possibility of all India transfer. The applicant has stated that in his application he furnished the Caste Certificate showing that he belongs to OBC and expressed his willingness to be considered for posts reserved for OBC category. The applicant came out successful in the selection and according to him, against State of Orissa his rank in general merit was at serial no.13. It is stated that he acquired fifth position in the merit list of OBC category. The applicant has stated that while sponsoring the name of the applicant the Staff Selection Commission sent his name to Central Bureau of Investigation. The applicant has further stated that on

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enquiry he found that he has been treated as a General Category candidate against an unreserved post and that is why he could be allotted to Central Bureau of Investigation, Orissa Branch. Even though he opted for reserved category and in the OBC category he ranked fifth by considering him as a General Category candidate and taking into account his merit position in the general list at serial 13 he has been allocated to Central Bureau of Investigation, Orissa Branch. The applicant states that had he been taken as a reserved category candidate, then he would have got better service/office than the Central Bureau of Investigation, Orissa Branch. On his name being allocated to Central Bureau of Investigation, Superintendent of Police, Central Bureau of Investigation, Orissa Branch, Bhubaneswar (respondent no.4) asked him to give his willingness to join by 28.2.2000. The applicant represented to respondent nos. 2 and 3 on 18.2.2000 and requested Superintendent of Police, Central Bureau of Investigation, Bhubaneswar, to keep his willingness in abeyance till the disposal of the representation. The applicant has stated that some of the selected candidates who have ranked lower in the merit list have turned down the offer of appointment in the offices where the petitioner preferred to work like Accountant General (Audit), Income Tax, Central Excise & Customs, etc. Notwithstanding this his representation to Staff Selection Commission has been rejected. In the rejection order at Annexure-7 the Staff Selection Commission has informed him that they have adopted a roster system of nomination where Departments are arranged ^{alphabetically} and allocation is made in vertical system as per available number of vacancies. This procedure has been followed uniformly in

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respect of all candidates and accordingly the applicant has been allocated to Central Bureau of Investigation, Bhubaneswar. The applicant has mentioned that such a practice results in hardship in genuine cases and the system should have been relaxed. It is further stated that if he joins Central Bureau of Investigation, he will have all India transfer liability to avoid which he had opted for Group-Y category in the examination. In the context of the above, the applicant has come up with the prayer referred to earlier.

3. Before referring to the counter filed by the Staff Selection Commission, it would be better to note the averments made in the counter filed by Superintendent of Police, Central Bureau of Investigation (respondent no.4). It has been mentioned that on getting his name from Staff Selection Commission, the applicant was asked to give his willingness by 28.2.2000. As the applicant wanted the offer of appointment to be kept in abeyance and as this was not possible, respondent no.4 returned his dossier to Staff Selection Commission. The Staff Selection Commission in their letter dated 28.4.2000 informed respondent no.4 that representation of the applicant has been rejected and respondent no.4 was advised to issue offer of appointment. Accordingly, the offer of appointment was issued to the applicant on 8.5.2000. The applicant again wanted the offer of appointment to be kept open. Ultimately, the applicant was informed by respondent no.4 in letter dated 16.5.2000 fixing his date of joining by 30.5.2000, but the applicant did not join. It has been stated by respondent no.4 that by not joining the applicant has lost all his claim relating to appointment under Central Bureau of Investigation after

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30.5.2000. It is not necessary to go further into this aspect because the applicant's prayer is also to quash his nomination to Central Bureau of Investigation.

4. Respondent nos. 2 and 3 in their counter have pointed out that according to the second proviso to paragraph 20 of the Notice of Recruitment of Clerks, 1997, it is provided that the candidates belonging to SC, ST and OBC who have been recommended by the Commission without resorting to the relaxed standard shall not be adjusted against the vacancies reserved for SC, ST and OBC. It has been stated that because of the aforesaid provision the applicant cannot claim for adjustment against the vacancies reserved for OBC who has been selected for "Y" Group. It is further stated that subordinate offices of Government of India come within "Y" Group where only one service, viz., General Central Service exists and as such no option was taken from the candidates. It is further stated that the applicant was nominated against an unreserved vacancy strictly in terms of instructions of Government of India and strictly following the procedure prescribed by the Commission in accordance with law. They have stated that offices coming under "Y" Group are arranged in alphabetical order and the candidates are allocated according to the roster of Departments arranged alphabetically. In view of the above, respondent nos. 2 and 3 have opposed the prayer of the applicant.

5. When the matter was called for hearing, the learned counsel for the petitioner Shri B.B. Mohanty was absent nor was any request made on his behalf for adjournment. In view of this, we have heard Shri A.K. Bose, the learned Senior Standing Counsel for the respondents and have perused the record.

6. The admitted position is that the applicant opted for "Y" Group and applied as an OBC candidate. But the rules provide that if an SC/ST/OBC candidate, i.e., a candidate belonging to reserved category, is included in the select list because of his merit and not because of his reserved status, then he has to be shown against a General Category of vacancy. This system is uniformly followed in all direct recruitment posts by Staff Selection Commission as also by Union Public Service Commission. For example, if a Scheduled Tribe candidate occupies first position in the merit list in the examination for IAS, he would be shown against an unreserved post and not against a reserved post because of his ST status. In view of this, the action of the Staff Selection Commission in showing the applicant against a General Category post and as a General category candidate is in accordance with rules and instructions and cannot be faulted. The whole case of the applicant is that because he belongs to OBC and he has applied as an OBC candidate, his merit position in the select list for OBC should have been taken into account for allocating him to an office. He states that thereby he could have got an office of his choice. As the applicant has come on merit in the select list he cannot be treated under the rules as a reserved category candidate and therefore, his contention is held to be without any merit and is rejected. As the entire case of the applicant is based on his plea that he should be treated as a reserved candidate and as this is not legally acceptable, we hold that the petition is without any merit and the same is accordingly rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
25.7.2001
VICE-CHAIRMAN