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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

OA Nos. 414 to 423, 435 to 439 & 603 to 605 of 2004.

Cuttack, this, the 2nd day of May, 2005.

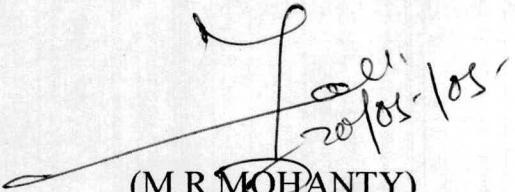
DOLAGOBINDA PALAI & ORS. Applicants.

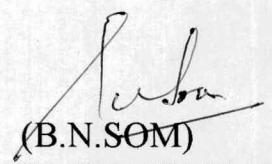
VERSUS

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 CAT or not? Yes


(M.R. MOHANTY)
MEMBER(JUDL.)


(B.N. SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH: CUTTACK.

O.A.Nos.414,415,416,417,418,419,420,421,422,423,435,436,437,438
439,603,604 & 605 OF 2004.

Cuttack, this the 20th day of May, 2005

CORAM:

***THE HON'BLE MR.B.N. SOM, VICE-CHAIRMAN.
AND
THE HON'BLEMR.M.R.MOHANTY, MEMBER(JUDL).***

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OA No.414/2004:	Dolagobinda Palai. –Vrs.- UOI & Ors.
OA NO. 415/2004:	Kedar Ku. Lenka. -Vrs.- UOI & Ors.
OA No. 416/2004:	Debendra Pradhan –Vrs.- UOI &Ors.
OA No.417/2004:	Sukanta Ku. Rout –Vrs. UOI & Ors.
OA No.418/2004:	T.Vijaya Kumar. – Vrs.-UOI & Ors.
OA No.419/2004:	S.K.Chowdhury.-Vrs.- UOI & Ors.
OA No.420/2004:	K.C.Sahoo – Vrs. UOI & Ors.
OA No.421/2004:	Kishore Ch.Behera-Vrs.-UOI & Ors.

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OA No.422/2004: B.D.Mohapatra –Vrs.-UOI & Ors.

OA No.423/2004: P.K.Panigrahi – Vrs.-UOI & Ors.

OA No.435/2004: Smt.K.Lakshmi-Vrs.UOI & Ors.

OA No.436/2004: Nityananda Sahoo-Vrs.UOI& Ors.

OA No.437/2004: D.K.Mahana-Vrs.-UOI & Ors.

OA No.438/2004: K.K.Mishra-Vrs.-UOI & Ors.

OA No.439/2004: N.K.Dhal.-Vrs.-UOI & Ors.

OA No.603/2004: B.K.Biswas-Vrs.-UOI & Ors.

OA No.604/2004: Ganeswar Singh-Vrs.-UOI & Ors.

OA No.605/2004: P.K.Mallick-Vrs.-UOI & Ors.

For the Applicants: M/s. ASWINI KU.MISHRA,
J.Sengupta,D.K.Panda,
G.Sinha, & Amrit Mishra,
Advocates.

For the Respndents; Mr. U.B.Mohapatra, Sr.St.Counsel,
&
Mr. S.B.Jena,Addl.St. Counsel.

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O R D E R

MR. B.N. SOM, VICE-CHAIRMAN:

Since the point in issue to be decided by us in all the OAs emerges out of similar facts and circumstances, this common order will govern all the cases mentioned above. For the sake of convenience, we may as well refer to O.A.NO.414/2004 filed by the applicant, Shri Dolagobinda Palai.

2. Applicant Shri Dolagobinda Palli has filed this O.A. challenging the order dated 23.6.2004 issued by the Government of India, Ministry of Finance, Department of Revenue vide Annexure-A/13, with regard to cadre restructuring of Central Excise and Customs for filling up of unfilled vacancies in the grade of Inspector of Central Excise (here in after called as Inspector) and the order dated 30.6.2004 under Annexure-A/14 issued by the Office of Respondent No.2 canceling the promotion from the grade of Tax Assistants to the grade of Inspector on ad hoc basis with effect from 30.6.2004. He has, therefore, prayed for quashing the impugned orders under Annexures-A/13 and A/14 with direction to Respondent No.1 for

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declaring that his interpretation with regard to the application of Col. 12© to Schedule to the Recruitment Rules (in short, Rules) is arbitrary and illegal and that the applicant be allowed to continue in the post of Inspector on regular basis.

3. The case of the applicant is that he was promoted to the post of Tax Assistant (in short T.A.) with effect from 2.5.2003 and was promoted to the grade of Inspector on 7.11.2003. He had passed the departmental examination meant for promotion quota of Inspector on 30.12.2003. However, the Respondent No.1, by his letter dated 23.6.2004 (Annexure-A/13) directed Respondent No.2 to revert the applicant from the post of Inspector on the ground that the applicant was promoted to that grade on a wrong premise and by misinterpretation and erroneous application of Col. 12© to the Schedule to Rules and therefore, the question of applying the relaxation to the applicant as granted by the Ministry in the matter of filling up of the post in the grade of Inspector by its order dated 8.10.2003 did not arise. It was further stated in that order by the Respondents that the relaxation was granted only in respect of the officials for promotion as Inspector in the pre structured cadre (viz. U.D.C., Data Entry Operator, Gr,A) who were otherwise eligible for promotion, but the said relaxation was not extended to the LDCs. It was further stated in their letter that such officials

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(i.e. LDCs) as had been promoted as Inspectors from the grade of Tax Assistants be reverted immediately. Soon after the receipt of this order, Respondent No.2 by his order dated 30.6.2004 ordered cancellation of the adhoc promotion of the applicant and reverted him to his former grade as Tax Assistant with effect from 30.6.2004.

4. We have heard Shri A.K.Mishra, the learned counsel for the applicant and Shri U.B.Mohapatra, learned Sr. Standing Counsel appearing on behalf of the Respondents separately in all the O.As. and have perused the materials available on records.

5. The sole issue raised in this O.A. is whether the applicant is entitled to promotion to the grade of Inspector of Central Excise by virtue of the operation of Col. 12C to the Rules. This point is no longer res integra. The learned Sr. Standing Counsel for the Respondents, by filing a Memo dated 29.4.2005 has placed before us a copy of the letter dated 4th October, 2004 issued by the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise and Customs, circulating the judgment dated 7.10.2003 in Writ Petition No.6957/2003 and 6958/2003 (filed by Shri M.R.Patil & Ors. And Smt.S.S.Dongre & Ors.), which inter alia held as follows :

“We are not inclined to agree with the submission Mr.Sighvi that clauses(b) and (c) of the relevant

rules of G.S.R.495 and G.S.R.496 should be made applicable only after a period of two years and clause (a) only would be applicable for the initial period of two years. While operation of clause (a) is restricted for the initial period of two years, there is nothing in rules which indicates that clauses(b) and (c) would not be applicable during the said initial period of two years, Clause (a) has been made to make a provision for considering certain persons for promotion during the initial period of two years. The channel of promotion would end after expiry of two years but that does not mean that for the initial period of two years. Clause (a) would be the only channel for promotion and clauses(b) and (c) would not be channels on promotion during the initial period of two years.

In the circumstances, petitions are allowed. It is declared that the experience gained by the petitioners as Assistant, Tax Assistants and Upper Division Clerk (Special Pay) and Data Entry Operators Grade B and C prior to their appointment as Senior Tax Assistant on unification/reorganization of the department in the year 2002 shall be taken into account for deciding their eligibility for promotion to the next higher grades. Similarly, experiences gained by the petitioners as Upper Division Clerk and Data Entry Operators Grade A prior to their appointment as Tax Assistant on account of unification/reorganization of the cadre in the year 2002 shall be taken into consideration as experience in the posts of Tax Assistants for the purpose of considering their eligibility for promotions. They shall be accordingly be eligible for being considered for promotion by selection to the respective next higher posts".

6. It is further disclosed in that letter that the order of the

High Court was carried in appeal before the Hon'ble Supreme Court in SLP,

which stood dismissed, upon which the Government has decided to implement the judgment of the Hon'ble High Court of Mumbai in the aforementioned Writ Petitions. They have, therefore, by their said letter called upon all the Chief Commissioners of Central Excise and Customs to implement the judgment of various Benches of the Central Administrative Tribunal which are in line with the decision of the Mumbai High Court, as referred to earlier.

7. In the instant O.A., as stated earlier, the prayer of the applicant is to give direction to Respondent No.1 that the benefit of provisions made in Col. 12C is made applicable to the officials in the Respondents-Department from the date of its promulgation and that the Rules for the post of Inspector, as promulgated in the Gazette of India on 29.11.2002 are made applicable to their case. As it has already been held that three channels of promotion laid down in Col. 12 of the Rules for the post of Inspector are available from the date those rules were promulgated, this O.A. succeeds to the extent that the applicant is entitled to the operation of the Rules as set forth in Col. 12C if he is otherwise eligible for being considered under that provisions. Accordingly, the order issued by Respondent No.1 under Annexure-A/13 dated 23.6.2004 is quashed. The Respondents are directed to consider the case of the applicant for promotion

to the post of Inspector according to any of the channels of promotion prescribed under Col. 12 of the Rules as per his eligibility. We, however, pass no order with regard to Annexure -A/14 because the Respondents are within their rights to order stop gap ad-hoc arrangements in public interest and are also empowered to terminate such arrangement at any time, if so required, in the exigencies of service. It is also the settled point of law that an ad-hoc appointee does not acquire any vested right to hold that appointment in perpetuity.

8. This common order, as indicated earlier, shall be made applicable in respect of all the OAs mentioned above and in the circumstances, all the OAs are accordingly disposed of. No costs.

20/05/05
(M.R.MOHANTY)
MEMBER(JUDICIAL)

20/05/05
(B.N.SOM)
VICE-CHAIRMAN