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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

Original Application No.676 of 2005  
Cuttack, this the 17<sup>th</sup> day of April, 2007.

Bhagaban Mallick ... Applicant  
Versus  
Union of India 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 CAT or not?

*foras*  
(M.R.MOHANTY)  
VICE-CHAIRMAN

*BBM 17/4/07*  
(B.B.MISHRA)  
MEMBER(A)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.**

O.A.No. 676 of 2005  
Cuttack, this the 17/4 day of April, 2007

**C O R A M:**

THE HON'BLE MR. M.R.MOHANTY, VICE-CHAIRMAN  
AND  
THE HON'BLE MR.B.B.MISHRA, MEMBER (A)

Shri Bhagaban Mallick, aged about 41 years, son of Bata Krushna Mallick, at Jaitalang, Po: Baigani, Via:Balikuda, District. Jagatsinghpur, at present working as Scientific Assistant Meterological Section (ATC), under the Deputy Director (Admn.), Aviation Research Centre, Charbatia, At/Po-Charbatia, District: Cuttack.

..... Applicant.

By legal practitioner: M/s. B.S.Tripathy, M.K.Rath, J.Pati,  
Advocates.

-Versus-

1. Union of India represented through the Cabinet Secretary, Cabinet Secretariat Building, South Block, New Delhi.
2. The Special Secretary, Aviation Research Centre (ARC), Head Quarter, East Block V, R.K.Puram, New Delhi-110 066.
3. The Deputy Director (A), Air Wing, Aviation Research Centre (ARC), Head Quarters, East Block V, R.K.Puram, New Delhi-110 066.
4. The Deputy Director (A), Aviation Research Centre (ARC), Charbatia, At/Po:Charbatia, Dist. Cuttack-754 028.

... Respondents.

By legal practitioner: Mr.U.B.Mohapatra, SSC

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## O R D E R

### MR.B.B.MISHRA, MEMBER(A):

The case of the Applicant, in nut shell is that he is working as Scientific Assistant in Meteorological Section (ATC) under the Deputy Director (Admn.) Aviation Research Centre, Charibatia. It is his case that he has acquired the necessary prerequisite training and is otherwise eligible to be promoted but his case has not received due consideration. Therefore, by filing this Original Application under section 19 of the Administrative Tribunals Act, 1985 he has prayed for a direction to the Respondents to promote him to the Post of Professional Assistant retrospectively.

2. By filing counter, the Respondent-Department have stated that out of two posts of PA (Met), one post was abolished as this was lying unfilled w.e.f. 1.10.2001. As per the instructions of the DOP&T dated 17.09.2003 the crucial date of eligibility for promotion is 1st January of the year . Accordingly DPC was convened during February, 2004. Since as on 01.01.2003, the Applicant was not having the requisite six years of service, one

Shri A.K.Shukla, who was senior to applicant having requisite eligibility, was recommended by the DPC and accordingly he was promoted to the post in question. Subsequently though the Applicant got the eligibility, as there is no vacancy, DPC could not be convened. It has fairly been disclosed by the Respondents that action has been initiated by the department vide letter dated 18<sup>th</sup> August, 2005 to revive the said post and, on receipt of clearance, DPC will be constituted and the case of the applicant will be considered for promotion. According to the Respondents, since no junior to the Applicant has been promoted to the post in question, the claim for his retrospective promotion is misconceived. Applicant has filed rejoinder stating that whenever there is a vacancy in the grade of PA (Met) the same is being filled up on deputation and thereby depriving the eligible candidate to get promotion. He has stated that though Mr. Shukla was eligible to be promoted to the post of PA (Met) earlier when the vacancy arose, he was not given promotion and, therefore, for the fault of the department the said post was abolished. By stating so, he has also reiterated some of the facts mentioned in his OA. ✓

3. We have carefully taken note of the submissions made by the respective parties and minutely gone through the materials placed on record. It is not necessary to record all those facts; because it is not in dispute that at that relevant time the Applicant did not have the minimum requisite years of service to be considered for promotion. It is also not in dispute that Mr. Shukla was senior to the Applicant as also there is no vacancy in the grade of PA (Met). The Respondents have fairly averred that steps have been taken for revival of the post and in the event of revival the case of the applicant will receive due consideration.

4. Ordinarily speaking, the creation and abolition of a post is the prerogative of the executive . It is the executive again that lays down the conditions of service of course, as per law made by the appropriate legislature. This power to prescribe the conditions of service can be exercised either by making rules under the proviso to Article 309 of the Constitution or (in the absence of such rules) by issuing rules/instructions in exercise of its executive power. The court comes into the picture only to ensure observance of fundamental rights, statutory provisions, rules and other

instructions, if any, governing the conditions of service. The main concern of the court in such matters is to ensure the rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16  
**(UMARANI VS. REGISTRAR, COOP. SOCIETIES, (2004) 7 SCC (L&S) 918; EXECUTIVE ENGINEER, ZP ENGINEERING DIVN. VS. DIGAMBARA RAO, (2004) 8 SCC 262.**

5. In view of the facts and law discussed above, we find no hole in the action of the Respondents so as to grant the relief claimed by the Applicant. Hence, this OA stands dismissed by leaving the parties to bear their own costs.

  
(M.R.MOHANTY)  
VICE-CHAIRMAN

  
(B.B.MISHRA)  
MEMBER(A)

KNM/PS.