



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH,  
CIRCUIT BENCH AT PORT BLAIR

O.A. No.52/AN/2013

Date of CAV:06.04.2017.

Date of Order : 21.07.2017.

Between :

1. Smt.S.Raji, d/o late K.S.Nath and  
w/o Shri S.Pradeep, aged about 41 yrs,  
Occ:Service as Lecturer (Civil) in  
Dr.B.R.Ambedkar Institute of Technology,  
Port Blair, residing at Rajiv Gandhi Nagar,  
Aberdeen Bazar, Port Blair, Andaman &  
Nicobar Islands, PIN-744 101.
2. Smt.Rita Biswas, d/o Shri N.C.Podder and  
w/o Shri S.KBiswas, aged about 43 yrs,  
Occ:Service as Lecturer (Civil) in  
Dr.B.R.Ambedkar Institute of Technology,  
Port Blair, residing at Lamba Line,  
Port Blair, Andaman &  
Nicobar Islands, PIN-744 103.
3. Shri Shajan Thomas, s/o late V.V.Thomas,  
aged about 49 yrs, Occ:Service as Lecturer (Mechanical) in  
Dr.B.R.Ambedkar Institute of Technology,  
Port Blair, residing at House No.32,  
Andaman Housing Colony, School Line, Port Blair, Andaman &  
Nicobar Islands, PIN-744 103.
4. Shri Sanjay Malhotra, s/o Shri M.S.Malhotra,  
aged about 50 yrs, Occ:Service as Lecturer (Mechanical) in  
Dr.B.R.Ambedkar Institute of Technology,  
Port Blair, residing at Rajiv Gandhi Nagar,  
Aberdeen Bazar, Port Blair, Andaman &  
Nicobar Islands, PIN-744 101.
5. Smt.Alka Singh, d/o Shri Randhir Singh and  
w/o Dr.Omkar Singh, aged about 44 yrs,  
Occ:Service as Lecturer (Electronics) in  
Dr.B.R.Ambedkar Institute of Technology,  
Port Blair, residing at Kamala Bhawan,Rajiv Gandhi Nagar,  
Aberdeen Bazar, Port Blair, Andaman &  
Nicobar Islands, PIN-744 101.

6. Shri Benia Varghese, s/o late P.V.Thomas,  
aged about 45 yrs, Occ:Service as Lecturer (Hotel Management)  
in Dr.B.R.Ambedkar Institute of Technology,  
Port Blair, residing at Lamba Line,  
Port Blair, Andaman & Nicobar Islands, PIN-744 103.

7. Shri Uday Narayan, s/o late Suraj Narayan,  
aged about 45 yrs, Occ:Service as Lecturer (Hotel Management)  
in Dr.B.R.Ambedkar Institute of Technology,  
Port Blair, residing at Buniyadabad Village,  
Port Blair, Andaman & Nicobar Islands, PIN-744 102.

... Applicants

And

1. The Union of India, service through the  
Secretary to the Government of India,  
M/o Human Resource Development,  
Shastri Bhawan, New Delhi-110 001.

2. The Union Public Service Commission,  
service through the Secretary, Dholpur House,  
Shahjan Road, New Delhi-110 069.

3. The Andaman & Nicobar Administration,  
service through the Lt. Governor (Administrator),  
Andaman & Nicobar Islands, Raj Niwas,  
Kamraj Road, Port Blair-744 101.

4. The Chief Secretary,  
Andaman & Nicobar Administration,  
Secretariat, Kamraj Road, Port Blair-744 101.

5. The Secretary (Education), Andaman &  
Nicobar Administration, Secretariat,  
Kamraj Road, Port Blair-744 101.

... Respondents

6. The Principal, Dr.B.R.Ambedkar Institute of  
Technology, Port Blair-744 101.

..Proforma Respondent

Counsel for the Applicants ... Mr.Biswajit Samanta  
Counsel for the Respondents ... Mr.S.K.Mondal & M.C.Misra  
... Mr.T.Lall

**CORAM:**

**THE HON'BLE MR.A.K.PATNAIK, JUDICIAL MEMBER**  
**THE HON'BLE MRS.MINNIE MATHEW, ADMINISTRATIVE MEMBER**



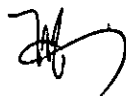
ORDER

{ As per Hon'ble Mrs. Minnie Mathew, Member (Admn.) }

This original application is directed against the Annexures A-20 and A-24 letters of the 2<sup>nd</sup> respondent dated 12.06.2012 and 08.07.2013, rejecting the recommendations of the A&N Administration for regularizing/absorbing the applicants as Lecturers in various disciplines in Dr.B.R.Ambedkar Institute of Technology (BRAIT), Port Blair.

2. The undisputed facts of the case are that the applicants were appointed as Lecturers in BRAIT through a due process of selection. The applicants 1 and 2 were appointed as Lecturers (Civil) and applicants 3 and 4 were appointed as Lecturers (Mechanical) on 20.09.2002. Likewise, the 5<sup>th</sup> applicant was appointed as Lecturer (Electronics) on 15.07.2003 and the 6<sup>th</sup> and 7<sup>th</sup> applicants were appointed as Lecturers (Hotel Management) on 08.08.2005. The applicants were appointed on deputation on a purely ad hoc basis. The appointments of all the applicants were extended from time to time and they are continuing as such. Prior to their appointment, the applicants were already serving in various capacities under A&N Administration. All the applicants have been subjected to a selection process by a selection committee under the Chairmanship of the Chief Secretary, A&N (Administration) and the recruitment on deputation, on adhoc basis was made by the Hon'ble Lieutenant Governor by exercising the powers vested in him under the UPSC (Exemption from Consultation) Regulations 1958.

3. The Recruitment Rules for the post of Lecturer (Civil, Mechanical, Electronics, Chemistry, Electrical) were notified with the approval of the UPSC. The method of



recruitment and other relevant details contained in the Recruitment Rules dated 25.02.1986 are as follows:

Name of the post	Method of recruitment as per notified RR
Lecturer (Civil, Mechanical, Electrical, Electronics)	By transfer/deputation (including short-term contract) failing which by direct recruitment.
Lecturer (Chemistry)	By transfer/deputation (including short-term contract) failing which by direct recruitment.

Accordingly, the vacancy position was circulated among the departments and also placed in the A & N Administration Website and the posts of Lecturer (Civil, Mechanical, Electronics and Chemistry) were filled up as per the provisions contained in the Recruitment Rules dated 25.02.1986. The two posts of Lecturer (Hotel Management) were filled up on the basis of the draft Recruitment Rules submitted to the UPSC on 14.06.2004 in view of the urgent need to post qualified faculty for conducting classes as per the observations made by the All India Council for Technical Education (AICTE) during their inspection in 2005 in which conditional approval of the Hotel Management course was given. The method of recruitment prescribed for Lecturers in the draft Recruitment Rules is as follows:

Name of the post	Method of recruitment as per draft RR
Lecturer (Hotel Management)	By transfer/deputation (including short-term contract) failing which by direct recruitment.

For filling up of these vacancies also a notification/circular was issued to all the Heads of the Department, A & N Administration on 18.10.2004. Selection was done by a

committee chaired by the Chief Secretary and the appointments were made on adhoc basis. Since these incumbents were working in a lower pay scale of Rs.5000-8000 (pre-revised), their appointments as Lecturer (Hotel Management) were on adhoc basis instead of deputation. The A&N Administration thereafter published a notification for filling up all the 8 posts in the Employment News in the year 2006. However, no applications were received in response to the advertisement. Therefore, the deputation/adhoc services of the 8 Lecturers were continued in the larger interest of the student community and the public. Further, all the 8 candidates were given extensive training both within the country and abroad in the last 8 to 10 years.

4. Earlier, the applicants had approached this Tribunal for regularizing their services as was done in the case of 10 other similarly placed Lecturers who were appointed on deputation basis and subsequently regularized in consultation with the UPSC. The OA.Nos.115, 118, 127, 129/AN/2007, OA.No.147/AN/2007 and O.A.No.47/AN/2007 filed by the applicants were disposed of with a direction to make comprehensive representations to the authorities who shall consider their cases for regularization/absorption with the approval of the UPSC. Pursuant to the orders of this Tribunal in the aforesaid OAs on 10.12.2008, 11.10.2007 and 23.05.2007 respectively, the A & N Administration decided to take up the matter with the UPSC through the Ministry of Human Resource Development for regularization/absorption of the applicants in pursuance of the non-availability of qualified Lecturers in the A&N Islands. The proposal, which was sent to the Ministry of Human Resource Development was forwarded to the UPSC along with the comments of the Ministry of Law and the



Department of Personnel & Training on 18.11.2010. Thereafter, the matter was being pursued by the Administration at different levels. On 2.4.2012 in response to a letter from the Honble Lieutenant Governor, A&N Islands, the UPSC informed the Administration that the proposal for regularization/absorption could not be acceded due to the reason that -

- (i) The A&N Administration has taken a different stand in the case of Dr.Rekha Kumari, Lecturer, JNRM.
- (ii) The incumbents have not completed 10 years fo service without orders of any Court as per DOPT OM dated 11.12.2006.

In response to these observations of the UPSC, the Administration again submitted a comprehensive proposal on 25.07.2012 in which justification was given for the Administration's stand in the instant case and the case of Dr.Rekha Kumari, contract Lecturer of JNRM. The A&N Administration has pointed out that the case of Dr.Rekha Kumari was entirely different from that of the applicants. Further, in Annexure-15 letter dated 25.7.2012 addressed by the Chief Secretary, A&N Administration to the UPSC, it has been pointed out that as per the provisions of the Recruitment Rules, the post of Lecturer (Home Science) in JNRM was to be filled up by Direct Recruitment. Instead Dr.Rekha Kumari had been appointed on contract basis on a consolidated wages of Rs.8000/- per month which was not as per the provisions of the extant Recruitment Rules. Further, the initial appointment of Dr.Rekha Kumari was made without any process of selection in March 2001. Hence, the Administration had approached the Hon'ble High Court by way of an appeal in W.P.CT.No.001/2010. The appeal filed by



the A&N Administration was disposed of by the Hon'ble High Court with a direction that Dr.Rekha Kumari be given an opportunity to respond to the advertisement issued by UPSC. Accordingly, she was permitted but she could not qualify. On the other hand, the appointment of the applicants in BRAIT has been made on deputation/adhoc basis which was as per the provisions of the Recruitment Rules prevailing at that point of time and after following the due procedure by conducting an interview by a Selection Committee under the Chairmanship of the Chief Secretary. The appointment was also made with the approval of the Hon'ble Lieutenant Governor of A&N Islands. Therefore, it was pointed out that the case of the applicants is not comparable with the case of Dr.Rekha Kumari.

5. The A&N Administration have further brought to the notice of the UPSC that the applicants have already put in 8 to 10 years of service in the post of Lecturer and that consistent efforts have been put in for these persons to become well qualified and trained Lecturers and that they have discharged their duties to the full satisfaction of the Administration. Accordingly, the Commission was requested to allow one time relaxation in the method of recruitment and accord approval for regularization of the services of the applicants from the date of their initial appointment as was done by the UPSC in the case of some other Lecturers of BRAIT. They have also pointed out that there is no other pending case of a similar nature and that the BRAIT has already taken steps to fill up the vacant posts of Lecturers in consultation with the UPSC as per the provisions of the revised Recruitment Rules notified on 8.1.2007.

6. The UPSC, however, vide their Annexure.A-24 letter informed that they could not agree to the above proposal as the Commission considers relaxation in the Recruitment



Rules only in cases requiring relaxation in educational qualification and/or qualifying service once the proposal is agreed to by the DOPT. In the instant case, the relaxation proposed is with regard to the mode of recruitment, which cannot be agreed to as it tantamounts to an amendment in the basic features of the Recruitment Rules. It was also pointed out that in the present case, the DOPT and Ministry of Law have not concurred with the proposal for the relaxation of Recruitment Rules. It was also stated that the earlier regularization of services of Lecturers pointed out by the A&N Administration were made before the issue of DOPT guidelines for regularization of qualified workers in OM dated 11.12.2006. On account of the DOPT OM dated 11.12.2006, the regularization and absorption cannot be agreed to as the extant Recruitment Rules do not provide for absorption. They pointed out that just as in the case of Dr. Rekha Kumari, the recruitment of the applicants is also not as per the recruitment rules as amended in 2007, as their initial appointment was purely on temporary basis for a period of one year though extended from time to time. The statutory recruitment rules for the post of Lecturer provided for consultation with the UPSC on each occasion, which has not been done in the present case. The UPSC has also pointed out that the A&N Administration has not taken action to fill up the posts in accordance with the provisions of the statutory recruitment rules. Hence, they have regretted their inability to agree to the proposal of the A&N Administration.

7. From the reply statement filed on behalf of the respondents 3,4 and 5, it is seen that there is no dispute with regard to the facts of the case as set out in the preceding paras.





8. In the reply statement filed on behalf of the UPSC and the 2<sup>nd</sup> respondent herein, it has been stated that when the matter for regularization/absorption was taken up by the A&N Administration through the DOPT and the Ministry of Law, the DOPT has advised as under:

*"The RRS 1986 was amended by the RRs 2007. The method of recruitment as per revised RRs 2007 is prescribed as direct recruitment in consultation with UPSC. Thus, neither the old RRs 1986 nor the new RRs 2007 does prescribe absorption as a method of recruitment. It was observed that regularization done by UPSC in 1997 does not seem to have been shown to DOP&T."*

The Ministry of Law has also observed that the Recruitment Rules of 2007 does not prescribe absorption as a method of recruitment. The Recruitment Rules of 1986 prescribes for the recruitment by transfer or deputation failing which by direct recruitment in consultation with the UPSC. As such, the proposal for regularization of Lecturers in BRAIT is not covered by the Recruitment Rules.

9. Further, when the matter was again taken up by the A&N Administration, the Commission has again reiterated that the proposal cannot be agreed to as the recruitment rules do not prescribe absorption as a method of recruitment and have again pointed to the different stand taken by the A&N Administration in the case of Dr. Rekha Kumari, as set out in para 4 supra. It was also pointed out that in its judgment in State of Karnataka v. Uma Devi, the Hon'ble Supreme Court has directed the Union of India and the State Governments and their instrumentalities to take steps to regularize as a one



time measure the services of such irregularly appointed persons who are duly qualified in terms of the statutory recruitment rules for the posts and who have worked for ten years or more in duly sanctioned posts, but not under the cover of the Court orders. The Apex Court also clarified that if such appointment itself is an infraction of the Rules or if it is in violation of the Constitution, such appointment cannot be regularized. It was also submitted that the case of the applicants for permanent absorption is not covered by the DOPT OM dated 3.10.1989, which is reproduced below:

*"10. Absorption of an officer on Transfer basis*

*10.1 Recruitment Rules for some posts prescribe inter alia 'Transfer' as a mode of recruitment. 'Transfer means permanent absorption in the post. Consultation with the UPSC is necessary in all cases of appointment by 'Transfer' to Group 'A' and Group 'B' posts. With a view to having a uniform approach and to enable the UPSC to consider proposals for absorption by 'Transfer' expeditiously, the following guidelines are laid down.*


*10.2 Cases of transfer fall into two categories viz.,*

*(a) Where recruitment rules provide for appointment by Transfer on Deputation/Transfer and the proposal is only to absorb an officer already selected on deputation.*

*(b) Where Recruitment Rules provide for Transfer on Deputation only at the time of initial selection of the officer concerned, but have been amended subsequently to include Transfer.*

*So far as the first category is concerned, the Commission will consider the proposals for absorption where the following conditions are fulfilled:-*

*(i) the initial selection on deputation basis should have been made in consultation with the Commission.*



(ii) *The administrative Ministry should certify that there is no other deputationist in position appointed earlier to the officer now proposed for absorption, and in case there is any such person, he is not willing to be considered for appointment on Transfer basis.*

(iii) *The person concerned and the lending authority have given their willingness for such permanent absorption.*

(iv) *The original circular letter calling for nomination for deputation should have clearly mentioned the possibility of permanent absorption (i.e. Transfer)*

*In the second category of cases i.e., where 'Transfer' has been provided in the Rules subsequent to the selection of a person on Deputation, the Ministries/Departments should re-circulate the post clearly indicating 'Transfer' as a mode of recruitment and then only make a reference to the Commission. Such circulation will also be necessary in the other category of cases if the original circular letter calling for nomination for deputation did not clearly mention the possibility of permanent absorption, vide (iv) above."*

The Commission also submitted that the regularization of other similarly placed Lecturers was made as per the Court directions prior to the issue of the DOPT instructions dated 11.12.2006 for regularization of ad hoc services and hence will not apply in the instant case.

10. The applicants have filed a rejoinder to the reply filed by the 2<sup>nd</sup> respondent. They point out that the respective employment notices issued by A&N Administration on 4.1.2002 and 14.10.2002 in respect of posts of Lecturers (Mechanical & Civil) and the



letter dated 18.10.2004, which have been annexed to the rejoinder statement contained the clause 'Transfer on Deputation' which in terms of DOPT OM dated 03.10.1989 is within the ambit and the purview of permanent absorption in the post. They also state that the three out of four conditions contained in Para 2 (a) of DOPT OM dated 3.10.1989 are fulfilled in their case and only the first condition of consultation with the UPSC was wanting. It was in these circumstances that the administration has sought a one time relaxation. It is also contended that no relaxation in Recruitment Rules has been sought and what has been sought for is only relaxation of the condition that the UPSC should be consulted since this was not done initially. Thus, the case of the applicants is covered by clause 10 (2) (a) of the DOPT OM of 1989. The applicants also state that the DOPT instruction of 2006 are based on Uma Devi's judgment but that judgment has been subsequently clarified/whittled down by the Supreme Court and it is not at all applicable as their appointments are neither illegal nor irregular.

11. Heard the learned counsel on both sides and perused the records. The learned counsel for the Applicants has also filed written notes of submission on behalf of the applicants. Although time was sought for and granted to the counsel for the UPSC for filing the written notes of submission, the same has not been filed.

12. Having perused the material on record and the rival submissions on both sides, it is seen that the respondents 3, 4 and 5 have been strongly recommending the cases of the applicants for regularization/absorption as Lecturers in various disciplines in BRAIT. Annexure.A-12 letters sent by the A & N Administration to the UPSC on 19.8.2008,



24.11.2008 and 8.5.2009 and also Annexure.A.19 letters of the Chief Secretary, A&N Administration dated 10.12.2010, and 25.7.2012 and the letter of the Lieutenant Governor, A&N Islands dated 2.4.2012, are some of the recommendations made by the respondents 3 to 5 for regularization/absorption of the applicants. The main issues highlighted by the respondents in these letters are that the posts were advertised and that the applicants were appointed between 2002 and 2005 as per the provisions of the Recruitment Rules in respect of applicants 1 to 5 and Draft Recruitment Rules in the case of applicants 6 and 7 and that the appointments were made as per the RRs in force at the relevant point of time. The applicants have also been duly selected by a selection committee under the Chairmanship of the Chief Secretary, A&N Administration. Further, even when the posts were re-advertised in 2006 by circulating among all the State/UT Governments and through Employment News on 7<sup>th</sup> July 2006, no applications were received in response to the advertisement. It was in these circumstances that the adhoc deputation of the applicants was continued in larger public interest and for the benefit of the student community. They have also pointed out that the applicants have been trained both within the country as well as abroad and the performance of the applicants during the period of their engagement as Lecturers was found to be very good.

13. The UPSC has, vide the impugned Annexure.A-20 and Annexure.A-24 letters dated 12.06.2012 and 08.07.2013, rejected the proposal on the following grounds:

- (i) That the Department of Personnel and the Ministry of Law have expressed their views that the proposal is not covered under the relevant Recruitment Rules, which do not prescribe absorption as a method of recruitment to the post of Lecturers.



(ii) In a similar case relating to one Dr. Rekha Kumari, Lecturer, Home Science, A&N Administration had filed a Writ in the High Court of Calcutta against the orders of the Central Administrative Tribunal. On the other hand, in this case, the A & N is recommending regularization/absorption.

(iii) The case is not covered in terms of the DOP&T OM dated 11.12.2006, which was issued in pursuance of the Apex Court judgment to regularize as a one time method the services of such irregular appointees who are duly qualified in terms of the statutory recruitment rules for the post and who have worked for 10 years or more in duly sanctioned posts but not under the cover of the orders of Courts or Tribunals.

(iv) It has also been pointed out that the statutory recruitment rules for the post of Lecturer provide for consultation with UPSC on each occasion, which has not been done in the present case.

14. The facts which are not in dispute are that the applicants herein were regular employees holding permanent posts under the A&N Administration when they applied for the post of Lecturers. The method of recruitment as per the Recruitment Rules which were in force at the time of their appointment was "By Transfer/Deputation (including short term contract) failing which by Direct Recruitment". Applicants 1 to 5 were appointed on deputation on adhoc basis for a period of one year with effect from the date they assumed duty in the said post or till UPSC nominee is appointed on regular basis. The appointment was done based on the recommendation of the Departmental Promotion Committee held on 26.08.2002 under the Chairmanship of



the Chief Secretary. Likewise, the applicants 6 and 7 were appointed based on the recommendations of the Screening Committee under Chairmanship of the Chief Secretary held on 22.2.2005. It also appears that there is a provision in Regulation 4 of the Union Public Service Commission (Exemption from Consultation) Regulation 1958, according to which the Lieutenant Governor, A&N Islands, can make appointments without consulting the UPSC and that the appointment of the applicants was made invoking the said exemption clause. It is also seen that their appointments have been extended from time to time under the terms and conditions stipulated in their initial appointment. Thus, what emerges is that the initial appointments of the applicants was in accordance with the then Recruitment Rules and was strictly as per the prescribed procedure. The vacancies were circulated and placed in the public domain thereby giving equality of opportunity to all eligible persons to apply for the posts. The selection was also done at the highest level under the Chairmanship of the Chief Secretary. In other words, all the relevant criteria for ensuring public employment in a fair and transparent manner have been strictly followed by the A & N Administration and there is nothing on record to suggest that any illegality or irregularity had occurred at the time of the initial appointment of the applicants.

15. Further, the A & N Administration had taken steps to re-advertise the posts in 2006 in the Employment News and by circulating to other State Governments/UTs. As there was no response to the advertisement, the services of the applicants were extended from time to time. Thus, admittedly it is on account of non-response to the



advertisement that the services of the applicants were continued in view of administrative exigencies and in the interest of the student community, which would be placed in a disadvantageous position for want of teaching faculty.

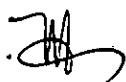
16. We now consider the objections raised by the UPSC. UPSC has repeatedly stated that the A&N Administration had taken a different stand in the case of one Dr.Rekha Kumari. However, it is seen from the Annexure.A.23 letter addressed by the A&N Administration to the UPSC on 9.5.2013, that the case of Dr.Rekha Kumari is entirely different as her initial appointment in March 2001 itself was made without the due process of selection. Further, she was appointed only on a contract basis in contravention of the Recruitment Rules which stipulated Direct Recruitment as the method of recruitment for Lecturer (Home Science) in JNRM. It was in these circumstances that the order of the Tribunal in respect of Dr.Rekha Kumari was challenged by the A& N Administration before the Hon'ble High Court of Kolkata. On the contrary the applicants herein were already regular employees and working in different capacities under A&N Administration and they were appointed on deputation as per the provisions of the Recruitment Rules, which prevailed at the relevant point of time and after undergoing a due process of selection. In other words, the A&N Administration has stated that the order of the Tribunal in Dr.Rekha Kumari's case was challenged because her recruitment itself was not in accordance with the provisions of the recruitment rules for the post and was not as per procedure prescribed. On the other hand, the recruitment rules for the post of Lecturers in BRAIT provided for transfer/deputation failing which by Direct Recruitment, and accordingly the





applicants were appointed on deputation on ad hoc basis following a due selection process. Having regard to the aforesaid uncontroverted facts, we are inclined to hold that the objection raised by the UPSC by comparing the case of the applicants with Dr. Rekha Kumari is devoid of any merit.

17. The second objection raised by the 2<sup>nd</sup> respondent is that the case of the applicants is not covered in terms of DOPT OM dated 11.12.2006, which was issued in pursuance of the Apex Court judgment in Uma Devi's case. In Uma Devi's case, the Hon'ble Supreme Court had expressed serious concern about irregular appointees or those appointed on contract or on daily wages, being continued year after year thus keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. The Apex Court has also deprecated the practice of such illegal, irregular and improper entrants being absorbed into service and also the continuance of such employees who have not secured regular appointment as per procedure established. In the instant case, as already pointed out, the initial appointment of the applicants cannot be termed as illegal, irregular or improper as their appointments were made as per the method of recruitment prescribed in the prevailing recruitment rules and as per prescribed procedure. They were appointed on deputation on ad hoc basis as they were already holding the permanent posts under A&N Administration. The vacancies have been duly notified in the Employment News and to all the Heads of Department under A&N Administration and also placed in the Official Website. Thus, there is no denial of equal opportunity to other would be aspirants to the posts against which the applicants were appointed. In Uma Devi's case, the Hon'ble



Supreme Court has emphasized the importance of ensuring equality of opportunity in public employment as extracted hereunder:

*"2. Public employment in a sovereign socialist secular democratic republic, has to be as set down by the Constitution and the laws made thereunder. Our constitutional scheme envisages employment by the Government and its instrumentalities on the basis of a procedure established in that behalf. Equality of opportunity is the hallmark, and the Constitution has provided also for affirmative action to ensure that unequals are not treated as equals. Thus, any public employment has to be in terms of the constitutional scheme."*

18. In the instant case, there has been no denial of equality of opportunity as the applicants were appointed after due notification. In view of the facts set out in paras 15 to 17 supra, we hold that in the instant case there is no violation of the quintessential spirit of the Uma Devi judgment or any of the conditions set forth by the Hon'ble Apex Court. Hence, the UPSC has erred in holding that the applicants are not eligible for regularization in terms of DOP&T OM dated 11.12.2006. In the result, we hold that the second objection is also unsustainable.

19. It is also pertinent to observe that after having initially appointed the applicants on deputation on adhoc basis, the respondents have again advertised the posts in 2006. It was only on account of the fact that no applications were received in response to their advertisement in Employment News in 2006 that the applicants were continued as Lecturers so as to avoid any inconvenience to the students. Although the applicants have been the beneficiaries of such continuance, we cannot ignore the reality that their continuance was also an administrative necessity for running the courses in BRAIT, Port Blair.



20. It has been contended by the UPSC that the proposal for absorption is not covered by the relevant Recruitment Rules. We do not find merit in this contention as the Recruitment Rules that were in force at the time of the appointment of the applicants has prescribed Transfer/Deputation failing which by Direct Recruitment as the method of recruitment. It is further seen that DOPT OM dated 03.10.1989 has clarified that Transfer means permanent absorption in the post and that consultation with the UPSC is necessary in all cases of appointment by Transfer to Group-A and Group-B posts. In these circumstances, we are unable to agree with the 2<sup>nd</sup> respondent that the Recruitment Rules do not prescribe absorption as a method of recruitment and that they cannot agree to any proposal for a change in the mode of recruitment. We are also of the considered opinion that in view of the specific provision for "Transfer" which is embeded in the Recruitment Rules of 1986/Draft Recruitment Rules for Lecturer (Hotel Management), there is no need for any relaxation in the method of recruitment insofar as the applicants are concerned.

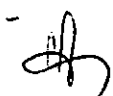
21. The UPSC has further pointed out that the case for permanent absorption in the post held on adhoc basis is not covered by the DOPT OM dated 3.10.1989 relating to absorption of an officer on transfer basis. However, Para 10.2 of the aforesaid OM extracted in para 9 supra, states that if in the initial recruitment rule there is also a provision for appointment by transfer on deputation/transfer and if the proposal is only to absorb an officer already selected on deputation, the Commission will consider the proposal for absorption subject to the condition that the initial selection on deputation basis was made in consultation with the Commission and the Administrative



Ministry certifies that there is no other deputationist in position appointed earlier to the officer now proposed for absorption. It is also seen that four conditions as laid down in Para 9 supra have to be fulfilled for considering proposals for absorption. From the material on record, it is apparent that the only condition which has not been fulfilled in the present case is that at the time of the initial appointment of the applicants on deputation, no consultation was made with the UPSC.

22. As such, we hold that the only relaxation that the UPSC is required to consider is exemption of the provision for prior consultation at the time of the initial selection of the applicants on deputation basis.

23. Taking into consideration the fact that it was the responsibility of the 3<sup>rd</sup> and 4<sup>th</sup> respondents to have consulted UPSC at the time of the initial selection and that the applicants cannot be faulted on this ground and also in view of the fact that the applicants have already rendered 12 to 15 years of service as Lecturers and also with due regard to the fact that the applicants possessed the requisite qualifications mentioned in the Recruitment Rules and that their selection has been carried out as per prescribed procedure and as none of the defects/deficiencies mentioned in the Umadevi judgment are attracted in the case of the applicants, we feel that this is a fit case for giving a direction to the UPSC to grant a relaxation of the condition of prior consultation for regularizing/absorbing the applicants as Lecturers as recommended by the A & N Administration from the date of their initial appointment.



24. Accordingly, the impugned Annexures.A-20 and A-24 are quashed and set aside. Consequently, there shall be a direction to the 2<sup>nd</sup> respondent to relax the condition of prior consultation, which shall be done within a period of six weeks from the date of receipt of a copy of this order. There shall be a further direction to the 3<sup>rd</sup> and 4<sup>th</sup> respondents to issue necessary orders for regularization/absorption of the applicants from the date of their initial appointment with all consequential benefits within a period of two months thereafter.

25. The OA is allowed as above. NO costs.

(MINNIE <sup>my name</sup> MATHEW)  
ADMINISTRATIVE MEMBER

(A.K.PATNAIK)  
JUDICIAL MEMBER

DATED: this the 21<sup>st</sup> day of July, 2017

DSN.