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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

Transferred Application No. 276 of 1986  
O.J.c No.1533 of 1980

Date of decision : June 30, 1987

Birabhadra Bal ... Petitioner

Versus

Union of India & others ... Respondents

Mr G.C Rout ... For Petitioner  
Advocate

Mr A.B Misra ... For Respondents  
Sr Standing Counsel (Central)

C O R A M

THE HON'BLE MR B.R PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR K.P ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the reporters or not ? NO. *Amal*
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes

J U D G M E N T

B.R PATEL, VICE-CHAIRMAN

The case of the petitioner is that he joined the post of Inspector, Ordinary Grade, on 5.4.45 and continued to work as such. But his seniority has been fixed in the gradation list of Inspector, Ordinary Grade counting his service from 29.9.64 which has resulted in earlier promotion of a large number of junior officers numbering as many as 248 superseding his claim to promotion on due date. He filed a writ petition in O.J.C No.826 of 1973 before the Hon'ble High Court of Orissa for re-determination of his seniority on the basis of his length of service and grant all consequential service benefits including arrears of pay and allowance. The writ petition was allowed and the respondents were directed by the Hon'ble High Court to re-determine his seniority counting his service from 5.4.45 from which date his continuous service began and to consider his claim for promotion to the higher post of Inspector, Senior Grade and to the rank of Superintendent, Central Excise and Customs, Group B. His grievance is that his seniority has not been fixed with reference to his length of service starting from 5.4.45 but has been done with reference to the date of his confirmation which is contrary to the direction of the Hon'ble High Court and as such his prayer is that the wrong orders passed in giving him seniority from the date of confirmation should be quashed and his due seniority restored. He has also claimed payment of arrears of pay and allowances.

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2. The respondents have maintained in their counter that the seniority of the petitioner has been fixed according to the direction of the Hon'ble High Court and his pay on promotional post has been fixed according to the rules and instructions of the Government of India and as such the petitioner should have no grievance.
3. We have heard Mr G.C Rout, the learned Counsel for the petitioner and Mr A.B Misra, learned Senior Standing Counsel for the Central Government and perused the records.
4. We have perused the Judgment of the Hon'ble High Court of Orissa in O.J.C No.826 of 1973. The High Court have ruled in unmistakable terms that the petitioner was entitled to determination of seniority on the principle laid down by the Supreme Court in the case of Union of India versus Ravi Varma AIR 1972 Supreme Court 670 by counting the length of services from 5.4.45 when the petitioner joined the post of Inspector, Central Excise, Customs and Narcotics, Ordinary Grade. In regard to his claim for service benefits the High Court have ordered that the opposite parties should consider the various claims of the petitioner and give him such service advantages as he is found entitled (Annexure 1). Mr Rout has contended that the petitioner's seniority has been re-determined with reference to the date of his confirmation and date of his passing the Departmental Examination and has drawn our attention to Annexure 4. Annexure 4 is a copy of the letter dated 20.1.78 of the Assistant Collector(HQRS), Central Excise & Customs, Bhubaneswar addressed to the

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petitioner. In para 2 of this letter it has been mentioned :-

" In pursuance of High Court's judgment, your seniority duly revised and refixed reckoning your date of appointment as 4.5.45 (Inspector,OG) and your date of confirmation as 11.7.52, when you have passed the Departmental Examination, you are placed above Shri Suraj Kanta Dutta ".

In para 4 of their counter, the respondents have stated that :-

" As per the order of the Hon'ble High Court , seniority of the petitioner was re-determined among the officers who were confirmed in the grade of Inspector (OG) with effect from 11.7.52 as per the list appended hereto as Annexure E".

In Annexure E, which is an extract of seniority list of Inspectors of Central Excise as on 1.1.60, the petitioner's date of appointment in the present grade has been shown as 5.4.45 and his date of passing the Departmental Examination as July ,1952 in additional chance and date of his confirmation is 11.7.52. This annexure as well as the statement in the counter-affidavit referred to above lends support to the contention of Mr Rout that the seniority of the petitioner was in fact fixed with reference to the date of confirmation and not from the date on which his continuous service began, i.e, 5.4.45. Paragraph 11 of the counter-affidavit makes this position still clearer for it states that :-

" Since the petitioner was appointed prior to 22.12.59, and that his seniority has been fixed

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with reference to the date of confirmation, the pay of the petitioner had, therefore, been notionally fixed ".

(Underlining is done by us for emphasis)

We have, therefore, no doubt that the seniority of the petitioner has been fixed with reference to the date of his confirmation and not with reference to his length of service counting from the date he joined the Ordinary Grade of Inspector, i.e, 5.4.45. This is contrary to the decision of the Hon'ble High Court. Mr Rout has also drawn our attention to Annexures 5 and 5A which are comparative statement of officers with particulars of their date of joining in different grades. The petitioner's date of joining as Inspector, Ordinary Grade has been shown to be 5.4.45 and that of Sk.Monwar Ali as 5.6.45. As such, according to the decision of the Hon'ble High Court of Orissa, Sk Monwar Ali was junior to the petitioner in the grade of Inspectors, Ordinary Grade. But according to Mr Rout, Ali has been promoted as Inspector, Senior Grade on 2.2.60 whereas the petitioner has been promoted to the same rank on 25.7.70. Though this has been specifically mentioned in paragraph 8 of the petition, the respondents have not controverted it either in their counter or during hearing. The counter is completely silent about it and we cannot but hold that what the petitioner has stated in paragraph 8 of his petition is correct. The petitioner also has

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mentioned in the same paragraph that the criterion for promotion to the rank of Inspector, Senior Grade was seniority-cum-fitness and it has not been controverted. Though we wanted to peruse the minutes of the DPC to find out if the petitioner was considered at all for promotion and requested the learned Senior Standing Counsel for the Central Government to produce the same, no DPC minutes have been made available to us. Therefore, we cannot but conclude that his case has not in fact been considered alongwith Sk Monwar Ali's case. We would, therefore, direct that the seniority of the petitioner in the gradation list of Inspectors, Ordinary Grade should be fixed solely with reference to his date of joining the grade which is 5.4.45 and from which date <sup>of</sup> <sub>✓</sub> his continuous service began and not with reference to his date of passing the Departmental Examination or the date of his confirmation in the grade. In other words, he should be made senior to all those who joined as Inspectors, Ordinary Grade later than 5.4.45 and his case for promotion to the promotional post of Inspectors, Senior Grade should be considered with reference to the date on which his immediate junior has been promoted to the senior grade of Inspectors by convening a review DPC. If he is found fit for promotion, he should be promoted. If his date of promotion to the Senior Grade of Inspector would be prior to 22.12.59 when the general principles

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of determining seniority were laid down by Govt of India in their O.M No.9-11/55 RPS dated 22nd December, 1959, his seniority in the grade of Inspector (SG) should be fixed according to his length of service, i.e, with reference to the date on which he would have been promoted to this grade. If on the other hand , his due date of promotion would be sometime after 22.12.59 his seniority would be determined in the grade of Inspector(SG) with reference to the principles laid down in the aforesaid letter of Government of India. His subsequent promotion to the rank of Superintendent, Central Excise and Customs, Group B will be governed by his seniority in the feeder grade of Inspectors (SG).

5. In regard to the petitioner's claim for arrears of pay and allowances, the High Court in their Judgment referred to above have directed the respondents to consider the various claims of the petitioner and give him such service advantages as he is found entitled. This in our opinion means that service advantages should be given to the petitioner as he is entitled to them under the rules. We have earlier dealt with his entitlement to promotion on the basis of re-fixation of seniority as indicated above. His pay in the promotional posts will have to be fixed with reference to the dates on which he would be promoted according to his seniority in the feeder grades. In para 10 of their counter-affidavit, the respondents have stated that the petitioner's pay has been fixed in terms of Government of India Order No.10 to FR 27 read with Ministry of Home

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Affairs No.1/3/65 Estt.(D) dated 20.2.67 communicated in M.F(D.R.I) F.No.15/13/67-Coord. dated 22.5.1967) (Page .133-135 of C.B.R Bulletin Vol.XIII No.2).

Mr Rout has contended that Office Memorandum of the Ministry of Home Affairs dated 20.2.67 is not applicable to the petitioner's case. and has drawn our attention to Annexure 13 where a copy of this Office Memorandum has been placed. Para 4 of this Office Memorandum reads as follows:-

" On promotion, his pay should have reached had he been promoted from the date the officer immediately below him was promoted, but no arrears would be admissible ".

(Underlining is for emphasis)

This Office memorandum, however, deals with cases where officers have not been considered suitable for promotion by the DPC because of adverse entries in the confidential reports. But later, on expunction or toning down of the adverse entries, they have been promoted and as such we agree with Mr Rout that the decisions contained in this Office Memorandum would not apply to the case of the petitioner. Government Order No.10 to FR 27 regulates advance increments to Stenographers in Selection Grade and as such this also does not apply to this case. Mr Rout has urged payment of arrears of pay and allowances on the basis of the decision of the Hon'ble Supreme Court in case K.S Upadhaya versus State of Gujarat in Civil Appeal No.2683(N) of 1977 in U.J(SC) 1979. In paragraph 5 , the Supreme Court

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have directed the State of Gujarat " to pay to the appellant the difference between the salary and allowances drawn by him as head Constable Grade I and the salary and allowances payable to him as Police sub-Inspector at the starting point of the scale from the date of his reversion to the date on which he was promoted again as Police sub-Inspector ". In this case the reversion of the appellant to the post of head Constable has been found to be illegal. This is, however, a special case as Their Lordships have observed in paragraph 4:-

" The fact remains that the appellant was later promoted as a police Sub-Inspector and has, by now, retired from service altogether. The result is that the dispute centres round a monetary claim of small dimension. It is this background which has persuaded us to pass the order which will work out substantial justice between the parties.

The suggestions also were put to the Counsel on both sides and they agreed that it was fair in the circumstances of the case. No such features are noticed in the present case except that the petitioner has since retired and as such we are of the view that this decision will not apply to the case of the petitioner in the matter of payment of arrear pay and allowances. Mr A.B Misra has drawn our attention to Annexure J in which the petitioner's pay as Inspector (SG) and Superintendent, Group B has been fixed and has contended that the petitioner has not mentioned any reason as to why the

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fixation of pay as it has been done is not acceptable to him. Mr Misra has further added that on promotion the petitioner's pay has been fixed notionally under Fundamental Rule 27. FR 27 as in Swamy's Compilation part I reads as follows:-

" Subject to any general or special orders that may be made by the President in this behalf, an authority may grant a pre-mature increment to a Government servant on a time scale of pay if it has power to create a post in the same cadre on the same scale of pay ".

In our opinion the Government of India's Orders No.8 to this FR contained in Government of India MHA O.M No. 20011/1/77-Estt.(D) dated 19th April, 1978 will appropriately apply to the petitioner in the matter of fixation of pay and payment of arrears. This order is pursuant to the instructions contained in Government of India, Cabinet Secretariat, Department of Personnel O.M No.9-3/72 Estt.(D) dated 22nd July, 1972 which had been issued after reviewing the extant rules and instructions in the light of the Judgment of the Supreme Court dated 4th January 1972 delivered in Civil Appeals (1) No.1845 of 1969 - Union of India and others v. M.Ravi Varma and others, (2) No.1846 of 1968 - Union of India and others v. S.Ganapathi Kini and others, and (3) No.50 of 1969 - Union of India and others v. Suresh Kumar and others. We would, therefore, quash the order of Assistant Collector (HQRS), Central Excise and Customs, Bhubaneswar dated 28.3.78 and the order dated 30th June 1979 of the Collector, Central

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Excise and Customs, Bhubaneswar and the Corrigendum dated 16.7.79 at Annexure 9 and 10 respectively and direct that after having determined afresh the seniority of the petitioner in the grade of Inspector, Ordinary Grade and fixing his date of promotion to the grade of Inspector, Senior Grade and subsequently to the grade of Superintendent, Central Excise and Customs, Group B, the respondents should fix his pay and allowances under Order 8 to FR 27 contained in G.I, M.H.A No.20011/1/77-Estt(D) dated 19th April,1978 and whatever arrears are due under this order should be paid to him within 3 months of receipt of a copy of this judgment. and further that his pension should accordingly be revised.

6. We are unable to accept the contention of Mr Rout that the respondents are guilty of contempt of the Hon'ble High Court for not having faithfully implemented the court's directions. This case was before the Hon'ble High Court from 1980 till 29.9.86 and the Hon'ble High Court have not taken any notice of this plea. It may be an error of judgment. But it certainly does not amount to contempt of court.

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7. The petition is thus partly allowed leaving the parties to bear their own costs.

K.P ACHARYA, MEMBER (JUDICIAL)



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Vice-Chairman

I agree.

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Member (Judicial)

Central Administrative Tribunal  
Cuttack Bench, Cuttack  
June 30, 1987/N.J. Joseph, SPA.