

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 69 of 1988.

Date of decision November 15, 1991.

Narayan Chandra Samal.

...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant ...

M/s. R. B. Mohapatra,
N. J. Singh, Advocates.

For the respondents ...

Mr. Amol Ray,
Standing Counsel (Income-tax)

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

A N D

THE HONOURABLE MR. J. C. ROY, MEMBER (ADMINISTRATIVE)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? *AD.*
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes.

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No. 69 of 1983.

Date of decision : November 15, 1991.

Narayan Chandra Samal ... Applicant.

Versus

Union of India and others... Respondents.

For the applicant ... M/s. R. B. Mohapatra
N. J. Singh, Advocates.

For the respondents ... Mr. Amol Ray,
Standing Counsel (Income-Tax)

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J U D G M E N T

K. P. ACHARYA, V.C., In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant prays to quash Annexures-15 and 20 and also direct the respondents to treat the applicant senior to the private respondents who have been appointed as Upper Division Clerks in the Office of the Commissioner of Income-tax, after 1968/1969.

2. Shorn of unnecessary details, it may be succinctly stated that the applicant had made ^{an} application in response to an advertisement, in the year 1967 to fill up certain vacancies arising in the cadre of Upper Division Clerks in the Office of the Commissioner of Income-tax, Bihar & Orissa. The case of the applicant was considered along with others and the applicant was selected and the appointment order was only to be issued which was not issued till a very late period, that means ⁱⁿ the year 1970. Prior to issuance of

the appointment order in favour of the applicant, another advertisement was published calling for applications from intending candidates in the year 1968/1969 to fill up certain vacancies in the cadre of Upper Division Clerks under the Commissioner of Income-Tax, Orissa. Respondents 4 to 59 were selected and appointed against the vacancies occurring in that year. Further case of the applicant is that appointment orders in favour of these respondents were issued earlier than the appointment order issued to the applicant though the applicant had been selected much prior to the selection of the said respondents pertaining to the year 1967. Necessarily, Respondents 4 to 59 have been treated as senior to the present applicant for which the applicant has a grievance and this application has been filed with the aforesaid prayer.

3. In their counter, the respondents 1 to 3 maintained that the relief sought by the applicant is fantastic and in no circumstance it should be allowed. According to the said respondents, the applicant having joined the post in question much later than the Respondents 4 to 59, they were rightly treated as senior to the applicant and therefore, the case being devoid of merit is liable to be dismissed.

4. We have heard Mr. R. B. Mohapatra, learned counsel for the applicant and Mr. Amol Ray, learned Standing Counsel for the Income-tax Department at a considerable length. Mr. Mohapatra contended that for no fault on the part of the applicant, appointment order was issued later than the appointment order issued in favour of Respondents 4 to 59 and

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admittedly the applicant having been selected for appointment much earlier than the vacancies arose in 1968-69, the concerned authority should have immediately issued the order of appointment which would have made the applicant eligible for joining the post in question and consequently he would have been treated as senior to Respondents 4 to 59. The delay in issuance of appointment order is purely due to the laches on the part of the administrative authorities for which the applicant should not be found fault with and his interest should not be prejudiced. On the other hand, Mr. Ray, learned Standing Counsel (Income-Tax) urged that the higher authorities cancelled the examination held for filling up the vacancies in the year 1967 as there were certain irregularities and consequently appointment order could not be issued in favour of the applicant. In such circumstances, it cannot be held that there was any laches on the part of the administrative authority in issuing the order of appointment in favour of the applicant. We have given our anxious consideration to the arguments advanced at the Bar on this question. True it is that for certain alleged irregularity said to have been committed, the concerned authority ordered cancellation of the examination but at the same time we cannot lose sight of the fact that admittedly the applicant did not apply for the vacancies occurring in the year 1968-69 and his appointment does not pertain to the vacancies arising in the year 1968-69. Admittedly, the appointment order issued in favour of the applicant pertains to the

vacancy occurring in the year 1967 and also pertains to the application made by the applicant for the vacancies occurring in 1967 and it also pertains to the selection of the applicant for the year 1967. It is not known under what circumstance this appointment order was issued in favour of the applicant relating it back to 1967. The undisputed position before us is that the appointment of the applicant relates back to the vacancy of 1967 and his selection for the same year. In such circumstances, we think that there was absolutely no justification on the part of the administrative authority for delaying the issuance of order of appointment till a time after the appointment orders were issued in favour of Respondents 4 to 59. Even though the appointment order of the applicant was issued in the year 1970 it must be deemed to have been effective for the vacancies occurring in 1967 and the appointment must relate back to the year 1967. Therefore, we hold, without least hesitation in our mind that the appointment of the applicant to the cadre of U.D.C. would relate back to the year 1967 and it must be held that the applicant is deemed to have been appointed with effect from 1967.

5. The next question that was mooted at the Bar by ^{that} Mr. Ray is / the case is grossly barred by limitation and even if the Bench holds that the applicant's appointment order should relate back to the year 1967, no relief could be granted to the applicant as the case is barred by limitation. Law is well settled that this Bench cannot take cognizance of any cause of action arising prior to ¹⁹⁶⁷

1.11.1982. Mr.Ray submitted that the cause of action relates to the year 1967 and therefore, this Bench cannot take any cognizance of the cause of action said to have arisen in the year 1967. We are not inclined to accept this argument of Mr.Ray because the applicant has been making representation relating to his grievance and furthermore, it should be appreciated that the seniority list pertains to 1.1.1982. Had not the applicant made any representation; as observed earlier, we would not have taken cognizance of the relief claimed because everything has happened before 1.11.1982. But Mr.Mohapatra invited our attention to Annexure-20 containing letter No.Ad-III-51/83-84/18313 dated 17.9.1983 wherein it is stated that the representation of the applicant deserves no merit and hence dismissed. Ofcourse there has been a delay in filing this application from 1983. This application was filed on 5.2.1983. While considering this aspect we think it just and proper to note that on the representation made by the applicant, the Commissioner of Income-tax was making correspondence with the Secretary, Central Board of Direct Taxes, New Delhi stating that the case of the applicant needs/deserves to be considered sympathetically and favourably because according to the Commissioner of Income-tax there was a ^{good} ~~not~~ case existing in favour of the applicant. While the Commissioner of Income-tax had entered into correspondence with the higher authorities, the applicant is bound to wait for final orders and therefore he had to wait till 1983 when the representation of the applicant was rejected, as communicated to him by the

Income-tax Officer.

As regards the delay occurring from 1983 to 1988 against serial Number 5.(iv)&(v) of the application the applicant has explained the cause of delay and prayed for condonoation of delay. Ofcourse Mr. Amol Ray submitted that the applicant has not made out sufficient cause to condone the delay. We are unable to agree with him. On a perusal of the facts mentioned against the said paragraph in the original application we are of opinion that sufficient cause has been shown by the applicant explaining the delay and therefore delay is condoned.

6. In view of the circumstances stated above and in view of the discussions made above, we hold that the applicant should be treated as senior to Respondents 4 to 59 and the deemed date of appointment and joining of the applicant should relate back to the year 1967. Accordingly, we would further direct that a fresh seniority list be prepared and we further direct that the applicant, if eligible for promotion, prior to filing of this application, his case should be considered and if found suitable, he should be given due promotion with all financial benefits but such promotion should not affect the service prospects of Respondents 4 to 59, if they have already got promotion etc. We would also say that without affecting the service prospects of Respondents 4 to 59, if necessity arises, a supernumerary post be created to give effect to this judgment.

7. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

.....15.11.91.....

MEMBER (ADMINISTRATIVE)

L. and S/P
15/11/91

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VICE-CHAIRMAN

Central Administrative Tribunal,
Cuttack Bench, Cuttack
November 15, 1991/Sarangi.

