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12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.16 of 1991
Cuttack this the ^{1st}~~30th~~ day of ^{December}~~November~~, 1995.

SHRI BASANT KUMAR DASH

...

APPLICANT

VERSUS


UNION OF INDIA AND OTHERS

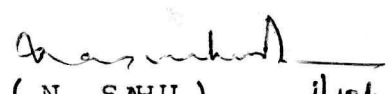
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RESPONDENTS

(FOR INSTRUCTIONS)

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunals or not?


(D.P. HIREMATH)
VICE-CHAIRMAN


(N. SAHU)
MEMBER (ADMINISTRATIVE)

18

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.16 of 1991

Cuttack this the ^{12th} 30th day of ^{Dec} ~~November~~, 1995.

CORAM:

THE HONOURABLE MR. JUSTICE D.P. HIREMATH, VICE-CHAIRMAN
AND
THE HONOURABLE MR. N. SAHU, MEMBER (ADMINISTRATIVE)

Shri Basant Kumar Dash,
S/o. Late Banchanidhi Das,
Inspector, Income Tax Department,
(Tax Recover),
O/O-ACIT, Cuttack Circle, Cuttack. Applicant

By the Applicant ... M/s. R. B. Mohapatra, J. K. Nayak,
D. R. Bath, Advocates.

Versus

1. Union of India represented through its Secretary, Ministry of Finance (Department of Revenue), New Delhi.
 2. Central Board of Direct Taxes, Department of Revenue, represented by Chairman, New Delhi.
 3. Chief Commissioner, Income Tax, Central Revenue Building, Patna, Dist: Patna, Bihar State.
 4. Commissioner of Income Tax, Orissa, 15, Forest Park, Bhubaneswar, Dist: Puri, Orissa State.
 5. Shri K. K. Das, Income Tax Officer, Paradeep, At/Po: Paradeep, Dist: Cuttack.
 6. Shri S. S. Baskey, Tax Recovery Officer, Sambalpur, At/Po: Dist: Sambalpur.
 7. Shri Biranchi Narayan Dash (B. K. Dash, Income Tax Officer, D. C. Assessment, Central Revenue Building, Bhubaneswar, Dist-Puri.
 8. Sri Umakanta Mohanty, Income Tax Officer, Ward No. 5, Arunodaya Market, Bhilding, Cuttack.
- [Handwritten signature]*

9. Shri N. Gupta,
Income Tax Officer,
O/o:Commissioner, Income Tax,
Bhubaneswar,Dist:Puri.
10. Sri B.N.Pati,
Income Tax Officer, Ward No.4,
Cuttack,Dist:Cuttack.
11. Sri D.Panda,
Income Tax Officer,
At/Po:Dist:Bolangir.
12. Sri T.L.N.Rao,
Income Tax Officer (C.I.B. & Recovery),
Bhubaneswar,Dist:Puri.
13. Sri R.C.Saranghi,
Income Tax Officer,
Ward No.2,Sambalpur,
At/Po:Dist:Sambalpur

.... Respondents

By the Respondents : Mr. Anil Krishna Roy,
Addl. Counsel, Income Tax.

ORDER


N. SAHU, MEMBER (ADMN.)

In this Petition filed under section 19 of the Administrative Tribunal Act, 1985, the applicant requires a direction to be issued to quash the orders of promotion in Annexures-1,3,4,5,8 and 9. In these Annexures, Respondents 5 to 13 were promoted. The applicant further seeks a direction to the Respondents to consider the case of the applicant for promotion to the post of Income Tax Officer, Group 'B' alongwith said Respondents in January, 1983 and in August, 1990 when the DPC met for considering their cases for promotion and for other consequential service benefits and financial benefits.

2. The applicant alleges that though he passed the departmental examination for promotion to the Post of I.T.O, Gr. 'B' in 1987 (examination held between 19.6.1987 to 26.6.1987), the DPC which met on 7.1.1988 ignored the case of the Petitioner for consideration. The applicant further alleges that the Review DPC which again met on 3.8.1990 did not also consider the case of the applicant for promotion. His representation has been rejected.


3. The result of the D.P.C. of I.T.O. Gr.'B' held in June, 1987 was published in 13.2.1988. The D.P.C. was convened on 7.1.1988. It could not possibly have considered the case of the applicant. The date of declaration of the result of the examination is conclusive and undisputed. There is no retrospectivity of passing of the examination from the date the examination was held. On this ground the applicant's case fails.

4. The applicant admitted that Respondents 9 to 13, both inclusive, have passed the departmental examination prior to him. Even the promotion orders of Respondents 9 to 13 was by the order dated 11.1.1988, prior to publication of the results. The applicant's contention is that the promotions of Respondents 9 to 13



are effective from the date of their taking over charge has no relevance in this context. Thus on 7.1.1983 when the DPC met the applicant did not satisfy the eligibility conditions. Until the result was officially announced by the respective authorities, no one could claim to have foreknowledge of the result which was kept in secrecy. The result of the aforesaid examination was received from the Directorate of New Delhi in the Office of the Commissioner of I.T. at Bhubaneswar on 8.2.1983. At best this date could be taken as the date of publication of the result. This contention therefore is dismissed.


5. The next contention of the applicant is that he was not considered in the DPC which met on 3.8.1990. It is stated in para 3.3 of the counter-affidavit that the DPC on 3.8.1990 considered the case of the applicant alongwith respondents 6 to 8 and drew up a panel of five names following the guidelines and the vacancy position. At the same time, the DPC reviewed the finding of the earlier DPC which met on 7.1.1983 in respect of the case of Shri K.K.Das, Respondent No.5. Respondent No.5 Shri K.K.Das cleared the departmental examination for promotion to ITO, Gr. 'B' on 2.7.1985. Inadvertently the DPC which met on 7.1.1983 missed consideration of his case. The DPC which met on 3.8.1990 reviewed the



findings of the earlier DPC which met on 7.1.1988 and gave promotion to Shri K.K.Das. Respondents in para 4.3. of the counter-affidavit drew our attention to the guidelines contained in GIDP and AROM No.22011/30/80-Estt.(D) dated 26.3.1980. This instruction indicates the circumstances under which a Review DPC can be convened. These circumstances are :


- "A. Where eligible persons were omitted to be considered; or
- B. Where ineligible persons were considered by mistake; or
- C. Where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or
- D. Where some procedural irregularity was committed by the DPC; or
- E. Where adverse remarks in the CRs were turned down or expunged after the DPC had considered the case of the officer".

6. According to the respondents, a Review DPC was to consider the cases of those persons who were eligible on the date of meeting of the original DPC but not the cases of those persons who become eligible subsequently. It is contended by the respondents that the applicant had gone wrong in mixing up case of Shri K.K.Das, Respondent No.5 with Respondent Nos.6,7 and 8. It is stated that Respondents 6 to 8 were senior to



the applicant and the respondents on 3.8.1990 drew up a panel of names for promotion. The applicant's candidature was not favoured by the said D.P.C. although he was considered alongwith Respondents 6 to 8. It is emphatically stated by the Respondents that no clear vacancy was available in 1988-89 and 1989-90. In the year 1988-89, the vacancy on the promotion of Shri S.C. Mohanty, as Assistant Commissioner on 31.3.1989 was not a regular one and the same could not have been anticipated during the year till 31.3.1989. In the year 1989-90, a vacancy arose due to promotion of Shri Mohanty on 31.3.1989 but the same was not filled in keeping in view the fact that the case of Shri P.C. Mishra who was placed in a sealed cover in the year 1986 DPC had to be reconsidered because the CAT, Cuttack by its order dated 23.10.1983 exonerated him from all the charges. In fact one post was also set apart for him by the DPC which met on 3.8.1990 since the matter was under process with the Respondents corresponding with Director of Income Tax (Vigilance).

7. In 1990-1991, there were seven vacancies, one vacancy was for Shri S.C. Mishra, four vacancies were due to promotion of ITOs to Assistant Commissioners and two clear cut vacancies due to retirement of two officers. Out of seven vacancies, a select panel of five names




were drawn up setting apart two vacancies of sealed cover cases of Shri P.C.Mishra and Shri B.D.Sethy who were exonerated from all charges in July, 1990 after finalisation of Court Case. Shri Sethi's case was kept in a closed cover by 1987 DPC which met on 7.1.1983.

8. The question is the situation as on 3.8.1990. The Review DPC considered the case of Shri K.K.Das. By that time, the applicant cleared the Departmental Examination. Shri P.C.Mishra's case was considered in 1986. Because of pendency of disciplinary proceedings, the DPC's findings were kept in a sealed cover. He was admittedly, exonerated from all the charges on 23.12.1983. It is the contention of the applicant that his result should have been published by opening the sealed cover and the benefit of promotion should have been granted to him with effect from the date in 1986 when he was considered by the DPC. There was absolutely no ground for keeping in reserve the vacancy available in 1988-89 for granting him the benefit of promotion by the DPC which was held on 3.8.1990 (Para 3 of the rejoinder to the counter affidavit).

9. The next point of the applicant is that when Shri B.D. Sethi was exonerated in July, 1990, his sealed cover should have been opened immediately. It is contended

that there is absolutely no basis for setting aside posts either for Shri P.C. Mishra or Shri B.D. Sethy in the DPC which was held on 3.8.1990. In the rejoinder to the counter-affidavit, the applicant had clearly drawn our attention to the Supreme Court Judgment reported in 1991 III SVLR (L) P. 93 (Union of India etc. Vs. K.V. Jankiraman Etc.) that on his getting completely exonerated of the charges, he should be given notional promotion from the date from which he should have been promoted as determined by the DPC when the result was kept in a sealed cover. It is contended that the reservation of the vacancies available with effect from 31.3.1989 in case of Shri P.C. Mishra and Shri B.D. Sethy has no justification. It is contended that these two officers should have been given the benefit of promotion with effect from the date when the DPC met on 7.1.1983 in respect of the vacancies available by then. It is contended that keeping the result in a sealed cover does not extend the date of allotting a post. Respondents 6, 7 and 8 i.e. Shri S.S. Baskey, Shri Biranchi Narayana Dash and Shri Umakanta Mohanty admittedly passed the examination on 2.4.1990. They should not have been taken into consideration for the vacancies available before the



said date of publication of the result i.e. for the vacancies available in 1983-89 and 1989-90 and also to the vacancies of 1990-91 shown in the counter.

10. Shri B.S.Nanda joined as Deputy Commissioner with effect from 28.3.1990 and Shri A. Ghosh joined as Assistant Commissioner on the same day. The vacancies arising out of the retirement of Shri J.Pani, R.N.Roy and Shri B.C.Lenka were available on 1st July, 1990 1st October, 1990 and 1st February, 1991 respectively. It is the contention of the Petitioner "Taking the worst view of the matter, respondents 6, 7 and 8 only have been taken into consideration for promotion to the vacancies arising after 2.4.1990^{when} admittedly the result of the Departmental Examination was published by the Commissioner. In that view of the matter, the applicant was also eligible for promotion to the vacancy i.e. available and arising out of the promotion of Shri B.S. Nanda, A. Ghosh and A. Behera. If the applicant's case had been considered in accordance with law for the said vacancies,, he should have been definitely promoted".

11. It is next contended that one Shri Sankali Sahu, ITO had retired on 31.1.1983. Shri S.C.Mohanty was promoted and joined as Assistant Commissioner on

31.3.1989. The said two vacancies should have been shown against the year 1988-89 and applicant should have been considered for the said vacancy in the DPC that met on 3.8.1990. It is submitted that the DPC should have been convened year-wise to consider the eligible persons for promotion to the vacancies available during the year. The bunching of candidates for number of years in one meeting is against all canons of justice, it is argued. Yearwise panel should be drawn in the vacancy available out of the candidates eligible for such promotion. The applicant drew our attention to the guidelines in Annexure-12. His main contention is that in not specifically considering the applicant for the vacancy available year-wise i.e. for the year 1988-89 and 1989-90, the respondents 1 to 4 have acted in contravention of law and against the direction issued by the Government.

12. We have recorded all the contentions of the applicant. It is necessary, however, to confine ourselves to his main grievance for which he seeks relief. He wants a direction to reconsider his case for promotion to the Post of I.T.O. Gr. 'B' when the cases of Respondents 9 to 13 were taken into consideration in January, 1983

or by way of Review in August, 1990. It is admitted by the applicant at para-4(II) of the petition that Respondent Nos.9 to 13 had passed the departmental examination earlier to him; ^{As such,} he could not possibly have any grievance against these respondents. We have already held that when the DPC was held on 7.1.1983, the departmental examination results of the applicant was not declared. Therefore, the DPC could not have considered his case. With regard to the contentions that he should have been considered in the DPC held on 3.3.1990, we have directed production of the minutes of the meeting of the D.P.Cs held on January, 1988 and August, 1990. Of crucial importance are the minutes of the D.P.C. held on 3.8.1990. We noticed from the said minutes at para 3 that the case of the applicant was considered but vigilance clearance was not given and therefore, the applicant's case was kept in a sealed cover. In this petition, the applicant did not challenge as to whether the sealed cover procedure adopted by the respondents was in order or not. We are, therefore not required to adjudicate this question. Most certainly either there should be a criminal charge pending against the applicant or there should have been a charge-sheet for major penalties and for that purpose the applicant's case must have been kept in a sealed cover. We assume, therefore, that the sealed cover procedure adopted was legal and proper and in that view of the matter we hold

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that the applicant was duly considered and he was not ignored in the DPC held on 3.8.1990.

13. As the applicant's case has no force inasmuch as that he was properly excluded from the DPC in January, 1983 and properly considered in the DPC in August, 1990, his grievance relating to improper identification of vacancies in the years 1983- and 1989 has to be mentioned only to be refuted. In para-8 of the counter affidavit, the respondents have analysed as to how the vacancies had arisen year-wise. This was countered in a rejoinder. It is true that when the CAT, Cuttack had exonerated Shri P.C. Mishra and Shri B.D. Sethy, the contention of the applicant is that the sealed cover should have been opened immediately and the contents of the sealed cover should have been given effect to. Shri Mishra's case was considered in 1986 DPC and kept in a sealed cover. He was exonerated of the charges on 23.12.1983. The contentions of the applicant is that soon after he was cleared, the sealed cover should have been opened and its contents given effect to. After a candidate is exonerated of the charges, a sealed cover no doubt has to be opened. For that the Head of the Department should seek administrative clearance or clarification and some time is needed for correspondence between the local office and the Delhi Office. Even with

regard to opening of a sealed cover, there should be an existing post to grant promotion to the candidate whose fate was sealed in a cover. Naturally, the local Head of the Department shall wait upto the time when such a vacancy arises. In 1986, Shri P.C. Mishra was kept in a sealed cover. It is nobody's case that a post should be kept vacant from 1986 onwards because nobody could have anticipated as to when the candidate would be exonerated of his charges. It may take two years, three years or five years. Therefore, there is no need to simultaneously keep a post vacant along with sealed cover.

14. Once he is exonerated of the charges, sealed cover can be opened but then a post must be available. If a post is not available, the authorities have to wait till such time when the post is available. Since the DPC had kept the case in a sealed cover, in this case, when the DPC met in 3.8.90, the contents of the sealed cover have been given effect to by allocating a post. We do not see any infirmity in this. At any rate, if there is delay the grievances should be of S/Shri P.C. Mishra and B.D. Sethy. We are unable to understand as to how the applicant should feel aggrieved about it.

15. The brief question before us is that between 7.1.1983 and 3.8.1990 was there any possibility for another

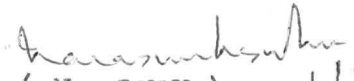


DPC and was it incumbent on the part of the respondents to convene a DPC ?. We have noticed that the respondents had given an explanation about the vacancy position in the years 1983-89, 1989-90 and 1990-91. We do not see any glaring discrepancy or glaring gaps in the explanation. As to when the DPC should be convened and as to when the clear vacancy could be said to exist, there is a very well laid out procedure. The local Departmental Head, the Commissioner of Income Tax and the Chief Commissioner of Income Tax should examine the vacancy position from time to time and obtain a clearance for holding a DPC. We have not been shown any foundation to show that there is any error in the application of this procedure. The applicant cannot compel the Department to hold a DPC within a few days of the occurrence of the vacancy. Sufficient time must be allowed. It is for the Departmental Head to decide and determine the number of vacancies and the persons in the zone of consideration. We are satisfied that the applicant was considered by the DPC on 3.8.1990. His case was kept in a sealed cover and subsequently he was promoted on 29.7.1991. He cannot complain that his seniority was ignored. His seniority was ignored because he was the subject matter of a disciplinary proceeding and vigilance enquiry and others junior to him did not have to contend with such stumbling blocks. We, therefore, do not see any justification for directing the respondents

to reconsider the applicant's case in the DPC held either on 7.1.1988 or 3.8.1990. The first contention of the applicant to quash the promotion of respondents 5 to 13 is equally untenable. On 3.8.1990, there were two DPCs; one Review DPC and one regular DPC. In the Review DPC Respondent No.5, Shri K.K.Das was cleared. It was stated that he could not be considered in the DPC on 7.1.1988 and that was a mistake and it was exactly for this reason a review DPC was held. This is in order.

16. In the result, the application is dismissed.


(D.P. HIREMATH)
VICE-CHAIRMAN


(N. SAHU) 11/12/95
MEMBER (ADMINISTRATIVE)

KN. Mohanty.