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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 448 OF 1993

Cuttack, this the 15th day of September, 1999

Sri Lakshmidhar Mahalik Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? *Yes*,
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No*.

(G.NARASIMHAM)
(G.NARASIMHAM)

MEMBER (JUDICIAL)

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(SOMNATH SOM)
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VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 448 OF 1993

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CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sri Lakshmidhar Mahalik, son of late Sanatan Mahalik, aged about 50 years, a permanent resident of village and PS-Fullwar Kasba, At/PO-Munsif-Balasore, Dist.Balasore, at present serving as Income-tax Officer, Income Tax Office, College Road, Keonjhar Munsif, Dist.Keonjhar ..Applicant

Advocates for applicant - M/s R.P.Kar
A.N.Ray
N.Paikray
M.K.Badu.

Vrs.

1. Union of India, represented through the Secretary, Ministry of Finance, At/PO-Central Secretariat, New Delhi.
2. Central Board of Direct Taxes, Represented through its Chairman, North Block, New Delhi-110 001.
3. Commissioner of Income Tax,Orissa, At/PO-15 Forest Park, Bhubaneswar, P.S-New Capital, Munsifi-Bhubaneswar, District-Khurda.
4. Sri S.C.Kanungo, Assistant Commissioner of Income Tax, Investigation No.2, Arunodaya Market, Cuttack, resident of Bepari Sahi,Mangalabag, Cuttack-1.

..... Respondents

Advocate for respondents - Mr.S.B.Jena, ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 28.1.1983 at Annexure-4 and for a direction to the respondents to implement the judgment delivered in TA No.215/86.

2. Before proceeding further it is to be noted that on 16.8.1999 hearing in the matter was closed in the absence of the learned counsel for the petitioner who later on filed a memo seeking for an opportunity for making his submissions. Accordingly, the learned counsel for the petitioner and the learned Additional Standing Counsel for the respondents were again heard on 25.8.1999 and in course of hearing the learned counsel for the petitioner submitted that in case the Original Application is allowed, he would confine his prayer for grant of notional benefits to the applicant for the purpose of increase of his retiral benefits as he has already retired. It is also stated that the applicant does not claim any service benefits. The Original Application is therefore being considered only for the above limited purpose.

3. The case of the applicant is that he as a direct recruit Inspector of Income Tax joined on 17.7.1969. Appointment to the grade of Income Tax Officer, Class-II, is governed by the Recruitment Rules for Class II Income Tax Officers 1963 under which appointment is made by promotion from the posts of Inspectors of Income Tax subject to the condition that the person whould have passed departmental examination and completed three years of service in the grade of

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Inspector. By January 1981 the applicant had fulfilled both these conditions. It is stated that as Inspector of Income Tax he earned rewards and recommendations for his hard work. Later on while officiating as Income Tax Officer during the period from 1981 to 1983 he got letter of commendation which is at Annexure-1. The applicant had passed the departmental examination in 1980 and had become eligible when DPC was held on 6.1.1981. According to the applicant, DPC recommended five names amongst which the applicant's name was at serial no.3. Basing on the recommendation, he was appointed to the grade of Income Tax Officer in January 1981 with the condition that his promotion is provisional and he will be liable to reversion if after a review of vacancies it is found that his promotion is in excess of the vacancies. The second condition was that the applicant will be on probation for two years and will be liable for reversion if performance during the period of probation including extended period of probation is found unsatisfactory.

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Another DPC was held in February 1982 which recommended D.R.Dev, N.P.Rama Rao, S.C.Kanungo and R.N.Prusty in the above order. Shri S.C.Kanungo (respondent no.4) was promoted and appointed as Income Tax Officer in order dated 10.8.1982 (Annexure-3). The applicant has stated that respondent no.4 was promoted as Income Tax Officer

two years after the applicant was so appointed. It is further stated that R.N.Prusty joined the post of Inspector of Income Tax as a promotee on 19.3.1971 and was appointed as Income Tax Officer, Class-II on 21.1.1983. Therefore, S.C.Kanungo, R.N.Prusty as also D.R.Dev and N.P.Rama Rao were junior to the applicant in the rank of Income Tax Officer, Class-II. The Commissioner of Income Tax in the impugned order dated 28.1.1983 at Annexure-4 held that the period of service of the applicant as Income Tax Officer from 27.1.1981 to 27.1.1983 is ad hoc. The applicant has stated that in this order it was wrongly mentioned that the promotion of the applicant was wrongly done due to incorrect determination of seniority in the grade of Inspectors of Income Tax at the time of D.P.C. held on 6.1.1981. R.N.Prusty and one G.B.Chhatar filed two writ applications before the Hon'ble High Court of Orissa which were numbered as O.J.C.Nos. 284 and 285 of 1982. In these writ applications they challenged the recommendation of DPC promoting the applicant on 6.1.1981 to the post of Income Tax Officer, Class-II and also challenged the interse seniority. These two writ applications were transferred to this Bench. In TA No.214/86 the Tribunal held that convening of DPC on 6.1.1981 was valid and promotion of the present applicant

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was also justified. In TA No. 215/86 the Tribunal held that it is the length of service which will determine the seniority and not confirmation. The Tribunal held that seniority of the applicants and respondents should be fixed in accordance with length of service and not according to the date of confirmation. The Tribunal also ordered that seniority is to be readjusted according to the length of service and quota and rota for direct recruits and promotees. The applicant has stated that in view of the above, his service as Inspector of Income Tax has to be reckoned from the date when he joined on 17.7.1969. R.N.Prusty was promoted to the post of Inspector of Income Tax on 10.3.1971. Therefore the applicant could not have been placed below R.N.Prusty. After delivery of the judgment the applicant made representation to Central Board of Direct Taxes, a copy of which is at Annexure-5. He has also stated that because of this he was deprived of being considered for the post of Assistant Commissioner of Income Tax which has resulted in loss of seniority and loss of higher pay scale. The DPC which met in 1990 did not take into consideration the case of the applicant for promotion to the grade of Assistant Commissioner of Income Tax. As a result the applicant's name was placed at a lower stage in the All India Income Tax Officers Class II gradation list which is at Annexure-6. In the above context, he has come up in this petition with the prayers referred to

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earlier.

4. On the date of admission of the Application on 24.8.1993 by way of interim relief it was ordered that the result of the Application would govern future service benefits of the applicant and if in the meantime any promotion is given the last incumbent in the promotion list should be specifically informed that his promotion is subject to the result of this O.A.

5. The departmental respondents in their counter have opposed the prayer of the applicant. It has been submitted by the departmental respondents that the applicant joined the Income Tax Department as Inspector on 17.7.1969 as per recruitment rules subject to the condition of passing the departmental examination. As per Ministry of Home Affairs' O.M. dated 15.4.1959 a person appointed against a permanent post as a direct recruit with condition of probation is to be confirmed in the grade from the date he successfully completes the period of probation. The applicant passed the departmental examination for Inspectors in 1979 and was confirmed along with others on 27.1.1981. Due to his late confirmation he was placed below R.N.Prusty in the grade of Inspectors of Income Tax in accordance with the Ministry of Home Affairs' O.M. dated 20.4.1961. As the petitioner's case was wrongly considered by DPC held on 6.1.1981 the subsequent DPC held on 3.2.1982 reviewed the

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recommendation of earlier DPC held on 6.1.1981 and eliminated the name of the applicant from the panel drawn up by 1981 DPC and included his name in the panel drawn up by 1982 DPC. Hence the period of service rendered by the applicant as Income Tax Officer prior to 28.1.1983 was treated as ad hoc. The official respondents have stated that DPC in their meeting held on 6.1.1981 also recommended the name of S.C.Kanungo whose name was wrongly omitted by the applicant in his averment in paragraph 4.4. It is further stated that the DPC in their meeting in 1982 reviewed the recommendation of DPC held on 6.1.1981 and directed to include the name of P.N.Sethi, P.T.Achary, B.C.Lenka, G.C.Lala and D.R.Dev. They also empanelled N.P.Rama Rao, S.C.Kanungo, R.N.Prusty, L.D.Mahalik (the applicant), G.B.Chhatar and P.S.Raman. It is submitted that S.C.Kanungo became senior to the applicant as he was confirmed in the grade of Inspectors of Income Tax earlier than the date of confirmation of the applicant. The official respondents have stated that these persons were junior to the applicant only before their confirmation. As soon as they were confirmed, they were placed above the applicant in the seniority list of Inspectors of Income TAX because the applicant was not confirmed. The departmental respondents have stated that at paragraph 10 of the judgment in TA No. 214/86 the Tribunal had observed that

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as no material had been placed before them that opposite party no.6 (the present applicant) was not promoted in accordance with the reserved quota, it was not possible to quash his promotion. The departmental respondents have stated that the applicant was not promoted in accordance with the reserved quota. The only scheduled caste point was point no.22 in the 40-point roster and Shri P.N.Sethy was considered against that point in 1981 DPC. The departmental respondents have stated that as R.N.Prusty was senior to the applicant after confirmation the applicant was rightly placed below Shri Prusty. On the above grounds, the departmental respondents have opposed the prayer of the applicant.

6. The private respondent no.4 was issued with notice but he neither appeared nor filed counter.

7. The applicant in his rejoinder has reiterated his averments that seniority should be determined on the basis of length of service and not date of confirmation in accordance with the decision of the Hon'ble Supreme Court. He has also stated that the recommendation of the DPC held on 6.1.1981 should not have been interfered with by the 1982 DPC. In order dated 13.1.1981 (Annexure-2) the applicant was promoted against a permanent vacancy and in the order itself there was no

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mention that his promotion was on ad hoc basis. Therefore, not considering the period of service rendered by the applicant as Income Tax officer for promotion to the higher post was illegal. It is further stated that the name of S.C.Kanungo (respondent no.4) did not come up for promotion as Income Tax Officer, Class-II. The applicant has stated that even though he is a scheduled caste candidate he was entitled to be promoted in January 1981 as by that time he was eligible and was also considered on the basis of seniority which was correctly taken into consideration. It is further stated that P.N.Sethi in any case was senior to the applicant and therefore DPC considered P.N.Sethi for promotion on the basis of his seniority and the applicant was promoted against SC quota. On the above grounds, the applicant has reiterated his prayer in his OA.

8. We have heard Shri R.P.Kar, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the departmental respondents and have also perused the records. The learned counsel for the petitioner has filed the copy of the order of the Tribunal dated 27.6.1991 in TA No.215/86. We have also perused the records of OA Nos. 214 and 215 of 1986.

9. The first prayer of the applicant is for

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quashing the order dated 28.1.1983 at Annexure-4 in which he was regularly appointed as Income Tax Officer (Group-B) with effect from 28.1.1983 and his name was ordered to be placed below R.N.Prusty in the grade of Income Tax Officers, Group-B. It was also ordered that period of service rendered by the applicant in the grade of Income TAX Officer, Group-B, prior to 28.1.1983 would be treated as ad hoc and would not be counted for the purpose of seniority. The applicant's case is that since he was recruited as Inspector of Income Tax on 17.7.1969 as a direct recruit, his seniority as Inspector of Income Tax should count from 1969 and his late confirmation in 1981 after he passed the departmental examination in 1979 can have no bearing on his seniority. Accordingly, he has stated that he has been rightly promoted on the basis of his seniority in the order dated 13.1.1981 (Annexure-1). The departmental respondents have stated that because of delay of twelve years in the confirmation of the applicant due to the time of 10 years taken by the applicant to pass the departmental examination, he became junior after confirmation and by mistake in the DPC meeting held on 6.1.1981 his seniority was counted from the date of his appointment and he was wrongly promoted even though persons who became his seniors by way of their earlier confirmation were not considered and promoted. Therefore, a Review DPC was held in 1982 which

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reviewed the recommendation of 1981 DPC and after the Review DPC's recommendations were available, the order dated 28.1.1983 was issued treating the period of service rendered by the applicant from 27.1.1981 till 27.1.1983 as ad hoc. The first prayer of the applicant is for quashing this order. It is clear that even though this order was issued on 28.1.1983, the applicant never challenged this order before filing this OA. This prayer of the applicant for quashing Annexure-4 is prima facie hopelessly barred by limitation. We note that on the date of admission of the application on 24.8.1993 the Tribunal admitted the OA, but at that stage the respondents were not heard. Moreover, limitation being a point of law can be raised even at the stage of hearing. The applicant has also not indicated any reason why he did not approach the Tribunal earlier for quashing the order dated 28.1.1983. He has also not filed a petition for condonation of delay. In consideration of this, we hold that the prayer for quashing the order dated 28.1.1983 (Annexure-4) is hopelessly barred by limitation.

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10. The next prayer of the applicant is for a direction to the respondents to implement the judgment in TA No.215/86. In TA No.215/86 the three applicants were R.N.Prusty, G.B.Chhatar and P.S.Raman. The private respondents were S.C.Kanungo, L.D.Mahalik (the present

applicant) and B.N.Naik. The Tribunal in their order dated 27.6.1991 disposed of the application by saying that as the quota of promotees and direct recruits appears to have been maintained, the seniority of the applicants and respondents 4 to 6 is to be fixed in accordance with their length of service and not according to their dates of confirmation. As this has not been challenged in any higher forum this order of the Tribunal is final. It is however to be noted that the Tribunal did not declare the seniority between the three applicants and the private respondents. They left it to the Department to refix the seniority in accordance with length of service and not by way of confirmation. The applicant has stated that after delivery of the judgment on 27.6.1991 by the Tribunal in OA No.215/86, he approached the Secretary, Central Board of Direct Taxes in his representation at Annexure-6 for implementing the above judgment. We find from his representation at Annexure- 5 that in this representation he made no prayer for refixing his seniority. He has merely prayed that he should be promoted to the post of Assistant Commissioner of Income Tax from the date when P.N.Sethi was so promoted. In his rejoinder the applicant has stated in paragraph 9 that P.N.Sethi was senior to the applicant. Thus his representation at Annexure-6 has nothing to do with the implementation of the judgment

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dated 27.6.1991 in TA No. 215/86. It is no doubt true that the import of the judgment in TA No.215/86 is that the applicant would become senior to those who joined as Inspectors of Income Tax later than him but were confirmed earlier. But in this case also the applicant did not approach the Tribunal within the period of limitation for refixing his seniority. His representation at Annexure-5 is not dated and it cannot be said whether after waiting for six months of filing of this representation at Annexure-5 he approached the Tribunal on 18.8.1993 within a period of one year. In consideration of the above, we hold that the applicant has not been able to make out a case for the relief claimed by him.

11. In the result, the Application is held to be without any merit and is rejected. No costs. The interim order dated 24.8.1993 is vacated.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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VICE-CHAIRMAN