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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 717 OF 1993
Cuttack, this the 29th day of August, 2001

Shri Bhaskar Mohan Upadhyaya 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.

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(G.NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
29.8.2001

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CORAM:

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

.....
Shri Bhaskar Mohan Upadhyaya, aged about 56 years, son
of late Mayuni Upadhyaya, Superintendent, Central Excise
and Customs, Bhubaneswar.....Applicant

Advocates for applicant - Mr.A.C.Rath

Vrs.

1. Union of India, represented by the Secretary, Ministry of Finance, Department of Revenue, New Delhi-110 001.
2. Secretary, Central Board of Excise & Customs, Ministry of Finance, Department of Revenue, Government of India, Jeevan Deep Building Parliament Street, New Delhi-110 001.
3. Collector, Central Excise & Customs, At-Rajaswa Vihar, PO-Bhubaneswar-751 004 District- Khurda.
4. Shri Budhiram Acharya, Senior Superintendent of Central Excise & Customs, C/O Collector Central Excise & Customs, At-Rajaswa Vihar, Bhubaneswar-4, PIN-751 004, Dist.Khurda

..... Respondents

Advocate for respondents -Mr.J.K.Nayak
ACGSC

SOMNATH SOM, VICE-CHAIRMAN
ORDER

In this O.A. the petitioner has prayed for revising the order dated 25.2.1992 (Annexure-2) promoting him to the level of Superintendent Group-B with effect from 7.2.1983, the date when Shri M.C.Sahoo, his immediate junior was promoted to that grade. He has also prayed for a direction to promote him to the post of Superintendent, Group-B with effect from 24/30.8.1982, the date when Shri Budhiram Acharya (respondent no.4), his junior was given promotion to that grade. He has also prayed for promotion to the

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grade of Assistant Collector from the date respondent no.4 was so promoted in the order dated 3.9.1992 at Annexure-3. He has also asked for financial and service benefits. The respondents have filed counter opposing the prayers of the applicant. No rejoinder has been filed.

2. For the present purpose it is not necessary to go into too manyfacts of this case because the present controversy falls within a small compass. It appears that the applicant and another person had earlier approached the Hon'ble High Court of Orissa in OJC No.1864 of 1988 challenging fixation of their seniority and this writ application was transferred to the Tribunal and was numbered as TA No.49 of 1987 which was allowed in order dated 9.3.1989. The Tribunal in their above order held that the applicant is senior to respondent nos. 4to 9 before them and accordingly quashed the seniority list. Sri B.Acharya, present respondent no.4, was opposite party No.4 in TA No.49 of 1987. The applicant's grievance is that according to refixation of seniority, he is entitled to promotion to Superintendent, Group-B from the date respondent no.4 was given such promotion. But he was given promotion from the date Sri M.C.Sahoo, who was respondent no.5 in TA No.49 of 1987, was given such promotion.

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3. The departmental respondents in their counter have stated that after the seniority of the applicant was fixed above B.Acharya and M.C.Sahu, the case of the applicant was considered along with his immediate junior, respondent no.4 by the Review DPC held on 24.10.1991 but he was not found suitable for promotion to Superintendent, Group-B with effect from

24/30.8.1982, the day Shri B.Acharya got such promotion. It is also stated that promotion to the level of Assistant Collector is done on the basis of all-India seniority list of Superintendents, Group-B, in which Shri B.Acharya is senior to the applicant and therefore the applicant is not entitled to be promoted to Assistant Collector from 3.9.1992 when Shri B.Acharya was so promoted. The respondents have further stated that the applicant was actually promoted to the grade of Assistant Collector with effect from 7.1.1994.

4. From the above it is clear that only point of controversy in this case is whether Review DPC which met on 24.10.1991 and reconsidered the case of the applicant for promotion, rightly held that the applicant is not fit to be promoted to Superintendent Group-B from the date Shri B.Acharya was so promoted. Departmental respondents have filed proceedings of DPC held on 21.8.1982 and 6.2.1983 and the proceedings of the Review DPC held on 24.10.1991 and we have perused the same. Promotion of Shri B.Acharya was considered in the DPC meeting held on 21.8.1982 and he was promoted from 24/30.8.1982. From the proceedings of the meeting of this DPC held on 21.8.1982 we find that the applicant's case was considered in that meeting. The applicant's case was considered in this meeting along with Shri B.Acharya. While Shri B.Acharya was rated as "Very Good" the applicant and several others were rated as "Not Very Good" and therefore Shri B.Acharya was promoted and the applicant was not promoted. It is to be noted that at that time Shri B.Acharya was wrongly reckoned as senior to the applicant which was corrected later on by the order of the Tribunal in TA No.49 of 1987. The

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applicant's case was next considered in the DPC meeting held on 6.2.1983. At that time disciplinary proceedings were pending against him and therefore, recommendation of the DPC in respect of him was put in sealed cover. Shri M.C.Sahu, who was again wrongly shown as senior to the applicant, was recommended for promotion in this meeting of the DPC and Shri M.C.Sahu was promoted from 7.2.1983. The Review DPC considered the entire matter and noted the fact that in the DPC meetings held on 21.8.1982 and 6.2.1983 the applicant was wrongly shown as junior to Shri B.Acharya who got promotion on the basis of recommendation of the DPC meeting held on 21.8.1982 and Shri M.C.Sahu who got promotion on the basis of the recommendation of the DPC meeting held on 6.2.1983. The Review DPC has also noted that the pending proceedings against the applicant because of which his case was placed in sealed cover resulted in complete exoneration of the applicant. The Review DPC also considered the CR of the applicant and found that he was due to be promoted on the basis of recommendation of the DPC meeting held on 6.2.1983 and accordingly he was promoted from 7.2.1983.

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5. The learned counsel for the petitioner has mentioned that there is no provision for assessing an officer as "Not Very Good". From the proceedings of the Review DPC held on 24.10.1991 we note that at the relevant time in 1982 the promotion was given to Superintendent Group-B, which was a selection post, only to officers who were rated as "Very Good". The Review DPC found that on the basis of his CR, the applicant can be rated as "Good" and as Shri M.C.Sahu, who ultimately became junior to the applicant, was given promotion from

7.2.1983 on the basis of his CR rated as "Good", the applicant was also given promotion from that date. The law is well settled that the Tribunal cannot re-assess the CR and come to a finding different from the finding arrived at by the DPC. We find that in the DPC meeting held on 21.8.1982 the applicant was not rated as "Very Good" whereas Shri B.Acharya was rated as "Very Good". Therefore, even though Shri B.Acharya was ultimately treated as junior to the applicant, he was given promotion which was denied to the applicant. We find no illegality in this and also in the recommendation of the Review DPC in promoting the applicant from 7.2.1983. In view of our above discussion, the prayer of the applicant for a direction to the departmental respondents to promote him from 24/30.8.1982 is held to be without any merit and is rejected. Consequently, his prayer for ante-dating his promotion to the rank of Assistant Collector from 7.1.1994 to 3.9. 1992 is also held to be without any merit because promotion to the rank of Assistant Collector is done on the basis of all-India seniority in the rank of Superintendent, Group-B and in that rank the applicant has been rightly held as junior to respondent no.4.

6. In the result, therefore, the O.A. is held to be without any merit and is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

(SOMNATH SOM)

VICE-CHAIRMAN