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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.
ORIGINAL APPLICATION NO. 662 OF 1994
Cuttack, this the 17th day of August, 2000

Subrata Roy

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)
MEMBER(JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
17.8.2000

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CORAM:

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

Subrata Roy, son of late Bimal Chandra Roy,
aged about 46 years,
resident of At/PO-Sambalpur,
Dist.Sambalpur,
at present working as Inspector of Income Tax...Applicant

Advocates for applicant - M/s M.R.Panda
D.K.Pani
Mrs.M.K.Das

Vrs.

1. Union of India, represented through the Secretary, Finance Department, At/PO/PS-New Delhi.
2. Central Board of Direct Taxes, represented through the Chairman, At/PO/PS-New Delhi.
3. Commissioner of Income Tax, Orissa, At/PO/PS-Bhubaneswar, Dist.Khurda.
4. Shri Malay Kumar Sethi, at present serving as Income Tax Officer, under Commissioner of Income Tax, Orissa, At/PO/PS-Bhubaneswar, Dist.Khurda.
5. Shri Sudhir Chandra Sethi, at present serving as Income Tax Officer, under Commissioner of Income Tax, Orissa, At/PO/PS-Bhubaneswar, Dist.Khurda

..... Respondents

Advocate for respondents-Mr.A.K.Bose
Sr.C.G.S.C.

SOMNATH SOM, VICE-CHAIRMAN O R D E R

S.Jom
In this Application the petitioner has prayed for quashing the order dated 6.7.1994 (Annexure-1) promoting respondent nos. 4 and 5 to the rank of Income Tax Officer (ITO) and for a declaration that consideration of respondent nos. 4 and 5 by the Committee in 1993 is contrary to law. The third prayer is for a direction to the departmental authorities to consider the case of promotion

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of the applicant with retrospective effect and consequential benefits.

2. The applicant's case is that he joined as LDC on 31.10.1969 and was ultimately promoted to the post of Inspector of Income Tax on 19.9.19990. The applicant has referred to rules for fillingup of the post of ITO by promotion and has mentioned that an Inspector may be considered for promotion to the rank of ITO only after he has passed the required examination and after he has rendered three years service in the grade of Inspector. The applicant has stated that a vacancy in the rank of ITO arose in 1993 by which time he had completed three years of service and had also cleared the departmental examination held in July 1992. The order dated 4.3.1993 at Annexure-2 indicates that he had cleared the examination. There were two vacancies in 1993 and there was one anticipated vacancy. Respondent nos. 4 and 5 appeared at the examination which was held in between 7.7.1993 and 14.7.1993 and were declared successful in the order dated 10.2.1994. Thus these two respondents cleared the examination in the calendar year 1994 and therefore were not eligible for promotion in respect of the recruitment for the year 1993. The DPC considered respondent nos. 4 and 5 and they were promoted in order dated 6.7.1994 (Annexure-1) to the post of ITO. The applicant hasstated that his case was not properly considered. He submitted representation but without any result and that is how he has come up in this petition with the prayers referred to earlier.

J. J. OM

3. Private respondent nos.4 and 5 were issued with notice but they did not appear nor did they file counter.

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4. Departmental respondents in their counter have opposed the prayers of the applicant. It is not necessary to refer to the averments made by the respondents in their counter because these will be referred to while considering the prayers made by the petitioner.

5. We have heard Shri A.K.Bose, the learned Senior Standing Counsel and have also perused the records. The learned counsel for the petitioner has filed written note of submission which has also been taken note of.

6. The applicant's grievance is that there were two clear vacancies in 1993 and DPC should have met in 1993. At that time the applicant had cleared the departmental examination and had completed three years of service as Inspector and he would have been eligible for consideration for promotion. But the DPC met only on 5.7.1994 and by that time respondent nos. 4 and 5 had cleared the departmental examination and had also completed three years of service as Inspector and were considered and they were promoted. The first point for consideration is whether there were two vacancies in 1993. The respondents have pointed out that two vacancies had arisen due to promotion of ITO namely G.B.Chhatar and L.D.Mahallick to the grade of Assistant Commissioner of Income Tax in Board's letter dated 14.5.1994 and these two vacancies became physically available in June 1994. The respondents have also stated that in the year 1993 there were three vacancies and two anticipated vacancies. For filling up these vacancies DPC was convened on 14.7.1993 and five officers were promoted to the post of ITO. When DPC met on 14.7.1993 respondent nos. 4 and 5 were not

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promoted. Respondent nos. 4 and 5 were promoted against the vacancies of 1994 and by the time DPC met respondent nos. 4 and 5 had acquired the eligibility by clearing the departmental examination. The applicant has no grievance with regard to the persons who were promoted in 1993 on the basis of recommendations of DPC which met on 14.7.1993 as he has not challenged their promotion. In view of the above, the contention of the applicant that respondent nos. 4 and 5 have been promoted against the vacancies of 1993 is held to be without any merit and is rejected.

7. The departmental respondents have pointed out that DPC in their meeting held on 5.7.1994 had taken into consideration all eligible persons and had recommended respondent nos. 4 and 5 who were the seniormost officers amongst the Inspector of Income Tax and had also the necessary eligibility. In view of this, it cannot be said that any mistake was committed by giving promotion to respondent nos. 4 and 5 in the order at Annexure-1.

8. In the result, therefore, the Original Application is held to be without any merit and is rejected. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som.
(SOMNATH SOM)

VICE-CHAIRMAN 17.8.2000