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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

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ORIGINAL APPLICATION NO. 753 OF 1994
Cuttack this the 20th day of March /2001

G.C. Sahoo ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? 45
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? N/A

Somnath Som
(SOMNATH SOM)
VICE CHAIRMAN
20.3.2001

20-3-2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 753 OF 1994
Cuttack this the 20th day of March/2001

CORAM:

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

...

Gouranga Chandra Sahoo, aged about 49 years,
S/o. Sri Ganeswar Sahoo, now working as Tax
Assistant in the Office of Income Tax Officer,
Dhenkanal

...

Applicant

By the Advocates

M/s. D.K. Mohapatra
S.K. Purohit
Miss M. Mishra

-VERSUS-

1. Union of India represented by its Secretary,
Ministry of Finance, Department of Revenue,
Government of India, Central Secretariat,
North Block, New Delhi-1
2. The Chairman, Central Board of Direct Taxes,
New Delhi
3. The Commissioner of Income Tax, Orissa,
Bhubaneswar, Khurda
4. Sri B.C. Acharya, U.D.C., Income Tax Department,
Office of the Asst. Commissioner, Income Tax,
Arunodaya Market, Cuttack-12
5. Sri S.C. Dash, U.D.C., Income Tax Department,
Office of the Deputy Commissioner of Income Tax (Audit)
4th floor, Central Revenue Building, Vanivihar,
Bhubaneswar-751004
6. Sri Y. Nayak, U.D.C., Income Tax Department, Office of
the Asst. Commissioner Income Tax, Arunodaya Market,
Cuttack-12
7. Sri R.K. Nayak, U.D.C., Office of the Asst. Commissioner,
Income Tax Department, Arunodaya Market, Cuttack-12
8. Sri S.B. Rath, U.D.C., Office of the Asst. Commissioner,
Income Tax, Rourkela-769012, Dist-Sundargarh
9. Sri B.K. Parida, U.D.C., Office of Asst. Commissioner,
Income Tax Circle-1, Central Revenue Building,
PO: Vanivihar, Bhubaneswar-751004
10. Sri D. Patel, U.D.C., Office of the Income Tax Officer,
Bargarh, Income Tax Department, Bargarh

...

Respondents

By the Advocates

M/s. I.C. Dash, Jyoti
Patnaik, A. Das &
P.K. Khuntia (Res. 6 & 7)
Mr. A.K. Bose, Sr. St.
Counsel (Res. 1 to 3)

ORDER

MR. G. NARASIMHAM, MEMBER (JUDICIAL): In this Application filed on 22.11.1994, applicant, Gouranga Chandra Sahoo, a Tax Assistant of the Income Tax Department wants the following reliefs:

- a) To pass appropriate orders quashing Annexure-7, order dated 1.3.82;
- b) To pass appropriate orders directing the authorities specifically Respondent Nos. 1 to 3 to treat/accept the date of promotion of the applicant to the post of U.D.C. to be 16.11.72 and accordingly to reflect the correct position of the applicant in the Gradation List of U.D.Cs and Tax Assistants in Orissa (Charge) as on 1.1.90, prior to consideration of any promotion to the post of Head Clerk/Inspector
- c) To pass any other relief to which the applicant is entitled and to allow this original application with costs

2. Facts not in dispute are that the applicant joined in the Income Tax Department as L.D.Clerk on 14.12.1970 and was promoted as U.D.Clerk on 16.11.1972. Thereafter on 20.12.1979, he was promoted to officiate as Tax Assistant. However, he was reverted to the cadre of U.D.C. with effect from 4.5.1981 vide Annexure-1. On such reversion his pay was refixed at Rs.440/- in the U.D.C. scale of Rs.330-560/- in stead of Rs.470/-, which he was drawing on 3.5.1981 as Tax Assistant in the scale of Rs.380-640/- (Vide Annexure-2 dated 22.6.1981). By order dated 1.3.1982 (Annexure-7) he was shown to have been regularly promoted to the cadre of U.D.C. with effect from 15.3.1974. He represented to the Chairman, Central Board of Direct Taxes (Respondent No.2) on 4.3.1983 (Annexure-6). Gradation list of U.D.Cs as on 1.1.1990 for Orissa Circle was published on 24.5.1994 (Annexure-3). The applicant was shown at Sl. No.90 in that list.

The grievance of the applicant is that he was declared to have passed Ministerial Examination with effect from 31.7.92, while he was serving as U.D.C. and on that account he was allowed

to draw two advance increments by order dated 14.12.1973. He even passed the Departmental Examination for Income Tax Inspectors with effect from 12.8.1977 and was allowed to draw two advance increments with effect from that date. He was even allowed to cross E.B. w.e.f. 12.8.1977 and was allowed to draw special pay of Rs.35/- per month w.e.f. 2.7.1999. After his promotion to the post of Tax Assistant from 21.12.1979, he was allowed annual increment. After his reversion as U.D.C. w.e.f. 4.5.1981, he was once again promoted to the post of Tax Assistant and joined in that post on 24.2.1988. In the meantime his earlier position before reversion to the post of U.D.C. w.e.f. 4.5.1981 was restored with effect from 21.12.1979 and his pay was accordingly refixed. While continuing as Tax Assistant, this final Gradation List of U.D.Cs and Tax Assistant as on 1.1.1990 (Annexure-3) was published on 24.9.1994. These facts have also not been disputed in the counter.

3. The grievance of the applicant is that even prior to publication of final gradation list vide Annexure-3, he represented to the Commissioner of Income Tax in letter dated 21.3.1994 (Annexure-4) for restoring his date of promotion to the post of U.D.C. to 16.11.1972 on the ground that without following the principles of natural justice and that too after nine years from the original date of promotion his date of promotion was shifted to 15.3.1974. After publication of the gradation list under Annexure-3, he again represented to the Commissioner on 5.9.1994 (Annexure-5) stating that his position in the gradation list should be corrected to be shown at Sl.No.60 instead of Sl. No.90. These representations have not been

disposed of. Prior to the circular of final gradation list under Annexure-3, a draft gradation list was circulated on 25.1.1990 inviting objections. As by then he had already represented to the Chairman, Central Board of Direct Taxes (Res.2) on 4.3.1983 vide Annexure-6, and as that representation was still under consideration, he, with a reasonable hope for getting proper relief did not submit any further representation for rectification of wrong placement of his name in the draft gradation list. Thus, according to applicant, his promotion to the post of U.D.C. on 16.11.1972 should be treated as regular and he should get all consequential benefits.

4. The Department in their counter raised the plea of maintainability and limitation as well. Since the applicant seeks to quash Annexure-7 dated 1.3.1982, this Tribunal, according to Department, has no jurisdiction to entertain the dispute, the cause of action of which arose prior to three years preceding the date of commencement of functioning of the Tribunal on 1.11.1985. Moreover, the application is also grossly barred by limitation under the provisions of Section 21 of the A.T. Act, 1985. This apart this Application is also defective for want of necessary parties inasmuch as the applicant, though wants his seniority to be shifted from Sl. No.90 to 60 in the gradation list as on 1.1.1990, the employees shown above him in that gradation list upto Sl. No.60 should have been impleaded as necessary parties since their seniority would be affected if applicant's contention is ultimately accepted.

As per the Recruitment Rules for the promotion to the grade of U.D.C., the eligible L.D.Cs should have passed the Ministerial Staff Examination and also completed three years of regular service in that Grade. Due to non availability of

qualified candidates the Income Tax Board had directed the promotion to the post of U.D.Cs in respect of those who have fully qualified in the departmental examination. The Board further directed that partly qualified candidates promoted to the grade of U.D.C. should be treated as adhoc promotees and subsequently, on being qualified in the Ministerial Staff Examination, they would be considered along with other qualified LDCs by a regular D.P.C. for promotion to the Grade of U.D.C. and then they would be considered to have been promoted as U.D.C. regularly. The period of adhoc promotion would not count towards seniority even if there is no break in adhoc promotion. Subsequently as per Annexure-1 dated 4.1.1981, Office Order was issued by the Commissioner of Income Tax pursuant to letter of the Board dated 18.3.1980, wherein it was pointed out that promotions effected on or before 23.11.79, i.e., the date when the amended rules came into force, from the selected panels drawn up prior to 23.11.1979 would be treated as adhoc and promotions would be reconsidered again on the basis of non selection provided they are otherwise eligible and come within the range of seniority. As some representations were made, the matter was again referred to the Board for their decision. The Board, however, reiterated that promotions effected after 23.11.1979 from the panel drawn up by 1978 D.P.C. should be recorded as adhoc promotions. Since the applicant did not qualify at the relevant time, he had to face reversion as per Annexure-1 dated 4.5.1981. The applicant was promoted to the U.D.C. as a partly qualified candidate w.e.f. 16.11.1972. The Departmental Examination, in which he appeared was conducted in the year 1972, but the

results were published on 12.3.1973, much after the D.P.C. held on 31.7.1972. Subsequently a review D.P.C. was convened on 22.1.1982 and in the review D.P.C. applicant's promotion was regularised with effect from 15.3.1974. His adhoc promotion from 16.11.1972 to 15.3.1974 cannot be counted for the purpose of seniority in the grade of U.D.C. None of the juniors to the applicant has been promoted earlier than him to the grade of U.D.C.

The representation of the applicant to the Chairman, Central Board of Direct Taxes (Respondent No.2) was duly forwarded on 8.6.1983. This was rejected by the Board and the result of rejection was duly communicated to the applicant in letter dated 20.8.1983 (Annexure-A/3 & B/3). His representation having been rejected in the year 1983 itself by the Board, further representation to the Commissioner will not save the limitation and those representations have no meaning since the Board has finally decided the matter in the year 1983 itself.

5. In the rejoinder, without denying the aforesaid facts pleaded in the counter, ^{the applicant} ~~defended~~ that the application is maintainable and not barred by limitation by interpreting the expression 'limitation', 'starting point', 'cause of action', ending point, 'remedy', 'redressal' and so on.

6. We have heard Shri D.K.Mohapatra, the learned counsel for the applicant, Shri A.K.Bose, the learned Senior Standing Counsel for the Respondents and Shri I.C.Dash, the learned counsel for Private Res. 6 and 7, on whose behalf no counter was filed. The main prayer of the applicant is for quashing Annexure-7 dated 1.3.1982, through which his promotion to the U.D.C. cadre was changed from 16.11.1972 to 15.3.1974. If this order is quashed, the other two prayers under Para-8

(b) and (c) will arise for consideration. In other words, so long as order dated 1.3.1982 under Annexure-7 stands, his other two reliefs will not carry any meaning.

Against this order the applicant represented to the Chairman, Central Board of Direct Taxes (Res. 2) on 4.3.1983 (Annexure-6). In other words, he represented to the Chairman after the expiry of one year when the order dated 1.3.1982 was passed. Though in the O.A. he averred that this representation was still pending for consideration even on the date the final gradation list as on 1.1.1990 was published on 24.5.1994 under Annexure-3, in Para-9 of the counter it has been specifically averred by the departmental respondents that this representation was forwarded to the Board on 8.6.1993 and the Board had rejected the same, as indicated in letter dated 15.7.1983, addressed to the Commissioner, Income Tax, Bhubaneswar (Annexure-A/3) and this rejection was intimated to the applicant vide Annexure-B/3 dated 20.8.1983. This specific averment in the counter has not been denied in the rejoinder at all. In other words, by August/83, the applicant was aware that his representation was rejected by the Chairman (Res.2), who is the final authority in taking decision in such matters. This being the position, he should have approached the Tribunal challenging the order under Annexure-7, at least prior to September, 1984, which is the period of limitation prescribed under Section 21(1)(a) of the A.T. Act, 1985. This having not been done, this O.A. is hopelessly barred by time. In order to understand the simple scope of Section 21 of the A.T. Act, we need not discuss the interpretations made by the applicant in the rejoinder in regard to various legal expressions, as

referred to above.

In fact the applicant should have at first challenged his reversion order dated 4.5.1981 under Annexure-1 of the O.A.

There is no specific prayer that his position in the gradation list of U.D.Cs as on 1.1.1990, published on 24.5.1994 vide Annexure-3, should be shown at Sl. No.60 in stead of Sl.90, as pleaded in the Original Application. Even if there had been any such prayer, the same could not have been taken into consideration in the absence of U.D.Cs as parties shown above him in the gradation list upto Sl. No.60, as it would involve the change in seniority position.

7. In the rejoinder itself the applicant referred to the following reported cases:

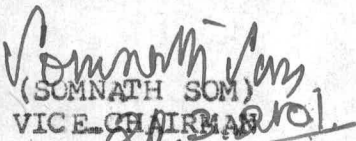
- 1) AIR 1980 SC 268 (G.C.Gupta vs. N.K.Pandey)
- 2) AIR 1990 SC 1607 (Direct Recruit Class-II Engg. Officers Assn. vs.State of Maharashtra)
- 3) AIR 1993 SC 978 (R.L.Bansal vs. Union of India)
- 4) AIR 1989 SC 278 (Delhi Water Supply & Sewage Disposal Committee vs.R.K.Kashyab)
- 5) AIR 1989 SC 356 (Municipal Corpn. of Delhi vs. Smt.Shila Puri)
- 6) 1994(1) SLR(SC) Page-525 = 1994 AIRSCW 1590 (M.V. Krishna Rao vs. Union of India)

All these decisions relate to counting of seniority in different services. Even assuming the ratio decided in these cases would be helpful to the applicant, unless he crosses the hurdle of limitation, as discussed above, we need not examine the applicability of those decisions to the facts and circumstances of the instant case.

This application having been filed on 22.11.1994, i.e. 10 years after the expiry of the period of limitation as discussed earlier, even in the absence of any application

for condonation of delay, supported by a duly sworn affidavit, as required under Rule-8(4) of the C.A.T.(Procedure) Rules, 1987, the delay cannot be condoned, more so, when a Larger Bench of the Apex Court in L.Chandra Kumar's case reported in AIR 1997 SC 112, in Para-16 of the judgment observed that Section 21 of the A.T.Act specifies strict limitation period and it does not vest the Tribunals under the Act with power to condone delay. Even if there is provision to condone delay under the Act, discretion to condone delay should ^{not} be utilised liberally and only in very exceptional and rare cases discretion can be utilised for condonation of delay.

9. In the result, O.A. is dismissed as hopelessly barred by limitation, but without any order as to costs.


(SOMNATH SOM)
VICE-CHAIRMAN

20.3.2001
(G.NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//