

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACKBENCH, CUTTACK.

ORIGINAL APPLICATION NO. 818 OF 1994

Cuttack, this the 19th day of April, 2001

Vrs.

Union of India and others ... 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 Tribunal or not? **No**.

(G. NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

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CORAM:

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

.....
Shri Purna Chandra Mishra, aged 50 years, son of late
Biswambar Mishra, resident of Quarter No.13, Type IV,
Block-III, Central Revenue Colony, Rajaswa
Bihar, Bhubaneswar

.....
Applicant

Advocates for applicant - M/s Bijan Ray
B.K.Bal

Vrs.

1. Union of India, represented by the Secretary, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001.
2. Central Board of Direct Taxes, Department of Revenue, represented by its Chairman, New Delhi.
3. Chief Commissioner of Income-tax, Central Revenue Building, Patna, District-patna (Bihar)
4. Commissioner of Income-tax, Orissa, At-15, Forest Park, Bhubaneswar-751 001, District-Khurda (Orissa)
5. P.V.Krishna Rao, Inspector of Income-tax, Office of the Assistant Director of Income Tax (Inv.), Arunodaya Market, P.O-Cuttack, Town/Dist.Cuttack.
6. Kishore Chandra Mohanty, Inspector of Income Tax, Office of the Assistant Commissioner of Income-tax, Circle-I, Arunodaya Market, P.O-Cuttack-12, District-Cuttack.
7. K.C.Patnaik, Inspector of Income Tax, Office of the Assistant Director of Income Tax (Inv.), Arunodaya Market, Post and District-Cuttack.
8. J.K.Lenka, Inspector of Income Tax, Office of the Deputy Commissioner of Income-tax, Special Range, Khan Nagar, Cuttack

..
.....Respondents

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

ORDER

SOMNATH SOM, VICE-CHAIRMAN

The petitioner in this O.A. has prayed for a direction to the departmental respondents to hold the meeting of the DPC immediately for considering the

applicant and others who had acquired eligibility on 1.11.1994 and for a further declaration that respondent nos. 5 to 8 not having acquired eligibility on 1.11.1994 are not entitled to be considered for the post.

2. Departmental respondents have filed counter opposing the prayer of the applicant. Private respondents were issued with notice but they did not appear or file counter. No rejoinder has been filed. We have heard Shri Srinivas Mohanty, the learned counsel on behalf of the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the departmental respondents and have perused the record. The learned counsel for the petitioner wanted time till 29.3.2001 to give citation of the decision of the Hon'ble Apex Court in the case of Union Public Service Commission referred to in paragraph 4.13 of the OA, but no such citation has been filed and the names of the parties have also not been mentioned in the OA and therefore, it has not been possible to refer to this decision, if any.

3. For the purpose of considering this petition, it is not necessary to go into too many facts of this case. The applicant joined Income Tax Department on 9.12.1970 as Stenographer and was promoted to the post of Senior Stenographer on 1.8.1983 and to the post of Stenographer (Selection Grade) on 26.2.1988. He was eligible to take the Departmental Examination for promotion to the post of Inspector of Income Tax. Accordingly, he took the Departmental Examination and came out successful and was promoted to the post of Inspector of Income Tax on 24.9.1990. The Rules provide that Inspectors, who have put in three years of service in the grade of Inspector after

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appointment on regular basis and have passed the Departmental Examination for promotion to the post of Income Tax Officer, are eligible for promotion to the post of Income Tax Officer. The applicant appeared at the Departmental Examination for promotion to ITO on 17.7.1991 and 25.7.1991 and results were declared on 7.1.1992. On 1.11.1994 five posts of Income Tax Officer were released by the Ministry of Finance in the order at Annexure-2. The applicant has stated that as he had qualified by 1.11.1994 he was entitled to be considered by that date. Private respondent nos. 5 to 8 had not acquired eligibility criterion for promotion as they had not passed the Departmental Examination for ITO. DPC was convened on 28.11.1994. But on 23.11.1994 respondent nos. 5 to 8 filed two Original Application Nos. 661 and 667 of 1994 before the Tribunal and obtained ex parte orders on 23.11.1994 as a consequence of which the departmental authorities deferred the meeting of the DPC. The applicant thus lost the opportunity of being considered for promotion to the post of ITO in the meeting of the DPC which was scheduled to be held on 28.11.1994. The applicant has stated that because of non-holding of the DPC, the departmental authorities were put to administrative difficulty and posts remained vacant. The applicant filed a representation, a copy of which is at Annexure-3. In the context of the above, the applicant has come up in this petition with the prayers referred to earlier.

4. Departmental respondents in their counter have admitted that the applicant acquired eligibility as on 1.11.1994 for being considered for promotion to the post of Income Tax Officer. It is stated that the DPC met on

28.11.1994 but could not consider the candidates for promotion in view of the order dated 23.11.1994 passed by the Tribunal in OA Nos. 661 and 667 of 1994. It is further stated that the Tribunal had stayed the meeting of the DPC and that is how the DPC meeting has not been held. In view of the above, the departmental respondents have opposed the prayers of the applicant. The rival submissions of the parties will have to be considered in the context of the above pleadings.

5. We have called for the records of OA Nos.661 of 1994 and 667 of 1994 and we find that the present private respondent nos. 7 and 8 had filed OA No.661 of 1994, and OA No.667 of 1994 had been filed by the present private respondent nos. 5 and 6. OA No. 667 of 1994 was disposed of at the stage of admission on 23.11.1994 with a direction that in the ensuing meeting of the DPC the cases of the applicants in that OA should be considered along with others and in case the results of the Examination in which these private respondents (applicants before the Tribunal in that OA) had been announced prior to holding of the DPC, then the DPC will proceed further in the matter depending upon success or failure of the applicants, i.e., the present private respondent nos.5 and 6. It was further ordered that if results are not declared by the date of DPC meeting, the result of the selection process in respect of the applicants will be kept in a sealed cover for suitable action at the earliest appropriate time. The departmental authorities were also directed to examine the advisability of the early declaration of the results of ITO Group-B Examination held in the month of June 1994. Orders on same lines were passed on the same day disposing of OA No.661 of 1994. The present applicant filed

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two R.As. 57 and 58 of 1994 praying for setting aside or reviewing the ex parte orders dated 23.11.1994. The RAs were taken up on 30.11.1994 and it was directed that operation of the orders of the Tribunal, dated 23.11.1994 passed in OA Nos.661 and 667 of 1994 is stayed with a direction that the departmental authorities shall keep the posts of ITO vacant until further orders of the Court. The two RAs were disposed of in order dated 7.12.1994 by setting aside the orders dated 23.11.1994 passed in OANos.661 and 667 of 1994 and those two OAs were restored to file to be listed on 8.12.1994. On 8.12.1994 the Tribunal directed that the DPC which was proposed to be held on 28.11.1994 and which was perhaps not held, shall not be convened without intimation to the Tribunal. The Department filed an application seeking permission of the Tribunal to convene the DPC meeting, but this could not be taken up for consideration. On 5.2.1995 the present private respondent no.6 and one Arun Kumar Mohanty were declared to have passed the Departmental Examination held in June-July 1994. On 4.5.1995 the applicants in OA Nos.661 and 667 of 1994 filed petitions seeking withdrawal of those two OAs which were dismissed as withdrawn. The DPC met on 16.6.1995 and recommended the names of respondent nos. 6 and 8 along with some others for promotion to the post of ITO. From the above recital of facts it is clear that on 23.11.1994 the Tribunal did not pass any order staying the meeting of the DPC which was scheduled to be held on 28.11.1994. They had only directed that if the meeting of the DPC is held on 28.11.1994, the cases of the applicants before them in OA

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Nos. 661 and 667 of 1994 should also be considered and the recommendation with regard to these persons should be kept in sealed cover for suitable action in future. It is only on 8.12.1994 that the Tribunal ordered that the DPC if not already held on 28.11.1994 shall not be held without intimation to the Tribunal. In the present petition, the applicant, who had earlier filed RA Nos. 57 and 58 of 1994, has asked for a direction for holding the DPC meeting immediately. The DPC meeting has already been held on 16.6.1995 and it is, therefore, not necessary to issue any direction in this regard.

6. The grievance of the petitioner is that had the meeting of the DPC been held on 28.11.1994, when the results of the Departmental Examination for ITO held in June-July 1994 had not been declared, private respondent nos. 6 and 8 would not have been eligible to be considered because by that time their results had not been out and the applicant would have been considered and promoted as he had the eligibility and required service experience as on that day. We have already noted that there was no stay order for holding of DPC on 28.11.1994. But the departmental authorities decided not to hold the DPC. Because of postponement of DPC meeting, it cannot be said that the right of the petitioner has been violated in this way. Ultimately, in the meeting held on 16.6.1995 the persons who were recommended for promotion were all eligible and were senior to the applicant. We note that with exactly similar grievance one Sovesh Chandra Mohanty had filed OA No.207 of 1996 which was rejected in order dated 16.11.1999 by this Bench. Another OA No.133 of 1995 filed by Kumar Naik with the same grievance was heard and rejected in order dated 26.5.2000 by another Bench of which

one of us was a member. As the applicant has no right to be promoted but only has a right to be considered for promotion and as during such consideration made on 16.6.1995, persons senior to the applicant have been promoted and all those persons promoted had the eligibility for such promotion, we hold that the applicant is not entitled to the other relief claimed by him seeking a declaration that private respondents were not eligible for being considered for promotion to the post of ITO.

7. In consideration of all the above, the Original Application is held to be without any merit and is rejected. No costs.

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(G.NARASIMHAM)

MEMBER(JUDICIAL)

Somnath Som
(SOMNATH SOM)
19.4.2001
VICE-CHAIRMAN

19th April, 2001/AN/PS