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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

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ORIGINAL APPLICATION NO.133 OF 1995  
Cuttack this the 26<sup>th</sup> day of May, 2000

Kumar Naik ... Applicant (s)

-VERSUS-

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

(FOR INSTRUCTIONS)

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

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN

*J.S. Dhaliwal*  
(J.S. DHALI WAL)  
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 133 OF 1995  
Cuttack this the                      day of May, 2000

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI J.S.DHALIWAL, MEMBER (JUDICIAL)

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Shri Kumar Naik, aged about 45 years, S/o. Late  
Madan Mohan Naik, At/PO:Sanapadar, Dist: Khurda

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Applicant

By the Advocates

M/s.J.M.Patnaik  
L.K.Nayak  
B.N.Das

-VERSUS-

1. Union of India represented by Secretary, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110001
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-751001, District - Khurda (Orissa)
5. P.V.Krishna Rao, Inspector of Income Tax, Office of the Assistant Director of Income Tax (Inv), Arunodaya Market, PO: Cuttack, Town/Dist: Cuttack
6. Kishore Chandra Mohanty, Inspector of Income Tax, Office of the Assistant Commissioner of Income Tax, Circle-I, Arunodaya Market, PO: 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

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Respondents

By the Advocates

Mr. A.K.Bose,  
Sr.Standing Counsel  
(Central) (For Res.1 to 4)

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O R D E R

MR. J. S. DHALIWAL, MEMBER (JUDICIAL): Applicant Shri Kumar Naik has filed this Original Application pleading that he joined the Income Tax Department on 3.1.1969 as Stenographer and subsequently promoted to Stenographer (Selection Grade) on 30.9.1972. The applicant claims that he appeared<sup>in</sup> the Departmental Examination for promotion to the post of Income Tax Inspector and ultimately qualified and recommended by the D.P.C. in due consideration of his seniority and suitability to act as Income Tax Inspector, and thus he was provisionally appointed as Income Tax Inspector vide order dated 3.2.1988 (Annexure-2). Claims that he has been discharging his duties as Income Tax Inspector since 24.2.1988. He claims that under Article 309 of the Constitution President of India framed Rules, namely Income Tax Service (Class-II Post) Recruitment Rules, 1972, which provide prescribed qualification to be eligible for the post and method of recruitment on promotion and/or appointment to the post of Income Tax Officer (Class-II) - presently named as Income Tax Officer (Group-B). Rule 4 of the said Rules provides method of recruitment, age limit and other qualifications, as per schedule appended to that Rule (Column-II of Rule-4) as under :

"Promotion

Income Tax Inspectors who have put in three years ~~of~~ service in the grade after appointment thereto on a regular basis and have passed Departmental Examination for Income Tax Officers".

He claims that he has been declared successful in the Departmental Examination conducted on 7.7.1993 to 14.7.1993 for the post of Income Tax Officers being placed at Sl. No.3 vide result sheet dated 10.2.1994 (Annexure-3). His grievance is that Govt. of India have released 2038 additional posts in Group B, C and

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cadre in pursuance of the second phase cadre review and all the charges have been allotted their respective quota on the basis of effective assessment, sanctioned strength in the relevant grades and stagnation levels. He claims that all the charges have been requested to fill additional posts immediately by holding DPC. Claims that out of 2038 additional posts in Group B, C and D, quota for Orissa in respect of Group B posts is only five (Annexure-4). He claims that cadre review is done in the month of May each year and his name was placed in the Gradation list at Sl. No.2. Grievance is that result of D.P.C. for the year 1994 has not been published due to some administrative problems, even though the post is available. He has passed the Departmental Examination on 10.2.1994 and is eligible for promotion to the post of I.T.O. (Annexure-1). Meanwhile Res.Nos. 5, 6, 7 and 8 also appeared in the Income Tax Officers Examination yet for the year 1994 and its result had not been declared. Claiming that applicant had already become eligible on passing the I.T.O. examination, yet he is not being promoted to the post of I.T.O. for the post of 1994, he relies on Annexure-4, a notification issued by the Government of India dated 1.11.1994 regarding release of vacancies. Claims that since private Respondents 5 to 8 had not acquired eligibility for the post of I.T.O. by 1.11.1994 they were to be excluded from being considered and some of them have not even cleared the departmental examination for the said post. Claims that even if result is published now they should be considered not eligible for promotion to the post of I.T.O. as they had not cleared the examination by 1.11.1994 when the vacancy was released. D.P.C. was convened on 28.11.1994. Private respondents filed two O.A. bearing Nos.

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661/94 and 667/94 and had obtained ex parte order on 23.11.1994, as a consequence of which official respondents deferred meeting of the D.P.C. for indefinite period. Applicant lost his chance for being considered for the post of I.T.O. He has prayed for a direction to respondents to convene the D.P.C. at the earliest available opportunity to consider him and others who have acquired eligibility criteria as on 1.11.1994 and further to declare that Res. 5 to 8, who had not ~~acquired~~ such such qualification as on 11.11.1994 are not entitled for consideration for the post.

2. On issuance of notice official respondents filed a detailed reply pleading that the D.P.C. ~~had~~ did not hold Meeting on 28.11.1994 due to interim orders passed by this Bench of the Tribunal in O.A.Nos.661 and 667 of 1994. These applications were subsequently withdrawn and the Meeting was held in June, 1995. Res. 5 and 6 failed to qualify the examination for the post of I.T.O. and qua them the O.A. has been rendered infructuous. The other private respondents having qualified are thus eligible for being ~~considered~~ considered for the post of I.T.O. Counsel for the private respondents submitted that they adopt the written reply filed by the official respondents.

3. No rejoinder has been filed by the applicant.

4. We have heard learned counsel for the parties and have examined the material on the file.

5. Before addressing the merits of the case we find from the record of the Tribunal that O.A.207/96 (Suresh Chandra Mohanty v. U.O.I & Ors.) was filed with almost similar pleas claiming appointment to the post of I.T.O. on identical claim that the private respondents had not yet qualified the examination for



the post of I.T.O. and thus were not eligible. Those private respondents had filed O.A.Nos. 661 and 667/94 in which interim orders dated 23.11.1994 were given injuncting the official respondents from holding the meeting of the D.P.C. Some of the private respondents meanwhile had qualified the examination and were considered by the D.P.C. and being senior to applicant in the O.A. were recommended by the D.P.C. It was mentioned in this judgment that in the interim order dated 23.11.1994 the Tribunal did not stay the Meeting of the D.P.C. but had merely directed that in the meeting of the D.P.C. the case of the applicants who had come to the Tribunal and whose result in the departmental qualifying examination for I.T.O. was yet to be declared should also be considered. If by that time the result of the departmental examination held in June-July, 1994 comes up D.P.C. should act accordingly with regard to applicants in those O.A.s depending upon their success/failure in the examination. This order was challenged in a Review Application which came to be rejected. Though interim order was granted for keeping the post of I.T.O. vacant till further orders through order dated 8.12.1994 a direction was given that the Meeting of the D.P.C. be held with the leave of the Tribunal on any scheduled date with intimation to the Tribunal. In the meeting of the D.P.C. held on 16.6.1995 some persons were promoted ~~and~~ who were senior to Shri Suresh Ch. Mohanty. The Tribunal held that no officer has a right to promotion but has a right to be only considered for promotion and that by delaying in holding the meeting of the D.P.C. it could not be said that rights of the applicant in that case have been infringed in any way.

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We find the facts of the present case are fully covered under the ratio of the judgment of this Bench in the case of Suresh Ch. Mohanty (Supra). To reiterate we further clarify that the departmental examination for the post of I.T.O. is a qualifying examination and it does not change the inter se seniority of the officials in the feeder cadre. Out of the persons who have qualified in the said examination and have the requisite length of service in the feeder cadre are to be considered as per their seniority. Merely because one officer who has qualified the departmental examination earlier will neither make him senior to the persons who qualified it later on nor can he claim that since posts were released on 1.11.1994, only those persons should be considered who are eligible as on 1.11.1994. We are mentioning this, particularly to clarify as we are conscious of specific provisions of some of the Departments, like, Para-206 of P & T Manual and some provisions for Railway employees where seniority and eligibility are to be counted from the date of passing of a particular departmental qualifying examination. In the absence of any such provision in the respondents (Department) the general law of the country has to be applied which is to the effect that a qualifying examination merely makes a person eligible for being considered for appointment by promotion to the higher post which in the present case is the post of I.T.O.

For the reasons discussed above, we find no merits in this Application which is accordingly dismissed leaving the parties to bear their own costs.

(SOMNATH SOM)  
VICE-CHAIRMAN

20.5.2000  
B.K.SAHOO//

(J.S.DHALIWAL)  
MEMBER (JUDICIAL)

26.5.2000