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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 139 of 1995
Cuttack, this the 19th day of February, 2001


Sri Swaraj Kumar MohantyApplicant


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)
VICE-CHAIRMAN
19.2.2001

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CORAM:

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

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Sri Swaraj Kumar Mohanty, aged about 47 years, son of late Dola Gobinda Mohanty of Jagannath Lane, Duttatota, Puri, at present working as Director (Finance), Orissa Power Generation Corporation Limited, Alok Bharati Office Complex (6th Floor), Saheednagar, Bhubaneswar-751 007

....Applicant

Advocates for applicant - M/s.S.K.Pattnaik
U.C.Mohanty

Vrs.

1. Union of India, represented through the Secretary, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi-110 001.
2. Chairman, Central Board of Direct Taxes (CBDT), Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi-110 001.
3. Chairman, Union Public Service Commission (UPSC), Dholpur House, Shahjahan Road, New Delhi-110 011

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Respondents

Advocate for respondents-Mr.S.B.Jena,
ACGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

S.Som.

In this Application the petitioner has prayed for a direction to the respondents, i.e., Chairman, Central Board of Direct Taxes (CBDT) and Chairman, Union Public Service Commission (UPSC) for convening the meeting of Departmental Promotion Committee (DPC) for filling up of the supplementary vacancies of 1993-94 and regular vacancies of 1994-95 in the post of Commissioner of Income Tax. The second prayer is for a direction to consider the case of the applicant separately for the supplementary DPC of 1993-94 and regular DPC of 1994-95

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for promotion to the grade of Commissioner of Income Tax. Respondent nos.1 and 2, i.e., Secretary to Government of India, Department of Revenue and Chairman, CBDT have filed counter and on behalf of UPSC a separate counter has also been filed.

2. We have heard Shri S.K.Patnaik, the learned counsel for the petitioner and Shri S.B.Jena, the learned Additional Standing Counsel for the respondents and have also perused the records.

3. The admitted position is that the applicant is an officer of Indian Revenue Service (IRS) of 1972 batch. He was promoted to the rank of Assistant Commissioner on 31.5.1982 and his post was redesignated as Deputy Commissioner of Income Tax with effect from 1.4.1988. He got the Selection Grade of Deputy Commissioner of Income Tax in January 1991 with retrospective effect from 1.1.1988. For the next promotion to the rank of Commissioner, DPC meeting was held from 19.10.1993 to 21.10.1993 and a panel of 72 names was drawn up. It is also the admitted position that in January 1994 Department of Revenue moved UPSC to hold a supplementary DPC meeting for filling up seven more vacancies. The applicant's first grievance is that even though the Department of Revenue moved UPSC in January 1994 for holding supplementary DPC meeting, the UPSC did not hold the meeting. The UPSC in their counter have pointed out and this has not been denied by respondent nos. 1 and 2 that proposal for holding Supplementary DPC meeting was withdrawn by the Department of Revenue in July 1994 as the vacancy position in the grade of Commissioner of Income Tax for the year 1993-94 had undergone a change. From this

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it is clear that the first grievance of the applicant is totally misconceived. It is no doubt true and admitted that the Department of Revenue moved UPSC in January 1994 to hold a Supplementary DPC meeting, but the Department of Revenue themselves withdrew the proposal in July 1994. Moreover, before holding a DPC meeting the UPSC have to process the cases and several steps are involved in this. First, the Commission have to be satisfied about the availability of clear vacancies as reported. Secondly, the up-to-date CRs have to be made available to the Commission. If sufficient number of copies are not available adequate number of copies of the CRs will have to be made and it is not that the Commission is merely a post office working at the beck and call of the Department and is bound to hold the DPC meeting as and when and immediately after a requisition is received. Generally, the Chairman or a Member of the Commission presides over the meeting of the DPC. They are Constitutional authorities with multiple demands on their time. The second grievance of the applicant is to be considered in the context of the above facts involved in processing a request for holding DPC meeting. The admitted position is that after the requisition was withdrawn in July 1994, a fresh requisition was made by the Department of Revenue in their letter dated 2.9.1994 and the meeting of DPC was held on 9th and 10th March 1995 in which the applicant was considered and included in the panel. The passage of time from September 1994 to March 1995 cannot be considered unreasonable in view of the facts mentioned by us earlier regarding processing of a request from the Department for holding DPC meeting. Thus, the first prayer of the

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applicant for holding the meeting of the DPC has already become infructuous with the holding of the DPC meeting on 9th and 10th March 1995.

4. As regards the second prayer of the applicant for a direction to the respondents to consider the case of the applicant separately for the vacancies of 1993-94 and 1994-95, no direction can be issued to UPSC to this effect. DPC is required to act in accordance with the instructions regarding recommending names against vacancies yearwise and as the DPC meeting has already been held, a direction to the UPSC as to how the names of the selected candidates are to be empanelled cannot be issued. This is also beyond the power of the Tribunal in the absence of any specific averment that rules in this regard are not going to be followed.

5. In the result, we hold that the Application is without any merit and the same is rejected. No costs.

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
19.2.2001
VICE-CHAIRMAN

February 19, 2001/AN/PS