

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 542 OF 1995
Cuttack, this the 9th day of August, 2002.

KISHORE CHANDRA MOHANTY. APPLICANT.

VRS.

UNION OF INDIA & 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.

S. K. Hajra
(S. K. HAJRA)
MEMBER (ADMINISTRATIVE)

Manoranjan Mohanty
(MANORANJAN MOHANTY) 09/08/2002
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 542 OF 1995
Cuttack, this the 9th day of August, 2002.

C O R A M :-

THE HONOURABLE MR. S.K. HAJRA, MEMBER (ADMINISTRATIVE)
A N D
THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.)

...

KISHORE CHANDRA MOHANTY,
Aged about 32 years,
S/o. Kailash Chandra Mohanty,
At/Po: and PS: Bidanasi,
Town and District: Cuttack,
At present working as Inspector
of Income Tax, At/Po/Dist. Cuttack. ... Applicant.

By legal practitioner: M/s. B.R. Sarangi,
R.K. Rath,
Advocates.

- VERSUS -

1. Union of India represented by the Secretary to Government of India, 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 (Bihar)
4. Commissioner of Income Tax, Orissa, 15, Forest Park, Bhubaneswar-1, District-Khurda. ... Respondents.
5. Sri Sovesh Chandra Mohanty, Aged about 36 years, S/o. Rama Chandra Mohanty, At present working as Income Tax Officer (CIB) Cuttack. ... Intervenor

By legal practitioner: Mr. S.N. Mishra, Advocate. *[Signature]*

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O R D E RMR. MANORANJAN MOHANTY, MEMBER (JUDICIAL) :-

The Applicant, while working as an Inspector of Income Tax (in the Office of the Assistant Commissioner of Income Tax, Cuttack) filed this Original Application, U/s. 19 of the Administrative Tribunals Act, 1985; by challenging the action of the Respondents (Departmental Promotion Committee) in not considering his case for promotion to the post of Income Tax Officer, Group B.

2. The next promotional post, from the cadre of Inspector of Income Tax, is the Income Tax Officer, Group B. The instructions/guidelines issued by the Department making eligible the Inspectors of Income Tax to become I.T.O. Group B are as follows:-

"4.10. Inspectors of Income Tax are considered for promotion as Income Tax Officer, Group B provided that they have passed the Departmental Examination prescribed for Income Tax Officers and put in service as Inspector for atleast three years and are otherwise approved promotion".

3. Admittedly, the Applicant having more than three years of experience, as an Inspector of Income Tax, had taken the Departmental Examination held during June-July, 1995; but the results thereof were published on 12-2-1996 and two annual increments were allowed to the Applicant retrospectively w.e.f. 3-7-1995. During this period on 06-09-1995, five posts of I.T.O. Group B were sanctioned for the Orissa region; for which the Departmental Promotion Committee was held on 13-10-1995 (and promotions to the selected Income Tax Inspectors were

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granted) without considering the case of the Applicant; who come out successful (in the Departmental examination) on 12-02-1996.

4. It is the case of the Advocate for the Applicant that whenever results of the Departmental examinations are published, it always takes effect from the date of completion of the examination and, therefore, the case of the Applicant ought to have been considered by the Departmental Promotion Committee held on 13-10-1995 and the results of the said consideration pertaining to the Applicant ought to have been kept in a sealed cover till publication of the result of the Departmental examination that was taken in June-July, 1995. In support of his contention (that the results of the Departmental examinations takes effect from the last date of the examination) the Advocate for the Applicant referred to two Office Orders under Annexure-3 dated 11-01-1977 and Annexure-4 dated 11-02-1994 and submitted that passing of the examination is always given retrospective effect and the incumbents are given two increments, retrospectively, from the date of the examination. It is stated on behalf of the Applicant that although I.T.O. Group B posts were sanctioned on 1st of November, 1994, the Departmental promotion Committee was held only on 16th of June, 1995 after publication of the results (of the Departmental examination) in the month of February, 1995, but in the next year in which the Applicant appeared in the Departmental examination, for no apparent

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reason, the said precedent was given a goby. A grievance has been raised in this case that even though the Applicant submitted a representation to the Commissioner of Income Tax (Orissa), Bhubaneswar, stating all these facts, it did not yield any fruitful result. Hence this Original Application.

5. A counter has been filed by the Respondent-Department; to which a rejoinder has also been filed by the Applicant. Another Inspector, who got the promotion in the Departmental Promotion Committee (in which the case of the Applicant did not receive consideration; as his results were yet to be published) intervened in this case as Respondent No. 5 and he has also filed a counter. Applicant being, admittedly, junior to the said Respondent No. 5, no grievances were raised against him (by the Applicant) at the hearing.

6. In order to substantiate the stand of the Applicant, the Advocate for the Applicant drew our attention to a judgment rendered in T.A. No. 214 of 1986 (Dhirsa Raj Dev vrs. Union of India and others decided on 27-6-1991) wherein this Tribunal upheld deferring of the DPC in a similar circumstances. He also relied upon the decision of the Government of India (Ministry of Finance) as at Annexure-12 dated 18-11-1996 wherein it has been stated as follows:-

"The matter regarding the date of passing of an examination has already been examined in the directorate earlier. Accordingly, the date of passing of examination is to be taken as the date on which the last paper of the said examination was held and not the delcatation of the result".

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7. Learned Senior Standing Counsel for the Union of India, appearing for the Respondents, have relied on two decisions of this Tribunal rendered in Original Application Nos. 543/1995 that was disposed of on 15-10-2001 and 207/1996 that was disposed of on 16-11-1999. While dealing with those cases, this Tribunal held that the DPC has to consider the persons who are eligible at the relevant time and the subsequent passing of the examination would not make a candidate eligible for promotion from the last date of holding of the examination.

8. In order to repel the above said contentions of the Respondents, Learned Counsel for the Applicant, during the course of argument, produced an order of the Hon'ble High Court of Orissa (rendered in the case of Ajaya Kumar Das vrs. Union of India and others in OJC No. 1594/1999 decided on 28-03-2001) in which an Assistant Audit Officer (in the Office of the Accountant General) applied (to the U.P.S.C.) for special limited competitive examination for induction to Audit and Accounts Service. In that case, the U.P.S.C., by its letter dated 26-12-1996, cancelled his candidature on the ground that he had qualified in S.O. grade examination on a date subsequent to the last date fixed by UPSC. The Petitioner, therein, challenged the said action of the UPSC (by filing of OA No.6 of 1997) before this Bench of the Tribunal and this Tribunal, by its order dated 13-01-1999, rejected the plea; by holding that his eligibility should

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count from the date of publication of result and not from the date of examination. Being aggrieved by the said order, the Applicant of that case, approached the Hon'ble High Court of Orissa and the Hon'ble High Court (by relying on a decision rendered in the case of Sukram Pal Singh Saharwat vrs. U.P. Secondary Education Service and Ors. reported in 1993 LAB I. C. 555) held as follows:-

"We are, accordingly, of the view that the Petitioner's qualification shall relate back to the date of examination. In the present case, Petitioner has completed five years from 16-11-1989 by the time he made the application for selection to higher post. The UPSC is not correct to cancel his candidature. The Tribunal has gone wrong in law in confirming the said illegal decision of the UPSC, OP No. 2. Therefore, we quash the order of the Tribunal dated 13-01-1999 (Annexure-10) as well as letter of the UPSC dated 26-12-1996 (Annexure-8) and direct the UPSC to consider the petitioner's application as valid. As the petitioner has fulfilled the eligibility criteria mentioned in clause 4(1) appropriate follow up action be taken in accordance with law".

Learned Counsel for the Applicant has also produced ,at the hearing, a letter of the Government of India (Ministry of Finance in the Deptt. of Revenue dated 18th of July, 2000 (issued to All the Chief Commissioners of Income Tax) wherein it has been provided as follows:-

*I am directed to say that as per the prevalent practice, the results of the departmental exams. are usually made effective from the date of the conduct of the last paper. Consequent to this practice, several cases have come to the notice of this Department where some senior income tax Inspectors who were initially not considered by the DPC for not having qualified the departmental examination on the date of DPC meeting, later on qualified the departmental examination retrospectively and thus became eligible to be considered by the Review DPC. This has given rise to unnecessary litigation as well as administrative

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problems. The matter has since been examined by the Board in consultation with DIT(IT/DGIT(Admn.) and accordingly in order to rule out the continued recurrence of such cases, it has been decided that no DPC for the Income Tax Officer grade may be held in between the period of examination and declaration of result thereof, especially when adequate number of officers for reserved vacancies are not available".

9. On a bare reading of the counter, it is evident that after declaration of result, the benefits (of two advance increments) are being allowed with effect from the date of the examination. It is also evident that in two occasions DPCs have been deferred and, only after declaration of the results, DPCs were convened taking into consideration of the cases of such of the candidates, who were successful in the Departmental Examinations. In the letter (quoted above) dated 18-7-2000, it has been made clear that a Review DPC is only answer for those who appeared in the Departmental examinations before the DPC and their results came out subsequent to the DPC. As such, since two advance increments are being allowed, giving retrospective benefits, there was no reason not to defer the DPC till publication of the result of the Departmental Examination in order to have the selection from a wider field.

10. Having heard the rival stand of the parties and, on perusal of the materials placed on record, we have given our anxious consideration to the points in issue. The judgment of the Hon'ble High Court of Orissa as rendered in the case of Ajaya Kumar Das vrs. Union of

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India and others (supra) recognises the date of examination to be the qualifying date (in case of success in the examination); whereas this Tribunal in OA No. 543/95 and OA No. 207/96 (supra) held the date of publication of the result in the Departmental Examination to be the qualifying date. Since the Hon'ble High Court has been given superintendence over this Tribunal (under Article 226 and 227 of the Constitution of India), the judgment of the Hon'ble High Court shall prevail and, in the said premises, the Applicant of this case, who has been given the monetary benefits retrospectively, from the date of appearing in the Departmental Examination, ought to have been considered in the DPC and the outcome of the DPC (pertaining to the Applicant) ought to have been kept in a sealed cover till publication of his result of the Departmental Examination.

11. In the result, therefore, this Original Application is allowed with direction to the Respondent-Department to hold a Review of Departmental Promotion Committee dated 13-10-1995 (which is permissible under the Rules), and consider the case of the Applicant (and such other similarly placed Income Tax Inspectors) within a period of 90 (ninety) days from the date of receipt of a copy of this order and, in the event he is found suitable, to grant him retrospective promotions by granting only notional financial benefits for the intervening period/till his actual promotion; which he must have received

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in the meantime; But in the circumstances, however, there
shall be no order as to costs.

Sanj K. Hajra
(S. K. HAJRA)
MEMBER (ADMINISTRATIVE)

Manoranjan Mohanty
09.08.2002
(MANORANJAN MOHANTY)
MEMBER (JUDICIAL)

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