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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 543 OF 1995

Cuttack, this the 15th day of October, 2001

Lalmohan Majhi and others Applicants

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 *Yes.*
of the Central Administrative Tribunal or not? *NO.*

(G. NARASIMHAM)
MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN *15.10.2001*

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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 543 OF 1995

Cuttack, this the 15th day of October, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDL.)

.....

1. Lalmohan Majhi, aged about 34 years,
son of late Krushna Chandra Majhi, At-Kharasahapur,
P.O-Rupkhanda, Via-Avana, Dist.Balasore,
at present working as Inspector of Income Tax
in the office of the Income Tax Officer,
Baripada, Dist.Mayurbhanj.
2. Arun Kumar Das, aged about 31 years, son of
late Baishnab Ch.Das, at present working as
Inspector of Income Tax in the office of the
Dy.Commissioner of Income Tax, Special Range,
Bhubaneswar, C.R.Building, 4 th Floor,
Bhubaneswar, Village-Sendpur, P.O-Kantapara,
Via-Sasarathpur, Dist.Bhadrak.
3. Sri Radhakanta Seth, aged 34 years,
son of Karunakar Seth, Village-Balpur, P.O/PS-
Dhama, Dist.Sambalpur, at present working
as Inspector of Income Tax in the office of
Ministerial Staff Training Unit (Income Tax
Department), Sadar Thana, Cuttack

.....APPLICANTS

J. Som.
Advocates for applicants - M/s Ashok Mohanty,
P.R.Das
T.Rath J.Sahu, T.Natia

Vrs.

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, Orissa Forest Park, Bhubaneswar-751 001, Dist. Khurda.

...RESPONDENTS

5. Sovesh Chandra Mohanty, s/o R.C. Mohanty, Income Tax Officer (ITO) (IDS) Office of the Deputy Commissioner of Income Tax, Berhampur Range, Gajapati Nagar, Berhampur, Dist. Ganjam

....Intervenor/Respondent

Advocates for the respondents - Mr. A.K. Bose,
Sr. CGSC
&
M/s G. Rath, S. Mishra,
A.K. Panda
T.K. Praharaj

for Intervenor/Respondent

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ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the three petitioners have prayed for a direction to the respondents not to fill up five posts of Income Tax Officer (ITO) Group-B sanctioned for Orissa Region in the order at Annexure-2. The second prayer is for a direction to the respondents not to convene the meeting of the DPC scheduled to be held on 19.5.1995. The third prayer is for a direction to the respondents to convene the meeting of the DPC after publication of the result of ITO Group-B examination held in June 1995.

The fourth prayer is for a direction to the respondents

S. Som

to publish the result of the examination as early as possible. By way of interim relief it was prayed that the respondents should not fill up the post of Group-B ITO and should not hold the meeting of the DPC. The prayer for interim relief was disposed of in order dated 18.9.1995 with the direction that if promotions are ordered on the basis of any DPC, that may be held before the disposal of this case, the same shall be subject to the outcome of this case.

2. The case of the applicants is that they were appointed as Inspector of Income Tax on 12.10.1987, 10.7.1990 and 6.4.1984 respectively. The next promotional post from the level of Inspector of Income Tax is Income Tax Officer Group-B. The qualification for the post is 3 years of service as Inspector of Income Tax and passing of departmental examination for promotion to ITO Group-B. The applicants have taken the examination held in June 1995 but the results have not been published. In order dated 6.9.1995 five posts have been sanctioned for Orissa Region. The applicants have stated that according to the instructions about fixing the zone of consideration, for 5 posts 14 eligible candidates are due to be considered. But as the results have not come out, ^{only} there are/seven eligible candidates. The applicants have stated that even though eligible candidates are not there, the ~~xxx~~ respondents are going to hold the meeting of the DPC in which they are not going to be considered because in their case results of the departmental examination have not yet been published. In the context of the above, the applicants have come up in this petition with the

prayers referred to earlier.

3. The respondents in their counter have admitted that for 5 posts of ITO Group-B the normal zone of consideration is 14, but only 7 ~~qualifying~~ qualified and eligible candidates are available at the relevant time. The respondents have stated that as the number of eligible candidates is more than the number of vacancies by two, it is not obligatory under the circular to wait ~~xxxx~~ for holding the DPC meeting till the number of eligible candidates reaches 14. They have also stated that even though the applicants have taken the examination, it cannot be ~~faken~~ for granted that they will clear the examination and therefore, it is not possible to defer the DPC meeting. It is also stated that ITOs Group-B are included in all India gradation list and if the DPC meeting is delayed, then the persons due to be promoted will lose their seniority on all-India basis. It is also admitted that once the examination results come out, the candidates who have passed would stand qualified from the last date of the examination. It is also stated that those who qualify in the higher grade examination completely are granted two advance increments for passing the examination, but this would not mean that they will become eligible for consideration for promotion retrospectively. With regard to the averment of the applicants that in the previous year DPC meeting was ~~held~~ not held till the results were out, the respondents have stated that DPC meeting could not be held because of interim order of stay granted by the Tribunal. But in the instant case

Item

the Tribunal have not granted any stay. On the above grounds, the respondents have opposed the prayers of the applicants.

4. Private respondent no.5, who filed an intervention petition, has filed a counter opposing the prayers of the applicants and this has been taken note of. It is not necessary to refer to the averments as this would be taken note of while considering the submissions made by the learned counsel of both sides.

5. We have heard Shri Ashok Mohanty, the learned counsel for the applicants, Shri G.Rath, the learned counsel for intervenor-respondent no.5, and Shri A.K.Bose, the learned Senior Standing Counsel for the departmental respondents and have also perused the record. The learned counsel for the petitioners has referred to the decisions in TA No.214 of 1986, OA No. 207 of 1996 and O.A.No.6/97 and we have seen these records.

6. The admitted position is that for promotion from the post of Inspector of Income Tax to the post of ITO Group-B the necessary requirements are three years of service as Inspector of Income Tax which the applicants had and the passing of departmental examination for promotion to the rank of ITO Group-B. The applicants had taken the examination in June 1995, but the results had not come out when five posts of ITO were created for Orissa Region. The applicants have stated that as the zone of consideration for five vacancies is 14 and as 14 eligible candidates were not available, the DFC meeting should not have been held. We are not prepared

to accept this contention because of the relevant rule which has been quoted by the applicants themselves in page 4 of the O.A. This rule provides that the zone of consideration should be restricted to the number mentioned in a tabular form. There is nothing in this rule which provides that till 14 candidates are found, the DPC meeting cannot be held. The purpose of fixing the zone of consideration is primarily to restrict the number of candidates to be considered for promotion. The rule specifically provides for this and therefore, it is clear that even when less than 14 candidates are available, DPC meeting can be held. This conclusion is further strengthened by the fact that if the DPC meeting is not held because of absence of 14 eligible candidates, then the persons who have the eligibility conditions and are waiting to be considered and promoted, will lose their seniority in all India seniority list where their position would be counted from the date of their joining as ITO Group-B. In view of this, the contention of the learned counsel for the petitioners that the DPC meeting should not have been held till 14 candidates are available is held to be without any merit and is rejected.

7. The second contention of the learned counsel for the petitioners is that results of the examination held in June 1995 were published later on and the applicants cleared the examination. The departmental respondents have admitted that under the rules they are deemed to have passed the examination from the last date of the examination. But this would not mean that they will acquire eligibility to be considered for promotion ~~xx~~ from that date. The DPC

when it meets has to consider the persons who are eligible as on that date and the subsequent passing of the examination would not make the applicants eligible for promotion from ^{of} the last date of holding/the examination.

8. In view of our above discussions, we hold that the O.A. is without any merit and the same is rejected.

No Costs.

(G.NARASIMHAM)
MEMBER(JUDICIAL)

Somnath Som.
(SOMNATH SOM)
VICE-CHAIRMAN
15.11.2001

AN/PS