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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 207 OF 1996
Cuttack, this the 16th day of November, 1999

Sri Sovesh Chandra 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
16.11.99

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VS

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 207 OF 1996
Cuttack, this the 16th day of November, 1999

CORAM:

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

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Sri Sovesh Chandra Mohanty,
aged about 30 years, son of R.C.Mohanty, working as
Income Tax Officer (TDS), Office of the Deputy
Commissioner of Income Tax, Berhampur Range,
At/PO-Berhampur, District-GanjamApplicant

Advocates for applicant - M/s Ganeswar Rath
S.N.Mishra
A.K.Panda

Vrs.

1. Union of India, represented by its Secretary, Department of Revenue, New Delhi-110 001.
2. Central Board of Direct Taxes, represented by its Chairman, New Delhi.
3. Commissioner of Income Tax, Orissa, 15 Uday Marg, Bhubaneswar, District-Khurda.
4. Dilip Kumar Pradhan, son of not known working as ITO (TDS) Office of Additional Commissioner of Income Tax, Rourkela Range, Rourkela, District-Sundargarh.
5. Abhaya Charan Rout, aged not known, son of not known, working as I.T.O.(System), C/o Commissioner of Income Tax, Orissa, 15 Uday Marg, Bhubaneswar.
6. Jitendra Kumar Lenka, son of not known, Tax Recovery Officer, Income Tax Office, At-Sakhipada, P.O/Dist.Sambalpur.
7. Shri Arun Kumar Mohanty, son of not known, working as ITO(TDS), Cuttack, office of Dy.Commissioner of Income Tax, Cuttack Range, At/PO/Dist.Cuttack.
8. Kumuda Charan Patnaik, son of not known working as ITO, Phulbani Ward, Phulbani ...Respondents

Advocates for respondents-Mr.A.K.Bose
Sr.CGSC for
R 1 to 3
and
Mr.R.K.Rath for
R-6.

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SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order of promotion of private respondent nos. 4 to 8. The second prayer is for a direction to the departmental authorities to promote the applicant to the post of Income Tax Officer (ITO) from 1.4.1994 or 1.11.1994 with all consequential service and financial benefits.

2. The applicant's case is that he joined as a direct recruit Inspector of Income Tax (IIT) on 9.1.1990. He appeared at All India Departmental Examination for promotion to the post of Income Tax Officer, Group-B, in the month of July 1993 and passed the examination on 10.2.1994. On 16.3.1993 Government of India made an All-India Cadre Review and created additional 880 posts of ITO, Group-B. It was decided to fill up these posts phasewise in three years. On 1.11.1994 Government of India allocated five posts of ITO to the Orissa Charge. Consequently, the Department decided to hold DPC meeting on 28.11.1994 for considering eligible officers from amongst Inspectors of Income Tax for promotion to the post of ITO, Group-B. The applicant has stated that the requirement for promotion is that the IIT should have completed three years of service and should have passed the Departmental Examination for promotion to ITO. It has also been pointed out that the procedure for empanelment lays down that yearwise panel should be prepared if the DPC has not met for a number of years. The private respondent nos. 4 to 8 along with some others represented before the authorities to consider them for the promotional post of ITO in the ensuing DPC meeting as they had appeared at the ITO Examination in

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June-July 1994 but the results had not been published by then and they would be eligible from the last date of the examination. These representations were rejected. Thereafter respondent nos. 6 and 8 filed OA No.667 of 1994 and two other persons PVK Rao and K.C.Mohanty filed OA No.661/94. OA No.667 of 1994 was disposed of at the stage of admission on 23.11.1994 with a direction that in the ensuing DPC meeting the cases of these applicants should be considered along with others. In case the results of the Examination are announced prior to the date of holding of DPC, the DPC will proceed further in the matter depending upon success or failure of the applicants in the Examination. If the results are not declared by the date of DPC meeting the results of the selection process in respect of the applicants will be kept in a sealed cover for suitable action at the earliest appropriate time. It was also ordered that the departmental authorities should examine the advisability of the early declaration of the results of ITO Group-B Examination held in June 1994. Orders on same line were passed on 23.11.1994 in OA No.661/94 which was also disposed of at the stage of admission. One P.C.Mishra, a successful candidate of the departmental examination of June 1992 filed two review petitions, RA Nos.57 and 58 of 1994 praying for setting aside or reviewing the exparte judgment passed on 23.11.1994 in the two OAs. These two RAs were taken up on 30.11.1994 and it was directed that the operation of the orders of the Tribunal dated 23.11.1994 in the two OAs was stayed with a direction that the Department shall keep the posts in the cadre of ITO vacant until further orders from the Court. On 7.12.1994 the Tribunal disposed of the two RAs by setting aside the order dated 23.11.1994 passed in the OAs 667 and 661 of 1994 and restored these OAs to file to be

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listed on 8.12.1994. On 8.12.1994 it was directed that the DPC that 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 respondent nos.7 and 8 were declared to have passed the departmental examination held in June-July 1994. On 4.5.1995 the applicants in these two OAs filed petitions seeking withdrawal of the OAs and these two OAs were dismissed as withdrawn. The DPC met on 16.6.1995 and recommended the names of respondent nos.4 to 8 along with two others Shri P.C.Sethi and Shri Kumar Nayak. The applicant's grievance is that had the DPC met as originally programmed, the applicant would have been promoted and not private respondent nos. 4 to 8 because they had not passed the departmental examination by the original date of DPC. Because of the delay in holding of DPC meeting which was occasioned by filing of the two OAs 667 and 661 of 1994, the holding of DPC was delayed in the manner indicated above and in the meantime the results of the departmental examination held in June-July 1994 were published and the private respondents got promotion ahead of the applicant on 16.6.1995 vide order at annexure-9 of the OA. The applicant has stated that he was promoted to the post of ITO, Group-B on 13.10.1995 consequent upon allocation of vacancies to Orissa Charge on the recommendation of Departmental Promotion Committee. The applicant sent a representation on 13.7.1995 and followed it by several other representations, but his representations were rejected without application of mind. The applicant has also stated that even though new posts of ITO, Group-B were created on the same day in different Commissionerates and the ITOs cadre is an All-India cadre with all-India

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seniority, the scheduled date of DPC for Orissa Charge on 28.11.1994 was the last amongst all the Charges thereby causing loss of seniority of the applicant vis-a-vis candidates of other Charges. In the context of the above facts, the applicant has come up with the prayers referred to earlier.

3. The departmental authorities have filed counter opposing the prayer of the applicant. They have stated that the DPC held in June 1995 did prepare yearwise panel for the vacancies of 1994 along with eligible candidates. They have stated that even though new posts were allocated on 1.11.1994 to Orissa Charge, the date of DPC was fixed on 28.11.1994 taking into account the time required for preparation of DPC papers and intimation to the Members of DPC. The departmental respondents have also stated that it is not mandatory to hold the DPC meeting at par with other Commissionerates. This date of DPC depends upon availability of members and preparation of DPC papers. The Central Board of Direct Taxes have also not fixed any particular date for holding the DPC on all-India basis. The respondents have further pointed out that in their Department, Annual Confidential Rolls of officers are written financial yearwise ending on 31st March and in accordance with the circular dated 17.10.1994 at Annexure-R/2 vacancies in such cases are also to be determined financial yearwise. They have stated that strictly in accordance with the rules the private respondent nos. 4 to 8, who are senior to the applicant and were also qualified by the date of DPC, were promoted. They have also stated that the representations of the applicant were rejected in order dated 11.10.1995 at Annexure-R/1. On the above grounds, the departmental respondents have opposed the prayers of the applicant.

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4. The private respondents were issued with notice. Amongst them private respondent no.6 has appeared and filed counter. Others have neither appeared nor filed counter. In his counter respondent no.6 has stated that the DPC meeting was held in June 1995 and by the said date respondent no.6 had already passed the departmental examination and had also completed three years of service. It is stated that in accordance with the circular dated 18.11.1996, which is at Annexure-A/6, the date of passing the examination has to be reckoned from the date on which the examination of the last paper is held. It is also stated that even if the cases which were filed in 1994 had not been filed, even then the applicant could not have been promoted ahead of his seniors who had been made respondents. It is further stated that in the year 1980 similar situation arose and before declaration of results the DPC which was scheduled to be held on 6.7.1980 in fact was deferred and ultimately held on 6.1.1981 after declaration of the results in November 1980. The DPC recommendations were challenged by some officers before the Hon'ble High Court of Orissa in OJC No. 284 of 1982 questioning such action of the Department in delaying the DPC. This OJC was ultimately transferred to the Tribunal and numbered as TA No.214 of 1986 (Dhiren Ranjan Deb and others v. Union of India and others). This was disposed of on 27.6.1991 upholding the aforesaid action of the Department. Respondent no.6 has stated that the Tribunal's reasoning in that case was that if such accommodation was shown to the seniors, it was no way illegal but prevented supersession. A copy of this decision has also been filed by respondent no.6 at the time of argument. On the above grounds, respondent no.6 has opposed the prayer of the applicant.

5. We have heard Shri S.N.Mishra, the learned counsel for the petitioner; Shri R.K.Rath, the learned counsel for respondent no.6; and Shri A.K.Bose, the learned Senior Standing Counsel for departmental respondent nos. 1 to 3 and have also perused the records.

6. According to the applicant himself, private respondents were promoted in order dated 16.6.1995 and the applicant was promoted on 13.10.1995 on allocation of further posts to the Orissa Charge. His grievance is that had the DPC been held on 28.11.1994 he would have been promoted ahead of the private respondents who had not passed the departmental examination by that date because the results of the examination had not been published. In the process he has missed the chance of going over the private respondents who are admittedly his seniors. Thus, the sole question for consideration in this case is whether by deferring DPC meeting, any legal right of the applicant has been infringed. The first point to be noted in this connection is that according to the applicant himself the DPC meeting was originally scheduled to be held on 28.11.1994. The applicant himself has admitted that additional posts were allocated to the Orissa Charge on 1.11.1994 and the departmental respondents have pointed out that taking into consideration the work connected with the preparation of DPC papers and availability of Members of Departmental Promotion Committee, the meeting was scheduled to be held on 28.11.1994. This delay of 27 days is not material at all because it cannot be reasonably presumed that immediately on allocation of additional posts DPC meeting could be held on the very same day or the next day. So far as OA Nos.667 and 661 of 1994 are concerned, it is to be noted that the Tribunal in their original order dated 23.11.1994 did not stay the meeting of the DPC. The Tribunal merely directed that in the meeting of the DPC

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the cases of the applicants before them should be considered. It was indicated that if by that time the results of the departmental examination held in June-July 1994 come out, then the DPC should act accordingly with regard to the applicants in those two OAs depending upon their success or failure in the departmental examination. If the results do not come out by the date of the DPC meeting, then the cases of the applicants should be kept in sealed cover. The Tribunal also directed the Department to consider advisability of the early declaration of the results of the examination held about six months earlier. The first order on the two Review Application Nos.57 and 58 of 1994 was passed on 30.11.1994. By this order, the earlier order dated 23.11.1994 of the Tribunal in the two OAs was stayed. The Tribunal also directed in their order dated 30.11.1994 that the posts in the cadre of ITO, Group-B should be kept vacant until further orders from the Tribunal. This order also does not stay the meeting of the DPC. It is only on 8.12.1994 that the Tribunal ordered that the DPC that was proposed to be held on 28.11.1994 and which was perhaps not held in pursuance of an interim order passed by the Tribunal, shall not be convened without intimation to the Tribunal. From the above recital of the different orders of the Tribunal, copies of which have been enclosed by the applicant himself, it is clear that prior to 8.12.1994 there was no order from the Tribunal staying holding of the meeting of the DPC. It is only on 8.12.1994 that the Tribunal directed that the meeting of the DPC be held with the leave of the Tribunal. It was open for the Department to hold the DPC meeting on the scheduled date or on any date prior to 8.12.1994 without leave of the Tribunal and after 8.12.1994 with intimation to the Tribunal. The order of the Tribunal does not also require giving of prior intimation. From the above it is

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clear that the DPC meeting was not held on 28.11.1994 and thereafter till it was held ultimately on 16.6.1995 not because of any order of the Tribunal. In the context of the above, the only question for consideration is whether any legal right of the applicant has been infringed thereby. The completion of three years service as Inspector of Income Tax and passing of the ITO Group-B Departmental Examination are the two requirements for promotion to ITO, Group-B. An Inspector of Income Tax who has put in three years of service and has passed the ITO Group-B Departmental Examination does not acquire any right to get promoted. The law is well settled that no officer has a right to promotion but has only a right to be considered for promotion. In view of this, because of the delay in holding the meeting of the DPC, it cannot be said that the rights of the applicant have been infringed in any way. In any case, in the meeting of the DPC held on 16.6.1995 persons who have been promoted are all senior to him. It so happened that by the DPC meeting was held ultimately the results of June-July 1994 Examination came out and the private respondents, who are admittedly senior to the applicant, had passed the examination by that time. The prayer of the applicant to quash the promotion of private respondents to the post of ITO, Group-B is without any merit because on the date of meeting of the DPC they were qualified on both the above counts and were also admittedly senior to the applicant in the rank of Inspector of Income Tax. This prayer is therefore held to be without any merit and is rejected.

7. The second prayer of the applicant is that he should be ordered to be promoted with effect from 1.4.1994 or 1.11.1994. The applicant himself has stated that new posts were allocated to Orissa Charge on 1.11.1994. Therefore, the question of his promotion from

1.4.1994 does not arise. a person can be promoted from the post of Inspector of Income Tax to the post of Income Tax Officer, Group-B, only if he is qualified on both the counts and if his name is recommended by the Departmental Promotion Committee. The applicant was recommended by DPC and was promoted as ITO, Group-B on 13.10.1995. He therefore cannot claim that he should have been promoted from 1.11.1994. This contention is also held to be without any merit and is rejected. In view of our above conclusions, it is not necessary for us to consider the circular of 18th November 1996 laying down that the effective date of passing of examination would be the date of holding of last paper of the departmental examination.

8. In the result, therefore, the Original Application is held to be without any merit and is dismissed but, under the circumstances, without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

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VICE-CHAIRMAN