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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.486 OF 1996

Cuttack, this the 26th day of June 2003

R. B. Lal

.....

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 ?**

Yes

M. R. Mohanty
(M.R. MOHANTY)
MEMBER (JUDICIAL)

B. N. S. Som
(B.N. SOM)
VICE-CHAIRMAN

(8)

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CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.486 OF 1996

Cuttack, this the 26th day of June, 2003

CORAM:

**HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
&
HON'BLE SHRI M.R. MOHANTY, MEMBER (JUDICIAL)**

.....

Shri R.B. Lal, S/o. Late K.B. Singh, aged about 61 years, Retired Audit Officer, Office of the A.G. (Audit), Orissa, Bhubaneswar at present residing at House No.VIM/217, Phasc-VI, SAILASRIVIHAR, Bhubaneswar-16.

..... **Applicant**
By the Advocate(s) **Mr. Ganeswar Rath.**

Vrs.

1. Union of India, represented through the Comptroller & Auditor General of India, 10-Bahadurshah Zafar Marg, New Delhi-110 002.
2. Accountant General (Audit-I), Orissa, Bhubaneswar-1.

..... **Respondent(s)**

By the Advocate(s) - **Mr. A.K. Bose, (CGSC)**

O R D E R

SHRI B.N. SOM, VICE-CHAIRMAN:

This O.A. has been filed by Shri R.B. Lal, formerly Audit Officer, in the Office of the Accountant General (Audit), Orissa, challenging the order of the Respondent No.2 at Annexure-8 dt. 10th July, 1995 rejecting his representation for promotion from Audit Officer grade to Senior Audit Officer grade w.e.f. 3rd January, 1993 though he was eligible for that

promotion as per the condition set out in the Govt. letter dt. 22nd September, 1992 (Annexure-2). His representation was rejected on the ground that "on the prescribed crucial date before his retirement, i.e., on October 1, 1992" he had not completed 3 years of service.

2. The applicant has also felt aggrieved by the action of the Respondent No.1 in fixing a 'crucial date' to determine eligibility for promotion to the grade of Senior Audit Officer for the year 1993, as October 1, 1992, i.e., in the preceding year, though no such condition existed in the Govt. letter dt. 22nd Sept, 1992 by virtue of which method of promotion from Audit Officer grade to Senior Audit Officer grade was introduced. He has further submitted that the crucial date for determination of eligibility has been changed repeatedly by the Respondent No.1 without valid reason; that two crucial dates were fixed for the year 1992, one on 01.04.1992 and the second on 30.09.1992. For the panel year 1993, the crucial date fixed was 1st October, 1992 by virtue of Respondent No.1's letter dt. 28.10.1992 (Annexure-4). The crucial date was again changed to 1st October of the panel year from 1994 onwards (Annexure 6) The applicant further submits that had the decision dt. 23.12.1993 taken by the Respondent No.1 been applied for the panel year of 1993, he would not have been denied of promotion to the grade of Senior Audit Officer as he had completed 3 years regular service on 02.01.1993. The applicant has pointed out that the Govt. order dt. 22nd September, 1992 (Annexure-2) was issued by the Ministry of Finance, which did not set any crucial date for determining the eligibility condition of three

years regular service. In the circumstances, it was not left to the Respondents to make any change in the eligibility condition. The applicant has, therefore, alleged that the decision of Respondent No.1 in fixing a crucial date for promotion to the grade of Senior Audit Officer was arbitrary, discriminatory and violative of Articles 14 & 16 of the Constitution.

3. The Respondents have refuted the allegations of the applicant in the counter. They have justified the decision to set a crucial date for determining eligibility of officers for promotion from the grade of Audit Officer to Senior Audit Officer Grade. Referring to the applicant's main grievance, they have stated that his name could not be included in the panel of 1994 as he had retired on 31.07.1993 and as none of his juniors was promoted as Senior Audit Officer before his retirement, he could have no grievance to ventilate in this regard. They have defended the decision to fix a crucial date on the ground that "a common crucial date renders justice to the majority of the employees."

4. We have also heard the Counsels for both the parties and have perused the records placed before us. Our attention has also been drawn to the decision of this Tribunal, Hyderabad Bench, in O.A. No.1115/1998, dated. 7th October 1999 and decision of this Bench in O.A. No. 693/1995, dated. 5th September, 2002 on the same issue.

5. The main issue in this O.A is whether the concept of cut off/crucial date introduced by the Respondents is legally tenable and whether the crucial date(s) set by the Respondents was/were reasonable. In answering the first

issue, we would like to make it clear that the legality as well as the utility in declaring a cut off/crucial date has already been upheld by the Apex Court in the case of Bhupinderpal Singh Vs. State of Punjab, 2002 SLR(SC)608. The law is well settled that the crucial date provides the basis on which the eligibility is determined and it ensures equality of opportunity to all the candidates. Regarding the reasonableness of the crucial date(s), set by the Respondents, we observe that the Respondents have justified their actions on the ground that the crucial date was determined for all the cadres with a view to ensure justice to the majority of the employees. Undoubtedly such an objective is laudable. The question, however, remains to be answered as to whether the said policy was implemented in a reasonable manner. As admitted by the Respondents, they had fixed two crucial dates (01.04.1992 and 30.09.1992) for preparing panel for the year 1992. For the panel year 1993, they re-determined the date as 1st October of the previous year, i.e., 1st October 1992. Soon thereafter they changed the crucial date in consultation with the Govt. of India as 1st October of the panel year, from 1994. From the chronology of events, it is clear that the policy regarding fixing of crucial date for promotion to the grade of Senior Audit Officer during 1992 and 1993 was tentative and ad-hoc in nature. We find that the same issue has already been examined by Hyderabad Bench of this Tribunal in O.A. No.1115/1998. They have held that "There should be some nexus in fixing the dates for promotion to achieve the objective". We had repeatedly enquired of the Learned Sr. Standing Counsel to give reasons for

fixing crucial dates for preparing panel for the year 1993 in the previous year or fixing two crucial dates for preparing the panel for 1992. We did not receive any convincing reply from the Respondents. On the other hand, we find lot of force in the argument of the applicant that as the eligibility condition for promotion from the grade of Audit Officer to Senior Audit Officer was notified as 3 years regular service and the panel for promotion was to be prepared year wise, in the circumstances, the crucial date could have been so fixed that the majority of the officials could be covered by the notified crucial date for inclusion in the list during the year of the panel. As stated above, the crucial date for eligibility for inclusion in the panel for 1994 onwards was set as the 1st October of the panel year. That was rational because it took care of the majority of the applicants in the feeder grade for promotion. On the other hand, by fixing the crucial date for the panel year 1993 as 1st October of the previous year vide their letter dated 28.10.1992, the Respondents had denied promotion opportunity to all the officials who were recruited as Audit Officers between 2nd October, 1992 and 31st December, 1993 in the year 1993. That would mean that virtually none of the officers, who had completed three years after 1st October, 1992, was considered till the DPC for 1994 was held. We have no doubt that the policy makers did not wish such a situation to develop. But that is exactly what had happened. In fact, for the sake of smooth implementation of the provisions of the Recruitment Rules and to serve the principle of greatest good of the greatest number, we think that it would be advisable that the

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crucial date for determining eligibility condition is notified in the Recruitment Rules as a Note under Column 12 of the Recruitment Rules. We also hold that whenever a panel is prepared calendar-wise, the crucial date should be fixed in a month towards the end of October or November of that year, and, if the panel is prepared financial year wise the crucial date should be fixed towards the end of the financial year so as to include maximum number of persons eligible during the panel year.

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6. In conclusion, we would observe that fixing of crucial date for the panel year 1993 as 1st October of the previous year was not reasonable. It resulted in discrimination in the matter of promotion. In the circumstances, we direct the Respondents, following the ratio of the decision of Hyderabad Bench in O.A. No.1115/98 dt. 7th October, 1999 that had the crucial date for the panel year 1993 been set as 1st October, 1993, that would have been in conformity with the personnel policy espoused by the Respondents. It is now well settled that equality in the matter of employment is one of the priceless rights of the employees. It is also well settled that equality before law means that the law should be equal and should be equally administered and that the equals should be treated alike. This principle was postulated by the Apex Court in the case between Union of India & Others Vrs. Secretary, Madras Civil Audit and Accounts Association and Another (1992) 20 Administrative Tribunals Cases 176. In the circumstances, this O.A must succeed and accordingly we order that Respondents should hold a review DPC for preparing the panel of 1993 for promotion to the grade of Senior

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Audit Officer by considered all those officers who had completed 3 years of regular service in the grade of Audit Officer as on 1st October, 1993. so as to uphold the principles of equality and justice in the matter of employment.

However, we do not order payment of arrears to any individual, but their pay should be notionally fixed and revised pensionary benefits should be paid to them from the due dates.

Subul
26/06/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

Subir
(B.N. SOM)
VICE-CHAIRMAN

CAT/CTC
Kalpeswar