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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 629 OF 1996

Cuttack, this the 7th day of January 2000

Narayan Ch.Samal Applicant

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
(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som
(SOMNATH SOM)
7.1.2000
VICE-CHAIRMAN

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CORAM:

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

.....

Narayan Ch.Samal, aged about 51 years, Inspector of Income Tax, Office of Additional Commissioner, Income Tax, Orissa, Bhubaneswar Range, Bhubaneswar, District-Khurda

.....

Applicant

Advocates for applicant - M/s J.Das
B.S.Tripathy
N.Sarkar
M.R.Kar
j.Sahoo

Vrs.

1. union of india, represented through the Chairman, Central Board of Direct Taxes, North Block, New Delhi-110 001.
2. Chief Commissioner (Admn.) of Income Tax, C.R.Building, Bircchandi Patel Marga, Patna-800 001.
3. Commissioner of Income Tax, Orissa, 15 Forest Park, Bhubaneswar-751 012.
4. Nirmalendu Gupta, Income Tax Officer, At/PO-Charampa, Dist.Bhadrak.
5. B.N.Pati, Income Tax Officer, At/PO/Dist.Bolangir.
6. D.Panda, Income Tax Officer, Arunodaya Market, Cuttack-753 012.
7. T.L.N.Rao, Income Tax Officer, O/o ommissioner of Income Tax, 15, Forest Park, Bhubaneswar-751 012.
8. R.C.Sarangi, Income Tax Officer, At/PO/Dist.Bargarh.
9. K.K.Das, Income Tax Officer, Arunodaya Market, Cuttack-753 012.

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10. S.S.Baskey, Income Tax Officer, At/PO/Dist.Keonjhar.
11. H.Moharana, Tax Recovery Officer, Arunodaya Market, Cuttack-753 012.
12. B.N.Das, Income Tax Officer (IA), Central Revenue Building, Bani Vihar, Bhubaneswar-751 004.
13. U.K.Mohanty, Income Tax Officer, Arunodaya Market, Cuttack-753 012.
14. A.Tigga, Income Tax Officer, Udit Nagar, At/PO-Rourkela-12.
15. B.K.Das (expire
16. P.Kissan, Income Tax Officer, At/PO/Dist.Bolangir.
17. A.P.Mohanty (expired)
18. N.P.Pattnaik, Income Tax Officer, At/PO/Dist.Puri.
19. K.C.Sahani, Income Tax Officer, Hill Patna, At/PO-Berhampur (GM), Orissa.
20. C.V.S.Prakash Rao, Income TAX Officer, At/PO-Bhawanipatna, Dist.Kalahandi.
21. D.P.Besra, Income Tax Officer, At/PO-Udit Nagar, Rourkela-12.
22. K.K.Nath, Income Tax Officer, At/PO/Dist.Khurda.
23. R.K.Dalai, Income Tax Officer, Central Revenue Building, Vani Vihar, Bhubaneswar-751 004.
24. Alok Nath, Income Tax Officer, O/O Deputy Director of Investigation, 209, Sahid Nagar, Bhubaneswar-751 007.
25. Sahadev Behera, Income Tax Officer, At/PO-Baripada, Dist.Mayurbhanj.
26. G.C.Das, Income Tax Officer, At/PO/Dist.Rayagada.
27. G.C.Bhoi, Income Tax Officer, Bhutapara, At/PO/Dist.Sambalpur.
28. M.K.Sethi, Income Tax Officer, Bhutapara, At/PO/Dist. Sambalpur.
29. U.C.Satpathy, Income Tax Officer, Arunodaya Market, Cuttack-753 012.
30. B.B.Mishra, Income Tax Officer, At/PO-Jeypore, Dist.Koraput (Orissa.)
31. S.C.Sethi, Income Tax Officer, Arunodaya Market, Cuttack-753 012.

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32. D.K.Pradhan, Income Tax Officer, At/PO-Udit Nagar, Rourkela-2.
33. A.C.Rout, Income Tax Officer (TDS), At/PO-Udit Nagar, Rourkela-12.
34. A.K.Mohanty, Income Tax Officer (TDS), At/PO-Paradeep, Dist.Jagatsinghpur.
35. J.K.Lenka, Income Tax Officer (TDS), Aruinodaya Market, Cuttack-753 012.
36. K.C.Pattanaik, Income Tax Officer (CIB), Arunodaya,Cuttack-753012.
37. P.C.Sethi, Inome TAX Officer,At/PO-Berhampur (GM),Orissa.
38. Kumar Naik, Inome Tax Officer (TDS), Bhutapara, At/PO/Dist. Sambalpur.
39. s..Mohanty,Inome Tax Officer (TDS), Central Revenue Building, Bani Vihar, Bhubaneswar-751 004.
40. G.Pani, Inome Tax Officer (TDS), Gajapati Nagar, At/PO-Berhampur (GM), Orissa.
41. P..Mishra, Tax Reovery Offier, Sakhipara, At/PO/Dist.Sambalpur.
42. Subrat Ray, Income Tax Offier, Udit Nagar, At/PO-Rourkela-12.
43. M.Kalu, Income Tax Officer ((CIB)), Motijharkan, At/PO/Dist.Sambalpur.
44. J.Ananda Rao, Income Tax Offier, At/PO/Dist.Phulbani.
45. L.N.Majhi, Income Tax Officer (Admn.), O/O Commissioner of Inome Tax, Orissa, 15, Forest Park, Bhubaneswar-751 012..... Respondents
Advoote for respondents - Mr.Ashok Mohanty

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

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In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has prayed for quashing the order dated 23.4.1996 (Annexure-5) enlosing copy of the order dated 20.3.1996 rejecting the representation of the applicant. The second prayer is for a declaration that the applicant is entitled as a matter of right to be promoted to the post

of Inspector of Income Tax and Income Tax Officer retrospectively from December 1979 and January 1988 respectively with all consequential service and monetary benefits. The third prayer is for a declaration that in view of the judgment of the Tribunal at Annexure-1 no notional promotion can be given to the applicant to higher posts and for a direction to respondent nos. 1 to 3 to give effect to the judgment at Annexure-1 by allowing promotion to the applicant to the posts of Inspector of Income Tax and Income Tax Officer retrospectively.

2. The facts of this case, according to the applicant, are that in 1967 he applied for the post of Upper Division Clerk (UDC) in the office of erstwhile Commissioner of Income Tax, Bihar & Orissa. Though recruitment for the post was conducted on 18.12.1967 and the applicant was selected, order of appointment was issued to him only on 21.4.1970. Prior to issue of the appointment order to the applicant further advertisements were published inviting applications from intending candidates for the years 1968 and 1969 for filling up of the posts of UDC under Commissioner of Income Tax, Orissa, but the applicant was shown as junior to the persons appointed as UDC in subsequent recruitment examinations held in 1968 and 1969. Aggrieved by that, the applicant made series of representations praying for correctly fixing his seniority in the gradation list of UDCs published in 1974 but without any result. Another gradation list of UDC showing the position as on 1.1.1982 was published on 30.8.1982 showing the applicant as junior to the persons appointed in pursuance of the subsequent years' examinations in 1968 and 1969. His further representations did not yield any result and he ultimately approached the Tribunal in OA No. 69/88

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praying for quashing the gradation lists published in 1979 and 1981 and for refixing his seniority in accordance with law. OA No. 69/88 was disposed of in order dated 15.11.1991 in which the Tribunal held that the applicant should be treated as senior to respondent nos. 4 to 59 in that case and the deemed date of appointment and joining of the applicant should relate back to the year 1967. The Tribunal also directed that a fresh seniority list should be prepared. There was a further direction that if the applicant is found eligible for promotion, then his case should be considered and if found suitable, he should be given due promotion with all financial benefits. But such promotion should not affect the service prospects of respondent nos. 4 to 59 if they have already got promotion. If necessary supernumerary post should be created to give effect to the judgment. The applicant has stated that the Chairman, Central Board of Direct Taxes (respondent no.1) issued order dated 7.6.1993 inter alia allowing applicant's seniority in the cadre of UDC retrospectively with effect from December 1967 with the stipulation that in the seniority list of UDC the applicant should be placed above one A.P.Mohapatra. In that order the applicant was allowed notional promotion to the post of Head Clerk with effect from 23.2.1981. It was indicated that his position in the seniority list of Head Clerks will be above the name of A.P.Mohapatra. In the same order he was also given notional promotion to the post of Inspector of Income Tax with effect from 26.2.1988 and it was indicated that in the seniority list his name should be placed below Shri P.C.Sethi and above R.K.Mohapatra. In the above order it was also indicated that the pay of the applicant would be fixed notionally in the grades of Head Clerk and Inspector of Income Tax from the dates from which he has

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been allowed such notional promotion and no arrears of pay and allowances would be admissible to him as he did not perform the duties of higher posts during the relevant period. It was ordered that the applicant would get actual higher pay after it is fixed on the basis of his notional promotion from the date he takes over the charge of post of Inspector of Income Tax. This order dated 7.6.1993 was communicated to the applicant in order dated 10.9.1993 of Commissioner of Income Tax, Bhubaneswar (respondent no.3) and this is at Annexure-2. The applicant has stated that a number of persons who are junior to the applicant, namely, respondent nos. 4 to 45 were promoted to the post of Inspector of Income Tax since December 1979. Subsequently, respondent nos. 4 to 45 were given further promotion to the post of Income Tax Officer since January 1988. Accordingly, the applicant has prayed in this OA for promotion to the post of Inspector of Income Tax from December 1979 and to the post of Income Tax Officer from January 1988. It is further stated by the applicant that even though the decision of the Tribunal in OA No. 69/88 came on 15.11.1991 the order of promotion to the posts of Head Clerk and Inspector of Income Tax was communicated to him in letter dated 10.9.1993 and because of late issuance of this order he was illegally prevented/debarred from availing of the following chances to appear at the departmental examination:

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- (a) Ministerial Staff Examinations - 3 chances/years
- (b) Inspector Examinations - 3 chances/years.
- (c) Income Tax Officer Examination - 14 chances/years

Some of his juniors recruited in the years 1968 and 1969 availed of the opportunities to sit for the above

examinations and they were promoted to higher grades from the date of passing those examinations. The applicant represented on 6.4.1994 (Annexure-3) for retrospective promotion, but this was rejected in letter dated 26.2.1996 communicated to the applicant in letter dated 20.3.1996. These two letters are at Annexures 4 and 5. The departmental authorities rejected his prayer for retrospective promotion to the post of Inspector of Income Tax with effect from December 1979 when his juniors were promoted on the ground that he was not eligible for promotion to the post of Inspector of Income Tax in December 1979 as he had not passed the departmental examination for Inspector of Income Tax. His prayer for promotion to the rank of Income Tax Officer with effect from January 1988 was also rejected on the ground that according to the Recruitment Rules only those Inspectors of Income Tax who have rendered three years service and have passed the departmental examination for Income Tax Officers are eligible for promotion and the applicant did not fulfil the above two conditions to be eligible for promotion to the grade of Income Tax Officer from January 1988. His request for exemption from appearing in the departmental examination was also rejected on the ground that there was no provision in the Rules for granting such exemption from passing the departmental examinations for appointment to the grades of Inspector of Income Tax and Income Tax Officer. The applicant has stated that Rule 6 of Income Tax Services (Class II Posts) Recruitment Rules, 1972 provide for power of the Central Government to relax any of the rules in respect of any class or category of persons. He has also stated that the stand taken by the Department that he cannot be given promotion to the post of

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Inspector of Income Tax from December 1979 because he had not passed the departmental examination is also wrong because he had actually passed the examination in the year 1977 which is borne out by the order dated 23.1.1978 at Annexure-6. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. The departmental respondents in their counter have submitted that the order granting notional promotion to the applicant to the posts of Head Clerk and Inspector of Income Tax had been passed on 10.9.1993 and the applicant has in fact challenged this order in this OA filed in 1996. Therefore, the application is barred by time. These respondents have further stated that according to the judgment of the Tribunal in OA No.69/88 the applicant's seniority has been reconsidered along with respondent nos. 4 to 59 of OA No.69/88 taking the applicant's deemed date of appointment in 1967. The Tribunal had also directed that if the applicant is eligible for promotion his case should be considered and if found suitable, he should be given due promotion with all financial benefits. Accordingly, the applicant has been granted notional promotion to the posts of Head Clerk and Inspector of Income Tax with effect from 23.2.1981 and 26.2.1988 and his pay has been fixed accordingly. The applicant has not been allowed the arrears as he had not actually discharged higher responsibilities. Recruitment Rules for promotion to the grade of Inspectors provide that 50% of the vacancies to be filled up by promotion will be filled up by way of seniority and remaining 50% will be filled up on the basis of date of passing of departmental examination by the Ministerial Staff and the Stenographers. With effect

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from 1.10.1985 by order which is at Annexure-A quota has been fixed amongst ministerial staff and Stenographers in the ratio of 3:1. The departmental respondents have stated that on the date of promotion of person who is junior to the applicant to the grade of Inspector, the applicant was not coming under the zone of consideration either on the basis of seniority or on the basis of date of passing of departmental examination. A copy of the Recruitment Rules is at Annexure-B. The departmental respondents have admitted the averment of the applicant that he had passed the departmental examination for Inspectors of Income Tax in the year 1977. Thus, the applicant was only entitled for promotion on the basis of seniority-cum-merit and has been given promotion on the basis of seniority to the post of Inspector. He was promoted to the post of Head Clerk and Inspector on the dates mentioned earlier by creation of supernumerary posts and as he had not discharged higher responsibilities the question of disbursing differential salary does not arise. The departmental respondents have stated that the applicant could not have been promoted to the cadre of Inspectors of Income Tax from the date his junior passed the departmental examination as he had not appeared in the departmental examination by that time. It is further stated that directly recruited UDCs have to pass Ministerial Staff Examination. UDCs who have passed Ministerial Staff Examination and have completed two years of service are eligible to appear at the departmental examination for Inspectors of Income Tax as per rules which are at Annexure-C. After joining the Department on 4.5.1970 the applicant availed of three chances to pass the Ministerial Staff Examination

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whereas B.K.Das and N.Gupta passed the same in 1969 in one chance. U.C.Satpathy and R.C.Sarangi passed the departmental examination in 1970 in two chances. Similarly, K.C.Sahany and A.P.Mohanty passed the departmental examination in 1970 in one chance. The applicant has stated that forty-two persons have superseded him in the grade of Income Tax Officer. The departmental respondents have pointed out that the applicant was a direct recruit UDC whereas respondent nos. 4 to 45 were promoted from the grade of Lower Division Clerks. These persons became Inspectors of Income Tax either on the basis of seniority or date of passing of departmental examination or were directly recruited Inspectors. Respondent nos. 10,11,12,14,21, 22,24,28, 32, 33,34,35,37, 39 and 45 are direct recruit Inspectors of Income Tax and therefore the applicant's case cannot be compared with them. Respondent nos. 5,6,9 and 13 are senior to the applicant in the grade of UDCs. Respondent no.4 T.L.N.Rao was promoted to the grade of Inspectors of Income Tax from the grade of Stenographer, Special Grade carrying the same pay as that of Inspector of Income Tax. Shri Rao being the seniormost in the grade of Stenographers cannot be compared with the applicant who was promoted to the post of Head Clerk with the scale of pay of Rs.1400-2300/- The respondents have further stated that the applicant was promoted to the rank of Inspector of Income Tax in 1988 on the basis of seniority. He has passed the Departmental Examination in the year 1977 and some of his juniors who have been promoted as Inspectors have passed the Departmental Examination earlier than him. The departmental respondents have further stated that some of the private

respondents have been promoted to the rank of UDC from the grade of LDC. Only after passing the departmental examination for ministerial staff LDCs become eligible for promotion to the rank of UDC. The applicant availed three chances to pass the ministerial staff examination and in the process he lost one chance to appear at the departmental examination for Inspector of Income Tax. As these respondents came from a lower grade by promotion after passing the ministerial staff examination they cannot be compared with the applicant in the matter of departmental examination for Inspectors. The departmental respondents have also stated that several of the respondents who were directly recruited as UDCs like the applicant passed the departmental examination for the ministerial staff in one or two chances, but the applicant who joined the Department in 1970 availed three chances and cleared the said examination in 1972. It is further stated that the applicant passed the ministerial staff examination in 1972 availing three chances and passed the departmental examination of IIT in the year 1977. Thus, he availed five chances to pass the departmental examination for IIT. In total he took eight chances to clear both the ministerial staff examination and departmental examination for IIT, but his juniors cleared the examination in less number of chances. As the date of passing of departmental examination for IIT is the criteria for promotion, those who passed the examination earlier got promotion earlier on the basis of date of passing. It is further stated that several persons who are much senior to the applicant have either got promotion much later due to late passing of the examination and one of them

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has not yet been promoted because of his inability to pass the examination. It is further stated that even if he had been actually appointed in 1967, he could not have been eligible to appear at the ministerial staff examination in 1968 because he was issued with call letter for the interview on 18.12.1967 by which date the ministerial staff examination for 1967 had already been held. As regards the applicant's claim that he has been prevented from availing fourteen chances to appear at the ITO Examination. The respondents have stated that as he was given notional promotion to the grades of Head Clerk and Inspector in office order dated 10.9.1993, he was unable to appear at the Departmental Examination for ITO prior to this date. According to the Recruitment Rules, Inspectors with three years service who have passed the Departmental Examination for ITO are eligible for promotion to the post of ITO. The applicant had not passed the ITO Examination on the date of meeting of DPC and therefore he was not eligible to be promoted. It is also stated that there is no provision for granting exemption to the Recruitment Rules. It is further stated that with effect from 1.10.1985 the Recruitment Rules for the post of Inspector of Income Tax have been changed and according to the new Recruitment Rules quota of ministerial staff and Stenographers has been fixed at the ratio of 3:1. The departmental respondents have further stated that some officers promoted as Inspectors in 1977 have not yet been promoted as ITO because even after availing 18 chances they have not cleared the ITO Examination. The departmental respondents have stated that the order of the Tribunal has been properly implemented and on the above grounds they have opposed

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the prayers of the applicant.

4. The applicant in his rejoinder has reiterated some of the averments made in the OA on the question of his promotion to the rank of Inspector. He has stated that he was given such promotion notionally with effect from 26.2.1988 in order dated 10.9.1993 at Annexure-2 though his juniors were given promotion to the rank of Inspector since December 1979. The applicant has mentioned that actually he has passed the departmental examination for IIT with effect from 12.8.1977. On the question of promotion to the rank of ITO the applicant has stated that from the rank of Inspector promotion to ITO is given to those who have rendered three years of service and have passed the Departmental Examination of ITO. Such eligible officers are given promotion on the basis of seniority. The applicant had in his credit more than three years of service. As he was denied due chances to appear at the departmental examination, he was deprived of promotion to the rank of ITO and therefore he has reiterated that he should be given promotion to the rank of ITO, as prayed for, if necessary by relaxation of the Recruitment Rules. The applicant has also filed an affidavit with copy to the other side mentioning names of his juniors who were recruited in 1968 and 1969 and have been working as ITOs and has also stated in the affidavit that the applicant without any mistake on his part lost his chances to appear at the examination and thereby he has been illegally deprived of promotion to the rank of ITO.

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5. We have heard Shri J.Das, the learned Senior Counsel for the applicant and Shri Ashok Mohanty, the learned Senior Standing Counsel for the departmental respondents and have also perused the records. The learned counsel for the petitioner has filed written note of submissions which has been taken note of. The learned Senior Standing Counsel has filed the Recruitment Rules and a list of juniors of the applicant in the rank of UDC who were not promoted prior to 12.8.1977, i.e., date of passing of Departmental Examination for IIT by the applicant but were promoted subsequently.

6. In the order dated 10.9.1993 (Annexure-2) the applicant was allowed seniority in the grade of UDC with retrospective effect from December 1967 though he actually joined the post on 1.5.1970. He was also assigned seniority in the rank of UDC above one A.P.Mohapatra. The applicant has no grievance with regard to this. In the same order the applicant was given notional promotion to the rank of Head Clerk with effect from 23.2.1981 and to the rank of Inspector of Income Tax with effect from 26.2.1988 and was also assigned seniority over certain other persons. In the same order it has been mentioned that pay of the applicant should be fixed notionally in the grades of Head Clerk and Inspector from the dates he has been allowed such notional promotions but no arrears of pay and allowances would be permissible to him as he did not perform the duties of higher posts during the relevant period. It was ordered that he should be given actual pay in the grade of Inspector on the basis of notional

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pay fixation from the date he actually takes over charge of the post after issue of the order dated 10.9.1993. The first grievance of the petitioner is that even though the Tribunal had directed that he will be given financial benefits of such retrospective promotion, this has been unlawfully denied to him. The Tribunal in their order dated 15.11.1991 in OA No. 69 of 1988 have directed that the applicant should be treated senior to respondent nos. 4 to 59 in that case and the deemed date of appointment and joining of the applicant as UDC should relate back to the year 1967. It was also directed that a fresh seniority list should be prepared and if the applicant is eligible for promotion prior to filing of this application, then his case should be considered and if found suitable he should be given due promotion with all financial benefits. It has been submitted by the learned counsel for the petitioner that this order of the Tribunal has not been challenged on appeal and has become final. Moreover, in order dated 10.9.1993 it has been mentioned that the Central Board of Direct Taxes have accepted this order of the Tribunal. But even then in violation of the direction of the Tribunal the financial benefits have been denied to him. The learned Senior Standing Counsel for the departmental respondents has submitted that as the applicant did not actually work in the higher posts of Head Clerk and Inspector, he is not entitled to get the pay of the posts. In support of his contention the learned counsel for the petitioner has relied on the case of Dalip Singh v. Punjab & Haryana High Court, 1983(1) SLR 242, and the case of Jagmohan Lal v. State

of Haryana and others, 1981 (3)SLR 425. These decisions have also been perused. In denying the actual financial benefits arising out of retrospective promotion of the applicant the departmental respondents have gone by the service rules that a person gets pay of the post from the date he actually joins the post. This is no doubt true in all cases. But where a person has been denied promotion to a higher post illegally and where later on he has been allowed retrospective promotion to higher post, there for not working in the higher post the Government servant is not responsible. In such cases arrear emoluments cannot be denied to him. This has been laid down by the Hon'ble Supreme Court in the case of Union of India v. K.V.Jankiraman, AIR 1991 SC 2010. As in this case the applicant has been given notional promotion to the ranks of Head Clerk and Inspector from certain dates as mentioned in the order dated 10.9.1993 he is entitled to actual emoluments of the posts of Head Clerk and Inspector from the dates he has been given notional promotion and we order accordingly. This amount should be worked out and paid to the applicant within a period of 120 days from the date of receipt of copy of this order.

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7. The next prayer of the applicant is regarding his promotion to the rank of Inspector of Income Tax. In the order dated 10.9.1993 he has been given notional promotion to the rank of Inspector of Income Tax from 26.2.1988. This order has been issued on 10.9.1993 and the applicant must have joined as Inspector shortly after 10.9.1993. The applicant's prayer is that he should have been given notional promotion to the rank of Inspector from December 1979

when in order dated 28.12.1979 (Annexure-2-A series) some of his juniors were promoted to the rank of Inspector of Income Tax. Before considering this prayer of the applicant in this regard and the submissions made in support thereof, it will be necessary to refer to the Recruitment Rules for the post of Inspector of Income Tax. These rules are called Income Tax Department (Inspector) Recruitment Rules, 1969. According to these Rules 33-1/3% of the vacancies in the rank of Inspector of Income Tax is to be filled up by direct recruitment and 66-2/3% is to be filled up by promotion. Here we are concerned with only the promotion quota. It is provided in the Rules that UDCs and higher ministerial grades, Stenographers (Ordinary Grade) and Stenographers (Selection Grade) with three years service in the respective grade who have qualified in the departmental examination for Inspector of Income Tax are eligible to be promoted. It is further laid down that names of all such qualified persons, i.e., those who have completed three years service in the feeder grade and have qualified in the departmental examination for IIT should be arranged in two separate lists. In the first list the names of all qualified persons will be arranged in order of seniority in the Department. In the second list the names of all the qualified persons will be arranged according to the date/year of passing the departmental examination. It is laid down that for persons who have passed the departmental examination on the same date names will be arranged according to their seniority in the Department in the second list. The Departmental Promotion Committee has to consider the persons in the

two lists for the purpose of promotion obviously by taking into account their service records. After approval of the persons in the two lists by the DPC the names of all persons selected by DPC ~~xxxxxxxxxxxxxx~~ ³⁵
~~persons selected by the DPC~~ have to be again embodied in two separate select lists as above. The vacancies in the promotion quota will be filled alternatively from the two lists. The departmental respondents have further stated that with effect from 1.10.1985 these Recruitment Rules have been changed and a further quota has been provided between the ministerial staff and Stenographers at the ratio of 3:1. The applicant has prayed for promotion to the rank of Inspector with effect from December 1979 on the ground that in order dated 28.12.1979 some of his juniors were promoted to the rank of Inspector. The departmental respondents have promoted the applicant to the rank of Inspector with effect from 26.2.1988 in order dated 10.9.1993 and he must have joined as Inspector after 10.9.1993. From the provisions of the Recruitment Rules referred to by us earlier it is seen that the promotions are given to the rank of Inspector from the first list on the basis of seniority amongst those who have passed the departmental examination and from the second list in which the names of incumbents, who have passed the departmental examination on the basis of date of their passing the examination. From this it is clear that for promotion to the rank of Inspector seniority is not the only criterion. Date of passing of the departmental examination is also an important consideration. The applicant's representation for getting promotion from

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December 1979 has been rejected by the departmental respondents in their order dated 26.2.1996 at Annexure-4 on the ground that by December 1979 he had not passed the departmental examination. This is factually incorrect because the applicant had passed the departmental examination for promotion to the rank of Inspector in August 1977. This has been admitted by the departmental respondents in their counter. We must note here that the departmental respondents' statement in their order dated 26.2.1996 that the applicant had not passed this examination by December 1979 shows non-application of mind because the fact that he had passed the examination in August 1977 is borne out by the order dated 23.1.1978 which must have been available with the departmental respondents. The point for consideration is whether on the basis of the applicant's passing the examination in August 1977 he is entitled to be promoted as Inspector from December 1979. As we have earlier noted the promotion is not given merely on the basis of seniority. A junior person who has passed the examination earlier will occupy a higher position than his senior in the second list and when vacancy is filled up from the second list, the junior would get promotion over the head of his senior. It is only when the vacancy is filled up from the first list where the persons who have passed the examination and are otherwise eligible are placed in order of their seniority in the lower grade that a person has to be promoted on the basis of seniority. The departmental respondents have filed a list of juniors of the applicant in the grade of UDC who were promoted after 12.8.1977, i.e., the date of passing

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of the departmental examination by the applicant, leaving out the direct recruits. In the order dated 10.9.1993 the applicant has been given seniority in the rank of UDC from December 1967 and it has been ordered that his name in the seniority list in the grade of UDC will be above the name of A.P.Mohapatra. Thus in the rank of UDC A.P.Mohapatra is the immediate junior of the applicant. From the list of persons who have been promoted after 12.8.1977 and who are junior to the applicant, we find that A.P.Mohapatra passed the examination in 1975 and he was promoted to the rank of Inspector on 26.2.1988, the same date from which the applicant was given promotion. Similarly P.R.Kundu who passed the examination in 1975, two years prior to the applicant, was given promotion with effect from 26.2.1988. One A.P.Mohanty who passed the examination in 1972 was given promotion in 1983. Obviously A.P.Mohanty has been promoted from the second list, having passed the examination five years earlier than the applicant. One other person A.Pani who passed the examination in 1975 and is junior to the applicant has been promoted in October 1990, i.e., after the petitioner. So far as direct recruits of 1969 are concerned we find that those who have been promoted prior to the applicant have all passed the examination much earlier than the applicant. Some others like P.K.Pradhan and Benudhar Mishra who have passed the examination in 1976 have got promotion only in 1992. So far as promotees of the year 1969 are concerned we find that those who have passed the examination after the applicant in 1979 and 1980 have

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all been promoted after the petitioner. One N.Bhaskaran has passed the examination in 1975, i.e., prior to the petitioner, but he has been promoted on the same date as the petitioner on 26.2.1988. From the above it is clear that as the applicant passed the examination only in 1977 after taking three chances to pass the ministerial staff examination and two chances for passing the Inspector's examination he acquired eligibility for promotion to the rank of Inspector at a later date. It has been argued by the learned counsel for the petitioner that the applicant should have been appointed as UDC in 1967 but he was actually appointed in 1970. Though he got back his seniority in the rank of UDC he missed the chance of appearing at the examination because of his delayed appointment in the rank of UDC. But the fact of the matter is that the applicant got appointment as UDC initially in 1970. Thus he had taken seven years and five chances to pass the ministerial staff examination and Inspector's examination. He therefore cannot claim that because of his late appointment in the rank of UDC he has suffered in any way so far as his promotion to the rank of Inspector is concerned. In any case his claim is for appointment to the rank of Inspector from December 1979 when he has passed the required examination in August 1977. Because of his late passing of the examination, in the second list he has come down and accordingly he has been given promotion from the date his immediate junior A.P.Mohapatra got promotion to the rank of Inspector. In view of this, he is not entitled to claim promotion to the rank of Inspector from December 1979.

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8. The last prayer of the applicant is for promotion to the rank of Income Tax Officer from January 1988 on the ground that in order dated 11.1.1988 at Annexure-2A series some of his juniors have been appointed as Income Tax Officers. The departmental respondents have pointed out that for promotion to the rank of Income Tax Officer the requirement is three years service in the rank of Inspector and passing of ITO Examination. The departmental respondents have stated that the applicant had not passed the ITO Examination and had also not completed three years of service and therefore he could not be promoted to the rank of ITO. The applicant in his written submission has mentioned that he has passed ITO Examination in the year 1996. He has claimed that the year of passing the departmental examination should relate back to the year 1985 when his junior Nirmalendu Gupta (respondent no.4) has passed the ITO Examination. Respondent no.4 Nirmalendu Gupta is a direct recruit of 1969. He had passed the Inspector's Examination in 1970 and had been promoted as Inspector in 1979. The applicant joined as Inspector in 1993 even though his notional promotion was from February 1988. After joining as Inspector of Income Tax in 1993 he has taken three years and obviously more than one chance to pass ITO Examination and therefore he cannot claim that his passing of the examination should date back to the year 1985 solely on the ground that his junior had been promoted on that date moreso when he is claiming promotion to the rank of ITO from January 1988. The prayer of the applicant for promotion to the rank of ITO from 1988 is untenable on

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another ground. The applicant has been promoted to the rank of Inspector notionally from February 1988. But he has actually joined as Inspector after 10.9.1993. For promotion to the rank of ITO a person has to work for three years in the rank of Inspector. His notional promotion as Inspector from 1988 will not count towards this requirement of three years of service for promotion to the rank of ITO. This has been laid down by the Hon'ble Supreme Court in the case of Union of India v. M.Bhaskar, 1996 (2) SLJ 25, where their Lordships have held that acquiring the service eligibility for promotion to the next higher rank a person has to actually work in the lower post for the requisite period and notional service in the lower rank would not count for this purpose. As the petitioner has not actually worked in the rank of Inspector from 1988 but has worked as Inspector only after 10.9.1993, his period of notional service in the rank of Inspector cannot be taken into account for promotion to the rank of Income Tax Officer. This prayer of the applicant is therefore held to be without any merit and is rejected.

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9. The learned counsel for the petitioner has submitted that as because of late issue of the order giving him notional promotion in 1993 he was denied chances to take the departmental examinations for Inspectors and ITOs, his passing of the examinations in 1977 and 1996 should date back to the years when his juniors were promoted to the ranks of Inspector and ITO.

In support of his contention the learned counsel for the petitioner has cited the decision of House of Lords in East End Dwellings Co.Ld. v. Finsbury Borough Council, 1952 AC 109. A xerox copy of the decision has

been enclosed with the written note of submission and we have gone through the same. That was a case of compulsory acquisition of a site on which the standing houses were earlier damaged during the war and it was held that assessment of the value should be on the basis of notionally rebuilt flats. The facts of this case are widely different and this decision has no application to the claim of the applicant. In any case the applicant prays for promotion to the rank of Inspector from December 1979 and he has passed the departmental examination for Inspectors earlier to that in 1977. Therefore, so far as his promotion to the rank of Inspector is concerned, there is no question of dating back his year of passing. As regards dating back the year of passing of the ITO Examination, the applicant has passed the examination in 1996 and has stated that this should relate back to the year 1985 when his junior one Nirmalendu Gupta passed the ITO Examination. As we have earlier held, for becoming ITO the applicant has to work actually in the post of Inspector for three years and his notional service cannot be counted for this purpose. Relating back the year of passing of ITO Examination would not help him in any way. Moreover, obviously he has taken more than one chance to pass the ITO Examination, having actually joined as Inspector in 1993 and passing the ITO Examination in 1996. On this ground also there is no case for relating back the year of his passing the ITO Examination. This contention of the learned counsel for the petitioner is accordingly rejected.

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10. In the result, therefore, the Original Application is disposed of in terms of the observations and direction above but without any order as to costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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7.1.2000
VICE-CHAIRMAN

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