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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

ORIGINAL APPLICATION NO.509 OF 1998

Cuttack, this the 21st- day of March 2003

Amiya Kanti Patnaik & Others

Applicants

Vrs.


Union of India & Others

Respondents.



FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ? no
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? no


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N.SOM)
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.509 OF 1998

Cuttack, this the 2nd day of March 2003

CORAM:

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

1. S/Shri Amiya Kanti Patnaik,
aged about 43 years, S/o. Late Subal Chandra Das, At-A/48,
Mancheswar Industrial Estate, Bhubaneswar-10, now Superintendent,
Central Excise and Customs, Bhubaneswar-1
2. Rajnikanta Mohapatra,
aged about 47 years, S/o. Late Mrutyunjaya Mohapatra, At: VI-M-
732, Sailashree Vihar, Bhubaneswar-21, now Superintendent, Central
Excise and Customs, Bhubaneswar.
3. Rama Sankar Patnaik,
aged about 47 years, S/o. Late Jagabandhu Patnaik, At: 1991
Sriramnagar, Bhubaneswar-2, now Superintendent, Central Excise
and Customs, Bhubaneswar-11
4. Laxmi Narayan Mohapatra,
aged about 46 years, S/o. Late Mrutyunjaya Mahapatra, Plot No.534,
At: Sahidnagar, Bhubaneswar-7, now Superintendent, Central Excise
and Customs, Bhubaneswar-1
5. Rabindra Nath Ghosh,
aged about 46 years, S/o. Late Sibendra Nath Ghosh, At: Budhi
Thakurani Lane, Cuttack-2, now Superintendent, Central Excise and
Customs, Bhubaneswar-1

.....Applicants

By the Advocate(s)

..... M/s. A. Rath
A.C. Rath

Vrs.

1. Union of India represented through its Secretary, Ministry of
Finance, Government of India, Department of Revenue, North
Block, New Delhi-110001
2. Chief Commissioner (East Zone), Customs & Central Excise,
15/1, Strand Road, Calcutta-1
3. The Commissioner, Customs and Central Excise, Bhubaneswar
I Commissionerate, Rajaswa Vihar, Bhubaneswar-4
4. The Commissioner, Customs and Central Excise, Bhubaneswar
II Commissionerate, Rajaswa Vihar, Bhubaneswar-751004

..... Respondent(s)

By the Advocate(s) -

..... Mr. A.K. Bose,
Sr. Standing Counsel (Central)

O R D E R


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MR. B.N.SOM, VICE-CHAIRMAN : This Original Application has been filed by Shri Amiya Kanti Patnaik and five others working as Superintendents, Central Excise and Customs, Bhubaneswar-1 against "anomalous preparation" of seniority lists of Inspectors of Central Excise and Customs under Bhubaneswar Commissionerate.

2. Briefly stated, the applicants were recruited as Inspectors of Customs and Central Excise during the year 1975. The principle of determining seniority of this group of Inspectors was the subject matter before this Tribunal in three cases, i.e., T.A.No.49/87, O.A.Nos. 62 to 71 of 1987 and 210 of 1987. The principle of seniority, as enunciated by this Tribunal in the judgment rendered in aforesaid cases was that the seniority of Inspectors would be determined according to length of their service. In compliance of the said order, the seniority list of Inspectors was prepared and circulated on 20.8.1990. The applicants have submitted that since that seniority list was published in compliance with the judgment of this Tribunal in the aforementioned cases, they did not raise any objection, whatsoever. However, they found out later on that in this seniority list dated 20.8.1990, one of their juniors (Shri D.D.Naik) had got service benefits on the strength of the pre-revised seniority list as on 01.06.1979. They have stated that because of that wrong fixation of seniority of Shri D.D.Naik, he was considered for promotion to Superintendent, Group B, by a D.P.C. in December, 1998 and was also selected to the higher post



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and thereby the applicants were deprived of their claim. The latter submitted representations pointing out this anomaly to Res. No.3, in consequence of which, the seniority list dated 20.9.1990 was partially modified vide order dated 27.4.1998 (Annexure-2), lowering the position of Shri D.D.Naik, below Shri H.C.Das. However, the modified seniority list issued on 27.4.1998 had only redressed the grievance of those who were shown junior to Shri D.D.Naik, but the Inspectors, who were senior to Shri Naik were not given promotion to the grade of Superintendent, Group-B. Their repeated representations to Respondents did not bear fruits and accordingly, the applicants have approached this Tribunal seeking the following reliefs.

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- i) To regularise promotions of the applicants from the date their juniors Shri D.D.Naik was given promotion; ~~12.12.1998~~, 14.12.1998 to the grade of Superintendent, Gr.B;
 - ii) to grant all other service benefits to which the applicants shall be found fit and entitled to; and
 - iii) the names of the applicants to be incorporated in all India seniority list in the grade of Superintendent, Central Excise and Customs in appropriate place on 14.12.1988.

3. The Respondents have, in their counter, stated that the seniority list issued vide order dated 27.4.1998 has been rescinded, that the seniority position as on 01.06.1979 of the Inspectors was restored to the position as was existing prior to the issue of the order dated 27.4.1998. Thus, the seniority list dated 27.4.1998 having been rescinded, the very basis of the claims made by the applicants in this Original Application is lost. In so far

as the other grievance of the applicants with regard to earlier promotion of Shri D.D.Naik to the grade of Superintendent, Group B is concerned, the Respondents have pointed out that it is a fact that on the basis of the judgment of this Tribunal rendered in T.A.49/87, O.A.Nos. 61 - 71 and 210 of 1987, Respondent No. 3 had had revised the seniority list of Inspectors and published two seniority lists (both of them on the same date, i.e., 20.8.1990) one showing the position of Inspectors as on 01.06.1979 and the second seniority list showing the seniority position of Inspectors as on 01.01.1990 and both these seniority lists were circulated among the Inspectors. But no one including the applicants made any representation against the said seniority lists. It was only in March, 1998 that the applicant Nos. 1 and 3 made representations, which were considered in the month of April, 1998 and the departmental authorities, partially modified the seniority list of Inspectors as on 01.06.1979, by revising the seniority position of late D.D.Naik. But this list could not be operated as the review D.P.C. raised objections on some aspects of the list. The matter was again looked into thoroughly and thereafter on 29.04.1999, the Respondents passed an order rescinding the earlier order dated 27.04.1998 and restored the seniority position of Inspectors as on 01.06.1979 and circulated vide their order dated 20.8.1990. It was further explained by the Respondents that the promotion of Shri D.D.Naik was made against a Scheduled Caste vacancy and selected from the extended zone as the



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Scheduled Caste official within the normal zone was not cleared from vigilance angle. The Respondents, through their Senior Standing Counsel, Shri A.K.Bose, during oral arguments submitted that the contention of the applicants that they were all senior to Shri D.D.Nayak was not factually correct. The seniority position of the late D.D.Nayak vis-a-vis/applicants was as follows.

Sl.No. of the petitioners in the Revised Seniority List as on 01.6.1979 Issued on 20.8.1990	Sl.No. of the petitioner in Revised Seniority List as on 1.6.1979 Issued on 17.4.98	Sl.No. of the petitioner in the Seniority List As on 1.1.1998
1. A.K.Patnaik - 47	1.A.K.Patnaik-47	1.A.K.Patnaik-15
2. R.K.Mohapatra-53	2.R.K.Mohapatra - 53	2.R.K.Mohapatra-21
3. Dharanidhar Naik- 57	3.Dharanidhar Naik - 79	3.Dharanidhar Naik - 25
4. R.S.Patnaik 61	4.R.S.Patnaik- 60	4.R.S.Patnaik- 29
5. L.N.Mohapatra 69	5.L.N.Mohapatra- 68	5.L.N.Mohapatra-40
6. R.N.Ghosh - 71	6.R.N.Ghosh 70	6.R.N.Ghosh - 42

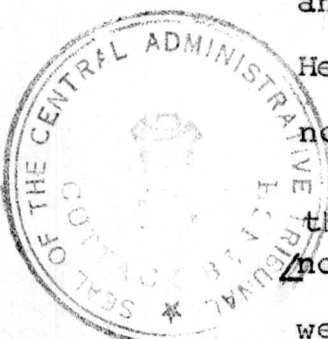
4. The applicants, through their learned counsel, Shri A.K.Mishra, during oral arguments submitted that although the Respondents have corrected the seniority list as on 01.06.1979, but they had not held the review D.P.C. to take the matter to its logical conclusion. We are not impressed with the arguments of Shri Mishra, the learned counsel for the applicants, because, it would be clear from the seniority position of D.D.Nayak vis-a-vis the applicants that ^{excepting} ~~excepting~~



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applicant Nos. 1 and 2, no one else was senior to D.D.Nayak and promotion of Mr.Naik was not a case of supersession of the seniors by a junior, but was a case of promotion of a reserved category officer to fill up the slot reserved for that category of officer. It was also disclosed by the Senior Standing Counsel that Shri Naik, () died within six months of his promotion and the consequential vacancy was filled up by promotion of one Ramesh Ch.Chaudhury, an O.C. officer, who was senior to applicant No.1. Hence, the question of holding a review D.P.C. does not exist and is uncalled for.

In view of the above facts and circumstances of the case no relief is available to the applicants and accordingly, we dismiss this Original Application being devoid of merit. No costs.


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21/03/03
(M.R. MOHANTY)
MEMBER (JUDICIAL)

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

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