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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 452 OF 2000
Cuttack this the 28th day of May 2004


Sri Sarat Chandra Mohanty ... Applicant(s)

-VERSUS-

Union of India & Others ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? Ys
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? Ys


(M.R. MOHANTY)
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 452 OF 2000
Cuttack this the 18th day of May 2004

CORAM:

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

Sarat Chandra Mohanty, aged about 51 yrs.,
S/o. late Bijaya Ch. Mohanty of Vill- Hattapara,
PO-Karilo Patna, PS-Patkura, Dist-Kendrapara -
now working as Inspector of Income-tax in the
Office of the Chief Commissioner of Income Tax,
Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar

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Applicant

By the Advocates

Mr. B.B. Mohanty

-VERSUS-

1. Chief Commissioner of Income-tax, Ayakar Bhawan,
Rajaswa Vihar, Bhubaneswar
2. Commissioner of Income Tax, Aayakar Bhawan,
Rajaswa Vihar, Bhubaneswar
3. Sri S. Roy, Income-tax Officer, Rourkela
4. Sri G.C. Sahoo, Inspector of Income Tax,
Bhubaneswar

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Respondents

By the Advocates

Mr. A.K. Bose, SSC

O R D E R

MR. B.N. SOM, VICE-CHAIRMAN: Shri Sarat Chandra Mohanty
(applicant) working as Inspector of Income Tax, in the
office of the Chief Commissioner of Income Tax, Bhubaneswar,
has filed this Original Application being aggrieved with
the inaction of the Respondents-Department in not holding
the review D.P.C. for the purpose of promoting him to the
grade of Tax Assistant with effect from 20.12.1979 inspite
of written commitment made in this regard to him vide
their letter No. AD.III/89-90/4108 dated 16/24.5.1994
(Annexure-8).

2. The factual matrix of this case is that the applicant, while working as Upper Division Clerk (in short U.D.C.) in the Office of the Respondents along with Res. Nos. 3 and 4, a new grade called 'Tax Assistant' was created by the Department in the year 1978. It is worthwhile to note that whereas the applicant was confirmed in the grade of U.D.C. with effect from 16.10.1976, Res.Nos.3 and 4 with effect from 7.2.1981, ~~and~~ revealed from the Gradation list of Tax Assistant (Annexure-2). The Respondents, in order to fill up the post of Tax Assistants, convened a D.P.C. and on the basis of recommendations made by it promoted eight UDCs including Res.Nos. 3 and 4 to that post provisionally by ignoring the claim of the applicant vide Annexure-2 dated 20.12.1979. This selection, it is stated, was made on non-selection basis. Thereafter, vide order dated 4.5.1981 (Annexure-3), Respondent No.2 reverted six of the eight officials who were promoted as Tax Assistants under Annexure-2 dated 20.12.1979 to the post of U.D.Cs on the ground that the method of selection through which these promotions were effected had been changed from non-selection basis to selection basis and therefore, only two of the eight UDCs were found suitable for promotion. In pursuance of the said recommendation of the DPC, Res.Nos. 3 and 4 along with other similarly placed officials who were promoted vide their order dated 20.12.1979 were reverted to the grade of U.D.C. It is the case of the applicant that he was unaware of the developments with regard to promotion of his juniors, i.e., Res.Nos. 3 and 4 to the grade of Tax Assistant, because, after his joining service in June, 1972, no gradation list had been published

by the Department. It was when the gradation list of LDCs/UDCs was published on 30.8.1982, he came to know that he was senior to Respondent Nos. 3 and 4 as well as the fact of giving promotion on provisional basis as Tax Assistants to his juniors, i.e., Res. Nos. 3 and 4. He was subsequently promoted to the grade of Tax Assistant ahead of Res. Nos. 3 and 4 by order of the Respondents-Department under Annexure-4 dated 23.2.1988. A gradation list of Tax Assistants published by the Respondents-Department as on 1.1.1990 also shows that the names of the applicant finds place at Sl. No. 48 whereas the name of Respondent Nos. 3 and 4 at Sl. Nos. 49 and 58 respectively. These facts are not disputed. The cause of action for the applicant to approach this Tribunal arose because of the fact that the reversion of Respondent Nos. 3 and 4 was negated by the Tribunal by their order in T.A.273/86 and he became their junior as Tax Assistant. It is in this background it is profitable to narrate in brief the events that had taken place after the reversion order^{at} Annexure-3 was passed reverting Res. Nos. 3 and 4 to the post of UDCs as hereunder.

Having been reverted under Annexure-3 dated 4.5.1981, Res. Nos. 3 and 4 had approached the Hon'ble High Court of Orissa in O.J.C.No.920/1981, which was subsequently transferred to this Tribunal bearing T.A.No.273/86 (wherein the subject matter of challenge was their reversion to the post of UDCs). While disposing of the T.A., the Tribunal, vide their order dated 8.8.1989 directed as under :

" For the reasons mentioned above, we have come to the conclusion that the reversion

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of the petitioners from the rank of Tax Assistants to the cadre of Upper Division Clerks with effect from 4th May, 1981 cannot be sustained and as such we quash the order of the Income Tax Commissioner, Orissa, Bhubaneswar No.AD.III.98/80-81/48229-231 dated 27/28th February, 1981 (Annexure-6) and order No.AD.III.3/81-82 dated 4th May, 1981 (Annexure-7).

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The arrears, if any, should be calculated and paid to the petitioners with effect from 4th May, 1981, within three months from the date of receipt of a copy of this judgment".

It is in compliance of the direction issued by the Tribunal in aforementioned T.A., Respondent No. 2, vide its order dated 6.3.1990 (Annexure-6) while restoring Annexure-2 dated 20.12.1979 (the order of reversion), ordered that the officials (including Res.3 and 4 herein) would be allowed to get their seniority in the promoted cadre of T.A.s accordingly, in addition to pay fixation and payment of arrears with effect from 04.05.1981. Immediately thereafter the applicant submitted representation dated 16.3.1990 (Annexure-7) drawing the notice of Res. No.2 that he being senior to Res. Nos. 3 and 4 could not have been denied promotion with effect from the date they were promoted; that by virtue of Annexure-6 dated 6.3.1990 he has been put in a rather disadvantageous position vis-a-vis his juniors Res.No.3 and 4 (vis., S/Shri S.Roy and G.C. Sahoo) respectively. This representation was followed by reminders. Thereafter in May, 1994, Respondents vide Annexure-8 dated 16th/24th May, 1994, while disposing of the representation of the applicant stated as follows :

"... it has been decided to review the selection D.P.C. of 1978 so far as it related to the grade of TA. His claim of seniority will, be decided on the

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recommendations of the said review DPC, which will be reflected in the gradation list of TA's to be published later. This being an event subsequent to 1.1.90, his position as it stood on the said date have been shown correctly."

Hence this application with the prayers referred to earlier.

3. The Respondents-Department in their counter have submitted that the applicant is not entitled to any relief, firstly, because, the application is barred by limitation as his prayer relates to granting him promotion with effect from 20.12.1979, with consequential service benefits and such a claim has been made long after the promotion took place in December, 1979, and, secondly, that Res.Nos. 3 and 4 have been promoted retrospectively by restoration of the order under Annexure-2 dated 20.12.1979 based on the judgment of this Tribunal; and thirdly, that it has no bearing on the case of the applicant. With these submissions the Respondents have prayed for dismissal of this Original Application.

4. We have heard Shri B.B.Mohanty, learned counsel for the applicant and Shri A.K.Bose, learned Senior Standing Counsel appearing on behalf of the Respondents-Department in extenso and also perused the materials placed on record. We have also taken note of the rejoinder^{to counter}/filed by the applicant.

5. In so far as the question of limitation as raised by the Respondents-Department, is concerned, we find from the records and also not disputed by the Department that the applicant came to know about the promotion of his juniors only in the year 1990 when the promotion^{of his juniors}/effected from

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20.12.1979 was restored by order dated 6.3.1990. Secondly, that the seniority list of U.D.Cs had not been published after 1971 and when it was published on 30.8.1982 showing the position of UDCs as on 1.1.1982, the applicant's position was found higher than Res. Nos. 3 and 4. This fact has also been admitted by the Respondents in their counter at Para-8 wherein they have stated that "gradation list in the grade of U.D.C.s could not be published between 02.01.1971 and 31.12.1981 due to some administrative reasons". As soon as order dated 6.3.1990 restoring the promotion order in favour of Res.Nos. 3 and 4 with effect from 20.12.1979 was issued, the applicant submitted his representation against his supersession vide his representation dated 16.3.1990. The Respondents took four years and informed him vide Annexure-3 dated 20.5.1994 that his case would be placed before a review D.P.C. and that his matter would be reconsidered by reviewing the selection made by the D.P.C. of 1978. Thereafter the Respondents had taken no action to stick to their commitment. In the circumstances, we see no reason to persuade ourselves that the present O.A. is hit by laches and limitations. Accordingly, this plea of the Respondents-Department is overruled.

From the facts of the case we find that the Respondents-Department had created the post of Tax Assistant in the year 1978 and so far as Bhubaneswar Commissionerate is concerned, they decided to fill up eight of such posts in December, 1978, which were ordered to be filled up on provisional basis. In the relevant order dated 4.5.1981,

Para-2, makes it clear to the effect that "the Central Board of Direct Taxes had decided to treat the appointments made to the grade of Tax Assistant prior to 23.11.1979 to have been made on ad hoc basis". As those promotions were made on adhoc basis, the Respondents could not have made the selection of juniors ignoring the claim of seniors, because in all cases of ad hoc promotion/appointment, seniority is the only condition for selection. However, claim of seniority can^{only} be ignored for the reason of adverse report in the ACR and/or in case of pendency of vigilance case. We have not been informed that the case of the applicant suffered from this vice. In view of the fact brought before us by the applicant in his O.A. as well as the Respondents in their counter that there was no gradation list of UDCs when the selection panel was prepared in 19.12.1979, we had called for the minutes of the Selection Committee to know what exactly was the reason for denying adhoc promotion to the applicant. In compliance with the said direction, the learned^{Sr} Standing Counsel for the Respondents placed before us the minutes of the D.P.C. meeting in respect of Inspectors of Class-II (ministerial) Selection Post, Orissa Charge. From the recording made therein (Page-6), we found that the Committee which met on 21.7.1978 had considered the names of 66 UDCs in order to prepare a panel of Tax Assistants. In this list of 66 UDCs, the names of Res. Nos. 3 and 4 had appeared at Sl. Nos. 59 and 61 respectively, whereas the name of the applicant had appeared at Sl. No. 63. In the matter of over-all grading of A.C.R., the Committee

had assessed all the three being 'very good'. However, the name of the applicant did not find place in the panel of 56 persons (selected for the post of Tax Assistants) solely on the ground that his name was not covered within the number of vacancies available for promotion to the grade of Tax Assistant. It is, therefore, clear from the minutes of the D.P.C. that the case of the applicant for promotion ~~an~~ ad hoc basis to the post of Tax Assistant in the year 1978 was left out because of non existence of gradation list of UDCs under Orissa charge. There is no doubt that it was an unintentional mistake and it is thus established that the case of the applicant for promotion to the higher grade of Tax Assistant was ignored not on account of his unsuitability but due to administrative error and in our considered opinion, such a mistake/error ought to have been rectified/corrected by the administration itself soon after it was detected. But we are unable to understand as to what crippled the Respondents to hold a review D.P.C. to correct the unintentional error despite the fact they had committed to do so in this regard vide Annexure-8 dated 24.5.1994. It was thus a fit case for holding a review D.P.C. In this background, it would be worthwhile to quote the relevant instructions of the Govt. of India for holding a review D.P.C. as under :

"...The proceedings of any DPC may be reviewed only if the DPC has not taken all material facts into consideration or if material facts have not been brought to the notice of the DPC or if there have been grave errors in the procedure followed by the DPC. Thus, it may be necessary to convene Review DPCs to rectify certain unintentional mistakes, e.g. -

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- a) where eligible persons were omitted to be considered; or
 - b) where ineligible persons were considered by mistake; or
 - c) where the seniority of a person is revised with retrospective effect resulting in a variance of the seniority list placed before the DPC; or
 - d) where some procedural irregularity was committed by a DPC; or
 - e) where adverse remarks in the CRs were toned down or expunged after the DPC had considered the case of the officer

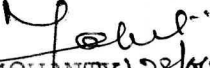
These instances are not exhaustive but only illustrative".


In terms of the above instructions, it was open to the Respondents-Department to resort to review D.P.C. when they came to know that the list of 66 UDCs placed before the DPC for filling up of 56 posts of Tax Assistants on 19.12.1979 had not been prepared according to correct seniority of the officials, which resulted in non-inclusion of the name of the applicant in the panel for promotion to the grade of Tax Assistant. It was an unintentional error as admitted by the Respondents in their communication dated 24.5.1994 (Annexure-8) sent to the applicant. As the error in the gradation list could be detected late in 1990 only and taken cognizance of that by the Respondents in 1994, it was incumbent on their part to take necessary remedial action then and there and the claim of the applicant to promotion to the grade of Tax Assistant from December, 1979, should have been fulfilled. It is of no avail for the Respondents to have stated as they have in Para-12 of their counter that the Respondent Nos. 3 and 4 were promoted retrospectively because of the direction of the Tribunal. It should be

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remembered that the issue of supersession of the applicant by two of his juniors was not agitated before the Tribunal in T.A.No.273/86 nor was there any scope for the Tribunal to look into that aspect. Hence, the direction of this Tribunal in T.A.No.273/86 cannot be used as an instrument for denying the legitimate claim of the applicant. Thus, we are of the view that the applicant was denied promotion to the grade of Tax Assistant vis-a-vis his juniors, who were ~~pr~~ promoted with effect from 20.12.1979 on account of non-preparation of the gradation list of UDCs by the Respondents-Department and therefore, we have no hesitation to hold that the applicant is entitled to the reliefs as prayed for by him. We accordingly order that the applicant be granted promotion to the grade of Tax Assistant with effect from 20.12.1979 when his juniors, viz., S/Shri S.Roy and G.C.Sahoo (Res. Nos. 3 and 4) were promoted to that grade, with consequential service benefits. We make it clear that if it is not feasible to accommodate the applicant because of lack of vacancy, the Respondents are advised to create supernumerary post with a view to accommodate the applicant with effect from the date as indicated above.

In the result, the O.A. succeeds. No costs.


(M.R. MOHANTY) 28/05/04
MEMBER (JUDICIAL)


(B.N. SOM)
VICE-CHAIRMAN

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