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CENTRAL ADMINISTRATIVE TRIBUNAL, CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO.615 OF 2004

Cuttack, this the 09th day of August, 2005.

Harekrushna Dash.

Applicant.

-VERSUS-

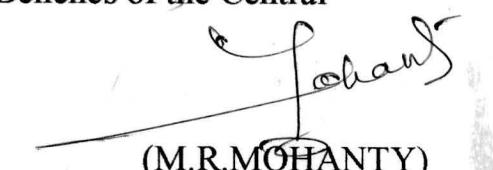
Union of India & Ors.

Respondents

FOR INSTRUCTIONS

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


(B.N. SOM)
VICE-CHAIRMAN


(M.R. MOHANTY)
MEMBER (JUDICIAL)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.**

Original Application No. 615 of 2004
Cuttack, this the 89th day of August, 2005

C O R A M:-

**THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE MR.M.R.MOHANTY, MEMBER(JUDL.)**

HAREKRUSHNA DASH, Aged about 35 years,
Son of Bholi Dash, At- Gangeswarpur,
Po-Kalyanpur Sasan, Old Town, Bhubaneswar.
District- Khurda, Presently working under Income Tax Officer,
Jharsuguda, District-Sambalpur.

..... APPLICANT.

By the Applicant : M/S. J.M.Patnaik, S.Mishra,
K.K.Jagdev, Advocates.

Versus

1. Union of India represented by Chairman,
Central Board of Direct Taxes, North Block,
New Delhi- 110 001.
2. Chief Commissioner of Income Tax, Orissa,
Ayakar Bhawan, Bhubaneswar, Dist. Khurda.
3. The Commissioner of Income Tax, Sambalpur.
4. The Additional Commissioner of Income Tax (Hqrs.) (Admn.),
Ayakar Bhawan, Bhubaneswar, Dist. Khurda.
5. The Income Tax Officer, Jharsuguda, Dist. Sambalpur.

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6. Kausik Roy, Steno Grade-II,Office of the Commissioner of Income Tax, Bhubaneswar, Dist. Khurda.
7. Gouranga Charan Sahoo, Steno Grade – II, O/O the Income Tax Officer, Bhadrak Ward, Bhadrak, Dist. Bhadrak.

..... RESPONDENTS.

By the Respondents : Mr. U.B.Mohapatra, Sr. Standing Counsel(Central).

O R D E R

MR. MANORANJAN MOHANTY, MEMBER (JUDICIAL):

Applicant was selected, for being appointed as a Stenographer, through an open competitive examination conducted by the Staff Selection Commission. His name was sent to the Income Tax Department from Staff Selection Commission. By a communication dated 29-07-1994 datas were called for from him by the I. T. Department. Due to delay caused in antecedent etc. verification (through District Civil & Police Authorities), the Applicant was only able to join as a Stenographer in I.T. Department on 30-12-1994 pursuant to the final offer given to him on 09-12-1994. Respondent Nos. 6 & 7 (who came I.T. Department as Stenographers on inter departmental transfer from other Department, on 11-09-1994, on compassionate grounds) became senior to the Applicant in the

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gradation list published on 01-11-1995. Consequently, Respondent Nos. 6 & 7 were given promotion to the next higher grade on 04-09-2002; whereas the Applicant was granted promotion to the said grade only on 28.08.2003. Applicant, having failed to redress his grievances from the Departmental Authorities with regard to placement of his name in the gradation list dated 01-11-1995 above the Respondent Nos. 6 and 7 and for ante-dating his promotion (to the dates, when Respondent Nos. 6 and 7 were promoted to the next higher grade) through representations dated 21-08-2002 and 09-01-2003, he has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985; wherein he has prayed to quash (a) order of promotion (dated 04-09-2002) of Respondent Nos. 6 and 7, (b) order of his promotion dated 28-08-2003 and (c) to direct the Respondent No.2 to give due seniority to the Applicant and to grant him promotional benefits with effect from 4th September, 2002 .

2. Respondents-Department in their counter filed on 16th February, 2005 have pointed out that the dossier of the Applicant having been received (from the Staff Selection Commission, Eastern Regional Office, Calcutta) in I.T. Department (Bhubaneswar) nominating him on the basis of Grade D Stenographer Examination, 1993 on 14-06-1994, the Applicant, was intimated to submit the attestation forms latest by 29-07-1994; and that

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appointment order was issued to the Applicant (on verification of his character and antecedents through the District Administrative and Police Authorities) on 09-12-1994 and, in response to the same, he joined the services only on 30-12-1994 and since the Respondent Nos. 6 & 7 joined the I.T. Department earlier than the Applicant (i.e. on 06-10-1944 & 26-09-1994) their names were rightly shown above the Applicant in the gradation list and that, basing on their placement in the gradation list, they were promoted earlier than the Applicant

3. We have heard Mr. J.M. Patnaik, learned counsel appearing for the Applicant and Mr. U.B. Mohapatra, Learned Senior Standing Counsel appearing for the Respondents and perused the materials placed on record.

4. Learned counsel appearing for the Applicant has submitted that since the Applicant was declared successful in the year 1993 by the Staff Selection Commission, by necessary implication, he is entitled to be appointed in the vacancy of that year and delay caused in giving him appointment, being no way attributable to the Applicant, irrespective of his joining on 30.12.1994 he was entitled to be shown above the Respondent Nos. 6 & 7 in the gradation list. He has further submitted that since the Respondents 6 and 7 came on inter departmental transfer to the Income Tax

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Department (from other Department) on 11-09-1994 on compassionate ground, they ought not to have been shown above the Applicant.

5. On the other hand, learned Senior Standing Counsel appearing for the Respondents has submitted that this submission of the Applicant is based on neither any rules nor law. He has submitted that it is a settled position of Rules and law that date of joining in the post is the criteria for fixation of seniority and since the Respondents 6 and 7 joined the Department much earlier than the Applicant, they were rightly placed above the Applicant in the gradation list. Apart from the above, learned Senior Standing Counsel, appearing for the Respondents, has also pointed out that this Original Application is being hit by Section 21 of the Administrative Tribunals Act, 1985, and, on that ground alone, the same is liable to be dismissed.

6. On perusal of the materials placed on record and after hearing counsel for the parties, it is clear that although the seniority list under Annexure -A/10 was published on 1.II.1995, the Applicant did not challenge the same within the limitation period prescribed under section 21 of the Administrative Tribunals Act, 1985. As per his own admission he submitted a representation (raising question against his placement below the Respondent Nos. 6 & 7 in the seniority list) only on 21.08.2002 i.e. after a

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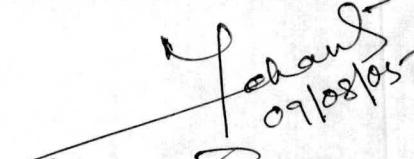
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lapse of seven years asnd approached this Tribunal (in the present O.A. during 2004). Therefore, we are of the firm opinion that this case is grossly barred by limitation. Apart from the above, Rules/laws are very clear that the date of joining in post is the criteria for fixing the seniority. Since the Applicant joined much later than the Respondent Nos. 6 and 7 we are of the opinion/ view that there was no wrong in giving promotion to them much earlier than the Applicant.

7. In the result, this Original Application is dismissed being devoid of any merit. No costs.


(B.N.SOM)
VICE-CHAIRMAN


(M.R.MOHANTY)
MEMBER(JUDICIAL)