

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.6,7 & 41 of 2006
Cuttack, this the 20th day of May, 2009

Basaranta Kumar Senapati & Ors. Applicants
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

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


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.Nos.06,07 & 41 of 2006
Cuttack, this the 20th day of May, 2009

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

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OA No.06/2006

1. Basanta Kumar Senapati, aged about 40 years, S/o.Nanda Senapati presently working as Office Superintendent, Office of Chief Commissioner of Income Tax, Computer Centre, Bhubaneswar, Dist. Khurda.
2. K.Satya Narayana Patro, aged about 40 years, S/o.Late Kotni Subba Rao presently working as Office Superintendent, Office of the Chief Commissioner of Income Tax, Computer Centre, Bhubaneswar, Dist. Khurda.

...Applicants

-Vs-

Advocate for Applicant: M/s. H.M.Dhal, B.Sahoo, B.B.Swain,
D.Pattanaik, K.Dhal.

-Versus-

1. Union of India represented through its Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. Central Board of Direct Taxes, represented through its Chairman, Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. Chief Commissioner of Income Tax, Orissa Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist. Khurda.

....Respondents

Advocate for Respondents: Mr.U.B.Mohapatra,SSC.

OA No.07/2006

1. Dinabandhu Swain, aged about 42 years, son of Gouranga Charan Swain presently working as Office Superintendent, Office of Commissioner of Income Tax, Cuttack, Town and District Cuttack (**OA No.7/06**).
2. Sushanta Kumar Samal, aged about 36 years, son of Raghunath Samal, presently working as Office Superintendent, Office of Income Tax Officer, Ward-1, Jharsuguda, At/Po/Dist.Jharsuguda (**OA No.162/2006**).
3. Chandi Prasad Patnaik, aged about 42 years, son of Gopal Prasad Patnaik, presently working as Office Superintendent, Office of Additional Commissioner of Income Tax, Rourkela Range, At/Po.Udit Nagar, Rourkela, Dist. Sundergarh (**OA No.163/2006**).

...Applicants

-Vs-

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Advocate for Applicant: M/s. H.M.Dhal, B.Sahoo, B.B.Swain,
D.Pattanaik, K.Dhal.

-Versus-

1. Union of India represented through its Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. Central Board of Direct Taxes, represented through its Chairman, Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. Chief Commissioner of Income Tax, Orissa Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist. Khurda.
4. Shri Harish Ch. Nayak, aged about 54 years, Son of Late Hrudananda Nayak presently working as Sr. Tax Assistant in the Office of A.D.I.T (Investigation) Arunodaya Nagar, Cuttack-12.
5. Mirza Z.Alli Baig, aged about 54 years, Son of Late M.K.Alli Baig presently working as Sr.Tax Assistant in the office of Tax Recovery Officer, Cuttack, Arunodaya Market, Cuttack-12.
6. Sarada Prasad Mohanty, aged about 53 years, S/o.Rajib Charan Mohanty, presently working as Sr.Tax Asst. in the office of Director, Income Tax (Investigaton) Plot No.730, Saheed Nagar, Bhubaneswar.
7. A.V.P.Rao, aged about 53 years, S/o. A.Rammurty, presently working as Sr.Tax Assistant in the office of Addl. Commissioner, Income Tax, Sambalpur Range(I), Sambalpur.
8. Premasila Lakra, aged about 55 years, W/o.Alexander Lukose presently working as Sr. Tax Assistant in the Office of Joint Commisisoner Income Tax, Uditnagar, Rourkela-12, Dist. Sundergarh.
9. Ramananda Tripathy, aged about 53 years, S/o.Sri Batakrushna Tripathy presently working as Sr.Tax Assistant in the office of Addl. Commisisoner, Income Tax, Sambalpur Range-II, Sambalpur.
10. S.Kambhu, aged about 52 years, S/o.Late Baidhar Kambhu, presently working as Sr.Tax Assistant in the office of Income Tax Officer, Ward-I, Baripada, Dist. Mayurbhanj.
11. Pravakar Sahoo, aged about 54 years, S/o.Late Madan Sahoo.
12. Uchhab Sahu, aged about 59 years, S/o.Late Arjuna Sahu.
13. Rantulu Ramulu, S/o.Late R. Rajayya.
(S.L.No.11 to 13 all are presently working as Sr. Tax Assistant in the Office of the Additional Commissioner, Income Tax, Berhampur Range, Ayakar Bhaban, Berhampur, Dist. Ganjam).
14. Shri Harish Ch. Nayak, aged about 54 years, Son of Late Hrudananda Nayak, presently working as Sr. Tax Assistant in the office of A.D.I.T (Investigation) Arunodaya Nagar, Cuttack-12.
15. Mirza Z.Alli Baig, aged about 54 years, S/o.Late M.K.Alli Baig, presently working as Sr.Tax Assistant in the office of Tax Recovery Officer, Cuttack, Arunodaya Market, Cuttack-12.
16. Sarada Prasad Mohanty, aged about 53 years, S/o.Rajib Charan Mohanty, presently working as Sr.Tax Assistant in the office of Director, Income Tax (Investigation) Plot No.730, Saheed Nagar, Bhubaneswar.

17. A.V.P.Rao, aged about 53 years, Son of A.Rammurty, presently working as Sr. Tax Assistant in the office of the Addl. Commissioner, Income Tax, Sambalpur Range (I), Sambalpur.
18. Premasila Lakra, aged about 55 years, W/o.Alexander Lukose presently working as Sr.Tax Assistant in the office of Joint Commissioner Income Tax, Uditnagar,Rourkela-12, Dist. Sundergarh.

....Respondents

Advocate for Respondents: Mr.S.B.Jena, ASC

M/s.R.N.Mishra, S.K.Das,
D.Parhi (for intervener).

M/s.R.K.Mohanty, A.P.Bose,
S.K.Mohanty, S.Mohanty,
M.R.Das, S.N.Biswal (For
intervener).

OA No.41/2006

1. Fagu Charan Hansdah, aged about 42 years, son of Sankho Hansdah, presently working as Office Superintendent, Office of Commisisoner of Income Tax, Bhubaneswar, Aayakar Bhawan, 2nd Floor, Rajaswa Vihar, Bhubaneswar, permanently resident of Village-Dighi, PO. Jarkani, PS-Bahalda, Dist. Mayurbhanj (**OA No. 41/2006**).
2. Ashok Kumar Das, aged about 41 years, son of Late Narayan Das, presently working as Office Superintendent, Office of Commisisoner of Income Tax, Sambalpur, Aayakar Bhawan, At/Po.Ainthapalli, Town/Dist. Sambalpur, permanent resident of Subudhi Street, PO. Polsara, PS Kodala, Dist. Ganjam (**OA No. 57/2006**).
3. V.Siva Kumar, aged about 47 years, son of V.Rama Mohan Rao, presently working as Office Superintendent, Office of Commissioner of Income Tax, Sambalpur, Aayakar Bhawan, At/Po.Ainthapalli, Town/Dist.Sambalpur, permanent resident of Bhapur Bazar, PO Berhampur-1, Dist. Ganjam (**OA No.58/2006**).
4. Hrushikesh Swar, aged about 40 years, Son of Banchhanidhi Swar presently working as Office Superintendent Office of Commissioner of Income Tax (Appeals), Sambalpur, Aayakar Bhawan, At/Po.Ainthapalli, Town/Dist.Sambalpur, permanent resident of At/Po.Bellaguntha, Dist. Ganjam (**OA No.59/2006**)

...Applicants

-Vs-

Advocate for Applicant: M/s. H.M.Dhal, B.Sahoo, B.B.Swain,
D.Pattanaik, K.Dhal.

-Versus-

1. Union of India represented through its Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. Central Board of Direct Taxes, represented through its Chairman, Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. Chief Commissioner of Income Tax, Orissa Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist. Khurda.

....Respondents

Advocate for Respondents: Mr.S.B.Jena, ASC.

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ORDER

Per-MR.C.R.MOHAPATRA, MEMBER (A):-

The Applicants in these three Original Applications are working as Office Superintendent in different Commissionrate of Income Tax in State of Orissa. Their grievance in all these three OAs is against the letter dated 8th December, 2005. The letter dated 8th December, 2005 has been issued by the Government of India, Ministry of Finance, Department of Revenue Central Board of Direct Taxes, New Delhi to all Chief Commissioners of Income Tax as the cadre controlling authorities; which speaks as under:

“Sub: Holding of DPC for promotion to the grade of office Superintendents-regarding.

In response to Board's letter F N.41015/19/2002-Ad.VII(Pt.II) dated 7th March, 2005 vide which instructions were issued for holding DPC Meetings to fill up vacancies by promotion to the various cadres, various representations have been received with regard to interpretation of DOMS instructions dated 4th June, 2001 (amended vide letter dated 19th July, 2001) as applicable to the grade of Office Superintendents for the year 2001-2001.

2. In this regard, I am directed to say that the Board's letter F. No.A-11013/3/93-AdVII dated 24th October, 2000 had circulated revised number of posts at different levels in the Income tax Department on account of restructuring vide Annexure-'A'. In the said Annexure, it had been clarified that on restructuring, the posts namely Head Clerk and DEO Gr.C had been re-designated as Senior Tax Assistants. The DOMS's instructions in respect of Office Superintendents applicable for the year 2001-2002 under category 'A' thus stands clarified.

3. Accordingly, the Senior Tax Assistants with at least two years service would be available in the recruitment year 2004-05 for promotion to the grade of Office Superintendents.

4. The instructions under category 'C' of DOMS's instructions would not be applicable after the recruitment year 2001-02 as the pre-restructuring cadres of Tax Assistants and DEO Grade-B had already been taken care of in the recruitment instructions of Senior Tax Assistant.

5. Henceforth, all promotions to the grade of OS shall be made in accordance with the draft Recruitment Rules as approved by DOP&T. According to these draft Recruitment Rules, the post of Office Superintendent is a

Group B non-Gazetted, Ministerial Selection post and promotion to this grade can be made from the grade of Senior Tax Assistants who have put in three years regular service in the grade.

6. The draft Recruitment Rules further provide that if a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation.

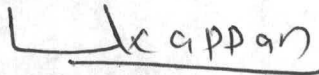
7. Promotion to the post of Office superintendents may now be affected as per instructions above.

This issues with the approval of Chairman, CBDT."

2. The grievance of the Applicants is that they have been promoted to the post of Office Superintendent in term of the instruction under Annexure-2 and for no fault of theirs, after continuing in the said post for a long time, the Respondent No.3 is taking step in view of the above instructions to review the promotion of the Applicants to the grade of OS. Respondents by filing counter opposed the stand of the Applicants on various grounds which need no elaboration as we find that the Applicants have approached this Tribunal challenging the letter dated 8th December, 2005. This is a letter sent by Headquarters to all Chief Commissioners of Income Tax not to the Applicants. It is for the Chief Commissioner to decide what should be the further course of action to be taken in the matter and thereafter, the Applicants may have a cause of action to agitate that too only after availing other remedies available under the Rules. As per provisions of the A.T. Act, 1985 no application in apprehension of a cause of action is entertainable. Further it is seen that the Applicants have approached this Tribunal straightaway challenging the correspondence made between the Headquarters and Chief

Commissioners of Income Tax without exhausting the departmental remedies available to them.

3. In view of the above, we are constrained to hold that these OAs are bound to fail for being premature. Hence, these three OAs stand dismissed. No costs.


(JUSTICE K.THANKAPPAN)
MEMBER (JUDICIAL)


(C.R.MOHAPATRA)
MEMBER (ADMN.)

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