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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH:CUTTACK

ORIGINAL APPLICATION NO.1089 OF 2002
Cuttack this the 16th day of December 2004

Ananga Kumar Mandal ... Applicant(s)

- VERSUS -

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

FOR INSTRUCTIONS

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

Yours
16/12/04
(M.R. MOHANTY)
MEMBER (JUDICIAL)

S. N. S.
(S.N. S.)
VICE-CHAIRMAN

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

Ananga Kumar Mandal, 53 years,
Son of late Kinu Mandal, Qr.No.III/2 Block-A(new)
CR Colony, Bhubaneswar - at present serving as
Inspector, Central Excise and Customs, in the
Office of Commissioner of Central Excise and
Customs, Bhubaneswar-1 Commissionerate

By the Advocates ... Applicant
M/s .A.K.Misra
J.Sengupta
D.K.Panda
PRJ Dash
G. Sinha

— VERSUS —

1. Union of India represented through Secretary to Govt. of India, Ministry of Finance, Department of Revenue, New Delhi
2. Commissioner of Central Excise and Customs, Bhubaneswar-II Commissionerate, Bhubaneswar
3. Commissioner of Central Excise and Customs, Bhubaneswar-I Commissionerate, Bhubaneswar

... Respondents

By the Advocates

Mr. A. K. Bose
Mr. S. B. Jana

I - R - D - E - R

MR .B.N.SOM, VICE CHAIRMAN: In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, applicant, Shri Ananga Kumar Mandal has challenged the inaction of the Respondents in regularising his service in the cadre of Inspector, in which he is officiating for a pretty long time, although officials junior to him have been promoted on regular basis. He has, therefore, alleged that he has been treated discriminatively by the Respondents.

2. The facts of the case according to the applicant are that while working as Tax Assistant (in short T.A.), he was promoted as Inspector of Central Excise & Customs with effect from 29.7.1994 on ad hoc basis. The applicant belongs to the reserved community (S.C.). However, the Respondents published a gradation list of T.A. on 4.1.2000 wherein his name was shown erroneously below one Shri P.K. Mohapatra, who was junior to him. Further, that a D.P.C. was held in 2002 and by their order dated 20.12.2002, the Respondents promoted 66 UDCs/TAs/Stenos, Gr.II/III of the Department to the grade of Inspector on regular basis, but his name was not included in that list although officials junior to him were promoted. Being aggrieved, the applicant has approached this Tribunal seeking a direction to be issued to Respondents to regularise his service as Inspector of Central Excise and Customs with effect from 24.6./29.7.1994 and to pay him the consequential benefits.

3. The Respondents have opposed the prayer of the applicant by filing a detailed counter. While they have admitted that the officials junior to the applicant had been promoted to the grade of Inspector, the Respondents, in support of their stand, have adduced the following reasons for the non-selection of the applicant.

Firstly, that he could not be regularised due to non-availability of regular post during the material period. Secondly, that when the D.P.C. meeting took place in November, 2002, the applicant became overaged on the crucial date/consideration, i.e., 1.1.2002. Lastly, that the applicant was promoted to the grade of Inspector in

1994 purely on ad hoc basis subject to the condition that the said promotion/appointment would not confer on him any right to claim regular appointment to the said grade.

Refuting the allegation of the applicant that he has been discriminated against, the Respondents have submitted that it is on account of becoming over-aged for the post, his case could not be considered for regularisation. With these submissions, the Respondents have prayed for dismissal of this O.A. being devoid of merit.

4. We have heard the learned counsel for the parties and perused the records placed before us.

5. The issues to be answered in this O.A. are two folds. Firstly, whether the applicant having officiated in the grade of Inspector with effect from June/July, 1994, his officiating service should have been counted for the purpose of regular promotion to the grade of Inspector when his juniors have been promoted to that grade. The other issue as raised by the Respondents is that promotion to the grade of Inspector of Central Excise and Customs is dependent on a candidate's fulfilling the conditions laid down in the Recruitment Rules. The question to be answered whether on the date the D.P.C. took place, the applicant was eligible for being considered for promotion to the grade of Inspector in terms of Recruitment Rules.

6. With regard to the first issue, we find that the applicant was appointed to the grade of Inspector purely on ad hoc basis against Cost Recovery vacancies in the time scale of Rs.1640-2900/- vide order dated 29.6.1994 (Annexure-1). We would like to point out here

that whether the post of Inspector of Cost Recovery constitutes a part of regular cadre of Inspector of Central Excise & Customs has been answered by us in O.A.No.497/98. While disposing of that O.A. vide our order dated 30.3.2004, we had held that the post of Inspector of Cost Recovery constituted ex cadre appointment and therefore, no benefit of service as Cost Recovery Inspector could be legally claimed for regular appointment as Inspector of Central Excise & Customs. We had also observed therein that because of lack of clarity in notifying the vacancies of Cost Recovery Inspectors the Respondents had landed themselves in controversy and we had gone in details to point out the lacuna in the text of the appointment order for Cost Recovery Inspectors. We had, therefore, called upon the Res. No.1 to take necessary remedial action to steer clear of all the controversies raised in this regard. Our observations in that O.A. also answered the issue as raised by the applicant in this O.A. In short, the service rendered as Cost Recovery Inspector does not make an incumbent eligible for the purpose of determining his eligibility for regular promotion to the grade of Inspector of Central Excise & Customs.

With regard to the second issue, it has been brought to our notice that no age limit had been specified for promotion quota. However, it was provided in the Recruitment Rules of 1979 by a note below the recruitment rules that a candidate would be required to possess such physical standard and pass such written test and physical test and conform to such age limit as may be specified by the Central Board of Excise & Customs from time to time. Thereafter, by issuing

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executive instructions, the Board had set that for consideration for promotion to the grade of Inspector the maximum age limit of 38 years is relaxable to 40 years. It was also provided that such of the officials ^{as} ~~who~~ were not considered for such promotion upto the age 38/40 years would be granted the benefit of relaxation in age limit upto 45 years in order to give a fair opportunity for career progression to all concerned. These instructions were further amended by order dated 29.11.2002 wherein the maximum age of eligibility was fixed as 45 years, which could be relaxable to 47 years in case of reserved category candidates. It was further provided therein that those of the officials who were not considered for such promotion upto the age of 45 or 47 years, as the case may be, shall be granted the benefit of relaxation in age upto 50 years. It has been submitted by the Respondents and not rebutted by the applicant that when the D.P.C. took place in November, 2002, the applicant was already above 52 years of age and therefore, did not fulfil the eligibility condition as notified in the Recruitment Rules for the post of Inspector. In the circumstances, our answer to the issue (2nd issue) as raised by the Respondents is that the applicant having become overage in terms of the recruitment rules could not have been considered for promotion to the grade of Inspector. The above decision of the Respondents is supported by the decision of the Hon'ble Supreme Court in R.Pravabati Devi case (reported in AIR 1988 SC 90).

7. Having regard to the facts and the position of

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law in the matter of promotion of Tax Assistant to the grade of Inspector of Central Excise and Customs, we are of the considered view that the applicant has not been able to make out a case for any of the reliefs prayed for by him. In the circumstances, the O.A. fails. No costs.

M.R. Mohanty
(M.R. MOHANTY)
MEMBER (JUDICIAL)

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

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