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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.No.175 of 2007
Cuttack, this the 13th August, 2010

Gangadhar Rout Applicant
-Versus-
Union of India & Others Respondents

FOR INSTRUCTIONS

1. WHETHER it be sent to reporters or not?
2. WHETHER it be circulated to all the Benches of the Tribunal or not?


(G. Shanthappa)
Member (Judicial)


(C.R. Mohapatra)
Member (Admn.)

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C O R A M
THE HON'BLE MR.G.SHANTHAPPA, MEMBER (J)
A N D
THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Gangadhar Rout, aged about 56 years, Son of Late Dhabali Rout, At-M-27, B.D.A. Colony, Khurda, PS/Dist. Khurda, at present working as Inspector of Income Tax in the office of the I.T.O, Dhenkanal Ward-I, At-Kunjakanta, Dist. Dhenkanal

.....Applicant

Legal practitioner: Mr.B.B.Mohanty, Counsel

-Versus-

1. Union of India represented through the Secretary to Government of India, Department of Revenue, North Block, New Delhi-110 001.
2. Chairman, Central Board of Direct Taxes, North Block, New Delhi-110 001.
3. Director General of Income Tax (Administration), E-2, Jhandewalan Extension, Chaunaught Circus, New Delhi-110 0055.
4. Secretary, Ministry of Personnel, Grievance & Pension, Department of Personnel & Training, Government of India, North Block, New Delhi-110 001.
5. Chief Commissioner of Income Tax, Ayakar Bhawan, Rajaswa Vihar, Vani Vihar, Bhubaneswar-9.
6. Pitamber Lenka, Inspector of Income Tax, Office of the Assistant Director of Income Tax, Arunodoya Nagar, Link Road, Cuttack-12.

By legal practitioner: Mr.U.B.Mohapatra, SSC

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A)

The background of this case is that for filling up of existing as well as anticipatory vacancies of the Recruitment Year 2007-08, in the grade of Income Tax Officer for 10 posts, list of names of the persons who were to be considered was published by the Respondents for being placed in the DPC scheduled to be held 3rd week of May 2007. As the name of the Applicant did not figure in the said list, by making representation while seeking insertion of his name in the said list of eligible officers for consideration in the ensuing DPC, he also prayed for deletion of the names of the officers as they were ineligible for being considered in the said DPC. He also prayed in the said

representation that pending consideration of his representation, the proposed DPC should not be held. No reply having been received on the said representation and on the other hand departmental action to hold the DPC he has approached this Tribunal in the present Original Application seeking the following relief.

- “(i) The Original Application may be allowed;
- (ii) The respondents more particularly Respondent No.2&5 be directed to consider and dispose of the representation of the applicant and necessary direction may be issued directing the Respondent No.5 to consider only candidatures who had acquired the eligibility by the crucial date of 1.1.07 in the zone of consideration for the post of Income Tax Officer in the DPC of 2007 taking into account the judgment of the Hon’ble Apx Court referred (surpa) and to DOPT instruction dated 8.9.1998 and promote the Applicant along with others with all service and financial benefits.
- (iii) And pass such other order(s) may be issued in giving complete relief to the applicant.”

As an ad interim measure he prayed the following relief:

- (i) During pendency of the OA, the Respondents more particularly the Respondent No.5 may be directed not to hold any DPC to the grade of Income Tax Officer for the year 2007-08.
- (ii) Pendency of the Original Application may not stand as a bar before the Respondents to cure the wrong committed by them. “

This Tribunal, in order dated 17th May, 2007 while directing notice to the Respondents to file their reply, as an ad interim measure directed as under:

“Before concluding we add, in view of the DPC meeting pointed out by the applicant’s counsel, any proceeding or step taken by the Respondents shall be subject to the result of the MA and OA aforesaid which shall also be indicated in the appointment order, if any, might be issued.”

In the counter filed by the Respondents [duly verified by one Shri Sishir Kumar Das, Income Tax Officer (Hqrs, Admn.) in the office of the Chief Commissioner of Income Tax, Bhubaneswar) it has been stated as under:

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“2) That the statements made in para 4.1 to para 4.4 of the Original Application are facts and need no reply. With regard to the statements made in para 4.5 of the Original Application it is respectfully submitted that as per direction/instruction of the competent authority no DPC could be held of the post of Income Tax Officer grade in between the period of examination and declaration of result. In this regard the letter issued by the Board from F.No.C-18012/72/2007 V&L dated 22.11.2007 and letter No.32013/03/2000-AD-VI dated 18.7.00 are relevant and copies thereof are annexed herewith as Annexures-R/1 and R/2 respectively for better appreciation. As averred in the Original Application, the result of the examination 2006 was declared on 16.7.2007. Therefore the seven persons referred to in this paragraph who are admittedly senior to the applicant having qualified the examination held in the month of October, 2006 become eligible for consideration before the DPC.

3) That the statement made in para 4.6. are not correct inasmuch as the fact that applicant could not have questioned the eligibility/legality or otherwise of such persons without making them party (except Respondent No.6) in the Original Application.

4) That the statements made in para 4.7 are facts and need no reply. The statements made in para 4.8 are not correct inasmuch as the fact that applicant chose not to challenge Annexure-A/5 even though he had the complete knowledge of same. Essentially the letter dated 18.7.00 directs to convene the DPC after declaration of result. Accordingly, the DPC was held and the persons legible were considered. It is not disputed by the applicant that those persons considered were senior to the applicant. **As per instruction issued by DIT (Income Tax & Audit), New Delhi in F.No.DI/2/Instructon/92/IIT/5324 dated 18.11.96, a copy of which is enclosed herewith as Annexure-R/3 for better appreciation, the date of passing the examination is to be taken as the date on which the last paper of the examination was held and not the date of declaration of the result. Therefore, after declaration of result, persons qualifying the same were considered eligible as on 01.01.2007 by the DPC for the Recruitment year 2007-2008.**

5) That with regard to the statements made in para 4.9 and 4.10 of the Original Application, it is respectfully submitted that there is absolutely no irregularity in convening the DPC as averred by the applicant. As submitted earlier, applicant with complete knowledge chose not to challenge the instruction in this regard. **Since the instructions are issued by**

the Board, the respondents are duty bound to implement the same. It is humbly submitted that the decision of the Hon'ble Apex Court as relied upon by the applicant, were clearly on different facts and circumstances. The representation of the applicant has been forwarded to the Board since Board is the competent authority in this regard."

2. We have heard Mr.B.B.Mohanty, Learned Counsel for the Applicant and Mr.U.B.Mohapatra, Learned Senior Standing Counsel appearing for the Respondents and perused the materials placed on record. As per Rules /instruction Inspectors of Income Tax are considered ~~for~~ promotion to Income Tax Officer Group B provided that they have passed the Departmental Examination prescribed for Income Tax Officers and put in service as Inspector for at least three years and are otherwise approved for promotion. The crucial date of acquiring eligibility as 1st January, of the year of vacancy is not in dispute. It is also not in dispute that the result of the examination for acquiring the eligibility criteria of the seven persons who were considered and promoted to ITO against the vacancies of the year 2007-2008 is not in dispute. Similarly it is not in dispute that the Applicant has acquired the eligibility criteria as on the crucial date. But it was contended by Mr. Mohapatra, Learned SSC that as per instruction issued by DIT (Income Tax & Audit), New Delhi in F.No.DI/2/Instructon/92/IIT/5324 dated 18.11.96, (Annexure-R/3) providing therein the date of passing the examination is to be taken as the date on which the last paper of the examination was held and not the date of declaration of the result and the CCIT, Bhubaneswar is duty bound to implement the same, persons qualifying the same were considered eligible as on 01.01.2007 by the DPC for the Recruitment year 2007-2008. Further it was contended by Mr. Mohapatra, Learned SSC appearing for the Respondents that leaving aside the merit of the matter this Original Application is liable to be dismissed for non-joinder/mis-joinder of necessary

party i.e. the persons who were selected and promoted on the recommendation of the DPC have not been made as Respondents. Accordingly, Respondent's counsel vehemently opposed the contention of the applicant and has prayed for dismissal of this OA. On the other hand Mr. Mohanty, Learned Counsel by placing reliance on a decision of the Hon'ble High Court of Orissa rendered in the case of Union of India and Others -v- Kishore Chandra Mohanty and others, 2009(I) OLR 262 submitted that the Respondents cannot maintain two stands on the same issue i.e. one before this Tribunal and the other before the Hon'ble High Court of Orissa. By drawing our attention to the aforesaid case of Mr. K.C. Mohanty (surpa) it was contended by Mr. Mohanty, Learned Counsel for the Applicant that the Union of India/CBDT challenged the order of this Tribunal passed in Kishore Ch. Mohanty's case before the Hon'ble High Court of Orissa. The ground of challenge was that the instruction of the CBDT dated 18.11.96 [providing therein that the date of passing the examination is to be taken as the date on which the last paper of the examination was held and not the date of declaration of the result] based on which the Tribunal granted the relief to the applicant was contrary to the law laid down by the Hon'ble Apex Court in the case of Union of India -v- Ajaya Kumar Das and on the basis of the submission made by the CBDT/UOI before the Hon'ble High Court of Orissa and by applying the law laid down by the Hon'ble Apex Court in the case of Ajaya Ku. Das(surpa), the Hon'ble High Court of Orissa reversed the order of this Tribunal. Hence it was argued by learned counsel for the Applicant that in view of the law laid down by the Hon'ble High Court, the applicant is entitled to the relief claimed in this OA. In regard to the non-joinder/misjoinder of the necessary party of the officers who were considered and promoted meanwhile, it was stated by the Learned Counsel for the Applicant that in view of the interim order of this Tribunal

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there was no necessity to make those who were promoted meanwhile as party to this OA. Accordingly, Learned Counsel for the Applicant insisted for allowing this OA.

3. We have carefully considered the rival submission of the parties with reference to the pleadings made and materials placed in support thereof. We have also gone through the decision relied on by the Learned counsel for the Applicant. Relevant portion of the order of the Hon'ble High Court of Orissa in the case of K.C. Mohanty (supra) is quoted herein below:

"In this case admittedly, the departmental examination was conducted in June/July, 1995 whereas the results were published in February, 1996. Admittedly also five posts of ITO Group B had been sanctioned for the State of Orissa and the Departmental Promotion Committee was convened on 13.10.1995, i.e. after the examination was conducted and before the results were published. The guidelines clearly lay down that in order to be considered for promotion to the post of ITO, Group B an Income Tax Inspector must have served as such for a period of three years and must have cleared the departmental examination. The applicant -Kishore Chandra Mohanty himself admits in the Original Application that though he had completed three years of service as an Income Tax Inspector by the time the DPC was convened, he had not cleared the departmental examination and the results were awaiting. Therefore, in terms of the guidelines regulating promotion of Income Tax Inspectors to the post of ITO, Group B, the applicant -Kishore Chandra Mohanty was not eligible to be considered for promotion on the date i.e. 13.10.1995 when the DPC was convened.

.....
XXXX. A person who acquires the prescribed qualification subsequently to such prescribed date cannot be considered at all. The learned counsel Shri Rath appearing for Shri Kishore Chandra Mohanty in his notes of submission has also referred to some other decisions relating to the practice adopted by the Department earlier but we are of the view that such decisions have no application in the present case considering the fact that the ratio laid down by the Supreme Court in the case of Ajaya Kumar Das still holds good and therefore, the applicant- Kishore Chandra Mohanty not being eligible for consideration on the date the DPC was convened was not rightly considered for promotion and his prayer for promotion by holding a review DPC with retrospective effect from the date the last paper of the departmental examination was conducted could not have been allowed by the Tribunal.

We in view of the reasons stated above, allowed both the writ applications and set aside the impugned judgment of

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the Tribunal. All consequential orders passed in pursuance of the judgment of the Tribunal impugned before this Curt shall also stand automatically recalled."

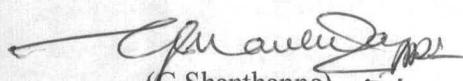
4. In view of the aforesaid decision of the Hon'ble High Court and in view of the interim order granted by this Tribunal dated 17th May, 2007 we do not find any force in the grounds taken by the Respondents in their counter and submission made by Mr. Mohapatra, Learned SSC and the stand taken in the counter. In view of the aforesaid order, the Respondent No.2 ought to have reviewed all such cases wherein promotion has been made following the principle set out in instruction dated 18.11.96. Having not done so, the Respondent No.2 [Chairman, Central Board of Direct Taxes, New Delhi) is hereby directed to review all the promotions made to the ITO on the basis of the instruction dated 18.11.1996 and consider the pending representation of the applicant and grant him the consequential relief keeping in view the decision of the Hon'ble High Court of Orissa in the case of Kishore Ch. Mohanty (surpa). All exercise shall be completed within a period of sixty days from the date of receipt of copy of this order.

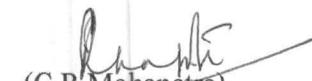
5. Before parting with this matter, we would like to observe that on the one hand the CBDT/UOI virtually challenged its own instructions issued on 18.11.1996 in the writ petition filed before the Hon'ble High Court of Orissa in the case of Kishore Ch. Mohanty (supra) in the year 2003 and on the other hand by filing counter in this case much after the decision in the Writ Petition the stand that the CCIT is duty bound to follow the instruction issued by CBDT vide No. F.No.DI/2/Instructon/92/IIT/5324 dated 18.11.96 envisaging the date of passing the examination to be taken as the date on which the last paper of the examination was held and not the date of declaration of the result deserves depreciation for being mischievously

inconsistent. As such, we hope the Respondent No.2 shall also consider this aspect of the matter while implementing our direction given above.

6. In the result, this OA stands allowed to the extent indicated above. There shall be no order as to costs.

7. Registry to send a copy of this order to the Respondent No.2 by post for compliance.


(G. Shanthappa)
Member (Judl.)


(C.R. Mohapatra)
Member (Admn.)