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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

OA No.436 of 2007

Cuttack this the 29th day of July, 2012

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

AND

THE HON'BLE MR.A.K.PATNAIK, MEMBER(J)

.....

1. Laxmi Narayan Mohapatra, aged about 54 years, Son of Late M.Mohapatra at present working as Superintendent, O/O. Chief Commissioner, Central Excise and Customs, Orissa, Bhubaneswar, Dist.Khurda.
2. Chitta Ranjan Sastry, aged about 53 years, S/o.Late Rajanikanta Sastry at present working as Superintendent D.G.C.E.I, Rourkela.
3. Tapan Kumar Naik, aged about 50 years, S/o.Late Ramakanta Naik, at present working as Superintendent, O/o the Commissioner-I, Central Excise Customs, Bhubaneswar, Dist.Khurda.
4. Gouranga Charan Rout, aged bout 54 years, S/o. Padma Charan Roul at present working as Superintendent, O/o. the Commissioner-I, Central Excise & Customs, Bhubaneswar, Dist.Khurda.
5. Harihar Kandhua, aged about 56 years, S/o.N.M.Kandhua at present working as Superintendent Office of the Commissioner-I, Central Excise and Customs, Orissa, Bhubaneswar, Dist.Khurda.
6. Lokanath Mishra, aged about 51 years, S/o.Late Babaji Mishra, at present working as Superintendent Central Excise and Customs, Bhubaneswar-I Commissionerate, Dist.Khurda.
7. Rabindra Kumar Dash, aged about 56 years, S/o.Late Ghana Shayama Dash at present working as Assistant Commissioner, Central Excise and Customs, Kolkata.

8. Baruna Kumar Ghosh, aged about 58 years, S/o.Late Amal Kanti Ghosh at present working as Superintendent, O/o. the Commissioner-II, Kuarkunda Range, Rourkela.
9. Rabindra Nath Ghosh, aged about 54 years, Son of Late S.N.Ghosh, at present working as Superintendent, Central Excise and Customs, Cuttack Division, Cuttack.
10. Rama Shankar Patnaik, aged about 55 years, S/o.Lte Jagabandhu Patnaik at present working as Asst. Commissioner, Central Excise and Customs, Kolkata.

.....Applicants.

By legal practitioner - Mr.G.A.R.Dora,
Senior Counsel
M/s.A.K.Bose, P.K.Das,
D.K.Mallick, Counsel.

-Versus-

1. Union of India represented through the Secretary, Ministry of Finance, Department of Revenue, New Delhi-1.
2. Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, Government of India represented through its Secretary, Jeevan Deep Building, Parliament Street, New Delhi-110 001.
3. Commissioner, Central Excise and Customs, Bhubaneswar-II Rajaswa Vihar, Bhubaneswar-7, Dist. Khurda.
4. Joint Commissioner (P&V), Central Excise and Customs, Bhubaneswar-II, Rajaswa Vihar, Bhubaneswar-7, Dist. Khurda.
5. Secretary to Govt. of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi-1.
6. Commissioner, Central Excise & Customs, & Service Tax, Bhubaneswar-I Commissionerate Bhubaneswar, Dist. Khurda.
7. Chief Commissioner, Central Excise and Customs and Service Tax, Bhubaneswar Zone, C.R.Building Bhubaneswar, Dist. Khurda, Pin 751 007.

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8. Shri Chandra Kanta Dalai, aged about 52 years, S/o. Kanhu Dalai at present working as Superintendent Central Excise and Customs House, At/Po. Paradeep Dist. Jagatsinghpur, Orissa.

....Respondents

By legal practitioner –Mr. S.B.Jena, ASC
M/s.S.K.Pattnaik,
U.C.Mohanty,
P.K.Pattnaik,
D.Pattnaik,
S.Pattnaik,
T.Kamila,
Counsel.

ORDER

C.R.MOHAPATRA, MEMBER (A):

9 (Nine) Applicants, who are working as Superintendent in the Central Excise and Customs have filed the instant Original Application seeking the following reliefs:

- “(a) The Original Application may be heard on merits and the same may be heard if necessary by referring the matter to a larger bench and appropriate order be passed to review/set-aside the judgment dated 11.8.2000 passed in OA No. 58 of 1991;
- (b) That Applicants be declared senior to the respondent No.8 Shri Chandrakanta Dalai in the cadre of Inspector (OG) and Inspector (SG) and the seniority list published by the departmental respondents as on 1.1.1990 annexed as Annexure-A/5 to the OA may be declared legal and valid in the eye of law;
- (c) The order dated 27.11.2007 passed by the Chief Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar Zone under Annexure-A/8 so far as it directs to keep the respondent No.8 above Shri Rabindra Kumar Das at Sl.No.22 in the seniority list of Inspectors as on 1.1.1986 be quashed and any further action in pursuance to the above order be also declared as illegal and invalid in the eye of law;
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- (d) Any other appropriate order be passed or direction be made which deems just and proper and this OA be allowed with cost."

2. This Tribunal, while issuing notice to the Respondents, by order dated 27th November, 2007 granted ad interim order to the extent that ".... the DPC may take place the results thereof shall not be declared without the leave of the Tribunal". While the matter stood thus, the Division Bench of this Tribunal vide order dated 28.05.2009 referred the matter to the Larger Bench for decision on the following points:

- (i) Whether order dated 27.11.07 passed by the Respondent- Department in pursuance of the order of this Tribunal in OA 58/91, which runs contrary to the directions issued by this Tribunal in OA Nos.62-71/87 and confirmed by the Hon'ble Supreme Court shall hold good?
- (ii) Whether the order passed in OA 58/91 can be reviewed and/or not set aside by this Tribunal in the light of the earlier orders passed in OA Nos.62-71/87 ?
- (iii) Whether Resp.No.11 herein, who was Respondent 8 in OA Nos.62-71/87, having not challenged the legality or validity of the decision of this Tribunal could maintain an OA before this Tribunal questioning the order issued by the official Respondents in compliance with the direction of this Tribunal, as confirmed by the Hon'ble Supreme Court?
- (iv) Whether OA 58/91 filed by Respondent 11 of this OA without impleading the applicants herein as private Respondents over whom he was claiming seniority was bad for non joinder of necessary party and maintainable and the order passed by this Tribunal herein is binding on the applicants."

3. As against the ad interim order, WP(C) No. 9698/09 was filed before the Hon'ble High Court of Orissa and meanwhile on 03-04-2012, the same was disposed of which is quoted herein below:

"Heard learned counsel for the petitioner.

The petitioner has come up before this Court against the interim order dated 27.11.2007 passed in OA No. 436 of 2007 by the Central Administrative Tribunal, Cuttack Bench, Cuttack directing that the DPC may take place the result thereof shall not be declared without the leave of the Tribunal. Now it is stated that the matter has been referred to the larger Bench of the Tribunal.

Considering the submissions made, we dispose of the writ petition directing the Tribunal to constitute a larger Bench and dispose of the matter within a period of two months from the date of communication of this order. The result of the DPC to be published shall be subject to the final result of the Original Application. The interim order dated 24.7.20009 stands vacated.

Issue urgent certified copy as per rules."

4. Accordingly, the matter was heard by the Larger Bench on 17.05.2012 (in which both of us are parties), who after considering all aspects of the matter held as under:

"28. In view of above facts, with due respect to the Hon'ble High Court and all the humility at our command, we hold that Tribunal cannot review the order dated 11.8.2000 as that has been upheld upto Hon'ble Supreme Court nor can we interfere within the order dated 27.11.2007 as that had been passed by the respondents in compliance with the direction of Hon'ble High Court.

29. It is also relevant to note that while referring to the Full Bench, Division Bench has to give reasons why they disagree with the earlier judgment

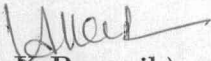
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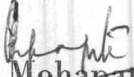
whereas in the instant case, no such finding was recorded by the Division Bench, therefore, technically speaking there is merit in the objection raised by the counsel for the private respondents that experience itself is not as per law. In any case for reasons given above, we have already held, Tribunal cannot interfere in the matter nor can review the 2nd judgment. The matter is accordingly remitted to the Division Bench for passing appropriate orders."

5. Accordingly, this matter has been placed before the DB. Heard the parties and perused the records. On 10.7.2012, Mr. Bose, Learned Counsel for the Applicants filed an affidavit in court after giving copy to other sides and submitted that the relief sought in paragraph 8 ('c') of the OA has not been given consideration/answered by the Larger Bench and, thus, the Division Bench of this Tribunal is required to answer/consider the same.

6. After giving our thoughtful consideration to the submission made above, we have minutely gone through the order of the Larger Bench vis-à-vis the pleadings and materials produced in support thereof by the respective parties. It is not correct that the Larger Bench decision is without meeting/answering the relief sought in paragraph 8 'c' of the OA. We find that this part of the prayer was well considered by the Larger Bench as would be evident from its order dated 18-06-2012. We concur with the decision taken by the Larger Bench and in view of the observations

made in paragraph 28 of the order, we are not inclined to reopen the matter with a piecemeal approach. This OA is accordingly dismissed. There shall be no order as to costs.


(A.K. Patnaik)
Member (Judicial)


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