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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

D.A.NO. 482 of 2007
Cuttack, this the 13th day of August, 2008

Mr. Subrata Roy Applicant
Versus
Union of India & Ors. Respondents

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

(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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

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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)

Mr.Subrata Roy, aged about 59 years, Son of Late Bimal Chandra Roy, F/6, Civil Township, Rourkela at present working as the Income Tax Officer, Ward-1, Rourkela in the district of Sundergarh.
..... Applicant

By legal practitioner: M/s. B.Panda, D.K.Das, S.C.Barik, Bijay Panda,
Counsel.
-Versus-

1. Union of India represented by the Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001.
2. The Central Board of Direct Taxes, Department of Revenue represented by the Chairman, North Block, New Delhi-110 001.
3. The Union Public Service Commission represented through its Secretary Dholpur House, Saahjahan Road, New Delhi-110 001.
4. The Chief Commissioner of Income Tax, Orissa Region, Central Revenue Building, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 004, Dist. Khurda.
5. Shri Manoranjan Rath, S/o. Balaran Rath working as ITO (Technical), Office of the Chief Income Tax Commissioner, Bhubaneswar.

.....Respondents

By legal practitioner: Mr. S.B.Jena, ASC.

M/s.J.M.Pattnaik, S.Mishra, C.Panigrahi,
A.P.Mishra, Counsel for intervener.

ORDER

MR. C.R.MOHAPATRA, MEMBER(ADMN.):

The Applicant is an Income Tax Officer. He is aggrieved by the action of the department pushing down his seniority from 1995 to 2001 consequent to the implementation of the direction of this Tribunal dated 9th August, 2002 in Original Application No. 542 of 1995 filed by Shri Kishore Chandra Mohanty, an employee of the Income Tax Department. According to the Applicant, this Tribunal based its conclusion in the case of Kishore Chandra Mohanty (supra) on the strength of the decision dated 28.03.2001, of the Hon'ble High Court of Orissa rendered in OJC No.1595 of 1999 filed by Shri Ajay Kumar Das, an Audit Officer, office of the Accountant General, Orissa holding as under:

"We are, accordingly, of the view that the Petitioner's qualification shall relate back to the date of examination. In the present case, Petitioner has completed five years from 16.11.1989 by the time he made the application for selection to higher post. The UPSC is not

correct to cancel his candidature. The Tribunal has gone wrong in law in confirming the said illegal decision of the UPSC, DP No.2. Therefore, we quash the order of the Tribunal dated 13.01.1999 (Annexure-10) as well as letter of the UPSC dated 26.12.1996 (Annexure-9) and direct the UPSC to consider the Petitioner's application as valid. As the Petitioner has fulfilled the eligibility criteria mentioned in clause 4(l) appropriate follow up action be taken in accordance with law."

It is the case of the Applicant that the above decision of the Hon'ble High Court of Orissa has already been upset by the Hon'ble Apex Court in Civil Appeal No. 6295/01 disposed of on 10.09.2001 holding as under:

"The High Court held that the results which were declared in March, 1990 will relate back to the date of the examination in 1989. This, in our opinion is an incorrect preposition of law. There can be no question of relating back. The condition of eligibility was very clear. It had to be five years' service after qualifying as on 1st January, 1995 and in this view we are supported by a decision of this Court in Ashok Kumar Sharma and others v Chander Shekhar and Another, 1997 (4) SCC 18.

For the aforesaid reason, this appeal is allowed and the decision of the High Court is set aside."

According to the Applicant, as the decision based on which this Tribunal reached a conclusion in the Kishore Chandra Mohanty (Supra) has been upset by the Hon'ble Apex Court in Civil Appeal No. 6295/01, the seniority

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position of the Applicant ought to have been restored to 1995 instead of 2001 entitling him further consequential benefit of promotion to the post of Assistant Commissioner of Income Tax. His grievance that this fact was brought to the notice of the Chief Commissioner through representation dated 15.02.2007 but there was no response. Hence, he approached this Tribunal in the present Original Application seeking the following relief:

8. RELIEF SOUGHT FOR:

Issue of direction to the CCIT the Respondent No.4 may be made to reconsider the representation is filed seeking review of the DPC result in the light of the decisions of the Apex Court and for giving proper adjudication in the matter granting adequate opportunity without sending him and reverting back to the cadre w.e.f. 10.07.2001 because of losing seniority eligibility.

May further consider to hold the applicant to avail proper eligibility on the basis of his seniority as accrued to him from the year 1993 keeping in view the principles decided by the Apex Court.

2. By way of interim relief, the Applicant has prayed that "in case of holding of DPC during the pending of this Appeal may please be stayed." The

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matter was listed on 26.11.2007; when this Tribunal while directing notice to the Respondents to file their counter, as an ad interim measure, directed as under:

"....The applicant therefore prays for as an interim order that the Chief Commissioner, Income Tax may be directed to consider the representation stated above judiciously and arrive at a decision and communicate the same to the Applicant. This interim relief prayed for being reasonable, the same is granted. The Chief Commissioner of Income Tax is directed to consider the entire case taking into account the decision of the Apex Court in the case of Ashok Kumar Das (*sic*) vide Annexure-4 and consider review of the earlier decision in revising the seniority if need be by approaching the appropriate forum for review of order on the basis of which the seniority of the applicant was pushed down."

3. Again on 7th February, 2008 by filing MA No. 90 of 2008 Applicant has sought for ad interim direction to the Respondents not to consider the promotion of the candidates of Orissa charge or to give petitioner the scope of consideration of his candidature basing on the Apex Court's order. MA No. 90 of 2008 came up for consideration on 23rd February, 2008, when this Tribunal passed the following orders:

"3. The exact date of DPC is not known. As such, taking into account the facts of the case and

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the decision of the Hon'ble Apex Court in the case of Ajay Kumar Das relating to the date of declaration of result as the date when an individual is stated to be qualified the Departmental Examination, the Respondents are directed to consider the case of the Applicant for promotion to the post of Assistant Commissioner subject to other conditions to be fulfilled but the result of the applicant in the DPC shall be kept in a sealed cover and may be operated only after the leave of the Court or after the disposal of the case."

4. On the prayer made in MA No. 122/08 one Shri Manorajan Rath, an Income Tax Officer (Technical) has been arraigned as party Respondents vide order dated 20th February, 2008 of this Tribunal and he also filed his counter.

5. The Respondents in their counter opposed the stand of the Applicant and in support of their objection, the stand of the Respondents are as under:

- (a) The representation of the Applicant on the subject was rejected on 25.8.2005. This OA has been filed on 16th November, 2007 which is beyond the period provided under section 21 of the A.T. Act, 1985. Hence, this OA is liable to be dismissed being barred by limitation;
- (b) Inspectors who were allowed to be promoted ahead of the Applicant were all senior to the applicant in the feeder cadre and hence undue supersession of

Applicant in the matter of promotion is not a fact at all.

(c) On the recommendation of the DPC the Applicant was promoted to the post in question vide order dated 13.10.1995 for the recruitment year 1995-96 subject to the outcome of OA No. 542 of 1995 filed by Kishore Chandra Mohanty v. Union of India and others. Thereafter in compliance of the order passed by this Tribunal in the above case, review DPC for the recruitment year 1995-96 was convened and vide order dated 25.06.2003, seniority of the applicant was pushed down to 10.07.2001 instead of 13.10.1995 (Annexure-R/4);

(d) Against the order of this Tribunal in OA No. 542 of 1995 the Respondent-Department preferred writ before the Hon'ble High Court of Orissa (WP (C) No. 224/2003) which is pending;

(e) There was no irregularity in holding the DPC for the recruitment years 1993-94 and 1994-95 nor recommending for promotion to ITO;

(f) As far as holding of departmental examinations in IT department is concerned, date of passing of the examination is to be taken as the date on which the last paper of the said examination was held and not the declaration of result as clarified by the Directorate of Income Tax in Annexure-R/6;

(g) Government of India, Ministry of Finance Department of Revenue in its letter dated 18.07.2000 informed that as per the prevalent practice, the results of the departmental examinations are usually made effective from the date of conduct of the last paper. Consequent to this practice, several cases have come to the notice of this Department where some senior

Income Tax Inspectors who were initially not considered by the DPC for not having qualified the departmental examination on the date of DPC meeting, later on qualified the departmental examination retrospectively and thus became eligible to be considered by the review DPC. This has given rise to unnecessary litigation as well as administrative problems. The matter was examined by the Board in consultation with DIT (IT/DGIT (Admn.) and accordingly, in order to rule out the continued recurrence of such cases, it has been decided that no DPC for Income Tax Officer grade may be held in between the period of examination and declaration of result thereof; especially when adequate number of officers for reserved vacancies are not available (Annexure-A/7). Two advance increments are also allowed to the officials who passed the examination with effect from the last date of the examination;

- (h) The decision rendered in the case of UPSC v Ajay Kumar Das (Civil Appeal No. 6295/2001) is not applicable to the present case as it relates to Audit and Accounts Service Examination, 1995 conducted by UPSC for promotion in various Departments other than Income Tax Department;
- (i) In the year 1980 similar situation arose and before declaration of results, the DPC which was scheduled to be held on 06.07.1980 was deferred and met on 06.01.1981 i.e. after declaration of result in November, 1980. The said recommendation of the DPC was questioned by some officers in the Hon'ble High Court of Orissa in OJC No. 284/1982 questioning the delay in holding the DPC. The matter was transferred to this Tribunal and registered as T.A. No. 214/1986 (Dhiresh

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Ranjan Das and others v Union of India and others) in which this Tribunal in its order dated 27.06.1991 upheld the action of the Department. In the instant case the DPC was conducted for the recruitment year 1993-94. Even the Apex Court has stated in the case of Ashok Kumar Sharma and others v Chandra Sekhar and another, 1997 (4) SCC 18 which was relied in the case of UPSC v Ajay Kumar Das (surpa) that upturning the inter se seniority at the distance of time is not justified;

(j) Not allowing same and similar benefits to similarly situated persons was held not justified by this Tribunal in OA No.207 of 1996 disposed of on 16.11.1999.

6. By stating so, the Respondents have prayed for dismissal of this Original Application. Applicant has also filed rejoinder more or less reiterating the same stand as has been taken in the Original Application.

7. Counter and written note of submission has been filed by Intervener more or less by reiterating the same stand as taken by Respondent-Department opposing the prayer of the Applicant.

8. Heard Mr. B. Panda, Learned Counsel for the Applicant, Mr. S.B. Jena, Learned Additional Standing Counsel appearing for the Respondent-Department and Mr. J.M. Patnaik, Learned Counsel for the Intervener-Respondent and perused the materials placed on record.

9. Learned Counsel for the Applicant has submitted that there has been no delay in approaching this Tribunal. However, even if there has been delay the same should not stand as a bar for correction of glaring injustice caused to a party in the decision making process of the matter. His contention is that no opportunity was given either before this Tribunal or while implementing the order by the Respondent-Department reversing his seniority position. His basic stand is that since the judgment based on which decree was passed by this Tribunal, in the case of Kishore Ch. Mohanty (supra) is reversed by the Hon'ble Apex Court in 2001 directing that the date of declaration of result is crucial to determine the date of eligibility. In view of the above, giving seniority to the applicant with effect from 13.10.1995 ought not to have been reversed to 10.07.2001 that too without complying with the principles of natural justice. His further contention is that although the applicant represented for nullifying the miscarriage of justice caused to him, the representation of applicant was rejected without considering the facts and law in proper perspective. Accordingly, he has prayed for issuance of direction to the

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Respondents for rectification of the mistake and grant of consequential benefits to him.

10. On the other hand, by reiterating the stand taken in the Counter, reported above, Learned ASC appearing for the Respondents opposed the arguments of the Applicant and prayed for dismissal of this OA. Besides the other arguments, Learned Counsel appearing for the Intervener-Respondent has argued that reversion of the date of seniority was in compliance of the orders of this Tribunal in the case of Kishore Ch. Mohanty (Supra) which is subjudice before the Hon'ble High Court of Orissa and that, if the applicant was in any way aggrieved by the said decision, as per the decision of the Apex Court he could have challenged the said order in separate OA. Having not done so, the present Original Application is not maintainable unless and otherwise the decision made by this Tribunal in the case of Kishore Ch. Mohanty is reversed by the Hon'ble Apex Court. Accordingly, he has prayed for dismissal of this OA.

11. In the case of Kishore Chandra Mohanty (supra), this Tribunal in its order dated 09.08.2002 in OA No. 542 of 1995 directed as under:

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"10. Having heard the rival stand of the parties and, on perusal of the materials placed on record, we have given our anxious consideration to the points in issue. The judgment of the Hon'ble High Court of Orissa as rendered in the case of Ajaya Kumar Das vrs Union of India and others (supra) recognizes the date of examination to be the qualifying date (in case of success in the examination); whereas this Tribunal in DA No. 543/95 and DA No. 207/96 (supra) held the date of publication of the result in the Departmental Examination to be the qualifying dates. Since the Hon'ble High Court has been given superintendence over this Tribunal (under Article 226 and 227 of the Constitution of India), the judgment of the Hon'ble High Court shall prevail and, in the said premises, the Applicant of this case, who has been given the monetary benefits retrospectively, from the date of appearing in the Departmental Examination, ought to have been considered I the DPC and the outcome of the DPC (pertaining to the Applicant) ought to have been kept in a sealed cover till publication of his result of the Departmental Examination.

11. In the result, therefore, this Original Application is allowed with direction to the Respondent-Department to hold a Review of Departmental Promotion Committee dated 13.10.1995 (which is permissible under the Rules), and consider the case of the Applicant (and such other similarly placed Income Tax Inspectors) within a period of 90(ninety) days from the date of receipt of a copy of this order and in the event he is found suitable to grant him retrospective promotion by granting only notional financial benefits for the intervening period/till his actual promotion; which he must have received in the meantime. But in the circumstances, however, there shall be no order as to costs."

12. It appears that this Tribunal reached the above conclusion on the basis of the decisions of the Hon'ble High Court in the case of Ajay Kumar (supra) decided on 28.03.2001. The decision of this Tribunal in the case of Kishore Ch. Mohanty is dated 9th August, 2002. The decision of the Hon'ble High Court of Orissa in the case of Ajay Kumar (supra) has been reversed by the Hon'ble Apex Court in Civil Appeal No. 6295 of 2001 dated 10th September, 2001 which is much before the orders of this Tribunal in the case of Kishore Ch. Mohanty. Also it appears that neither of the parties brought to the notice of this Tribunal when the case of Kishore Ch. Mohanty was taken up and decided by this Tribunal in OA No. 542 of 1995 that the case of Ajay Kumar (supra) has already been reversed by the Hon'ble Apex Court. It is seen that the Applicant in this Original Application seeks change of his place and position in the seniority list and other consequential benefits without making the others as party who are likely to be affected in case the prayer of the applicant is allowed, in this case. Even K.C. Mohanty has not been made a party. Virtually, the Applicant seeks alteration of his date of seniority assigned based on the

orders of this Tribunal in the case of K.C.Mohanty (supra). It is noted that the decision of this Tribunal in the case of Krishore Ch. Mohanty (supra) in OA No. 542 of 1995 is under challenge by the Respondents before the Hon'ble High Court in WP (C) No. 224 of 2003, as disclosed in para 9 of the Counter.

13. Above being the position of the case, we dispose of this Original Application with observation that the principles decided by the Hon'ble Apex Court in the case of UPSC v Ajay Kumar Das and Others in Civil Appeal No. 6295 of 2001 on 10.09.2001 shall now be the determining condition for eligibility for promotion. Accordingly, the Respondents are directed to consider the case of Applicant in the light of the above and pass a reasoned order within a period of 90 days from the date of receipt of a copy of this order.

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

K. Thankappan
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

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