

98

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No. 366 of 2008
Cuttack, this the 25th day of July, 2012

B.C. Bhoi & OthersApplicants
-Versus-
UOI & OrsRespondents

O R D E R

Coram:

The Hon'ble Mr.C.R.Mohapatra, Member (Admn.)
And
The Hon'ble Mr.A.K.Patnaik, Member (Judl.)

.....
04(Four) Income Tax Officers (M/s. Baikuntha Charan

Bhoi, Arun Kumar Das, Kishore Chandra Mohanty and Manoranjan Rath) working in the Odisha Region of the Commissionerate of Income Tax have filed this Original Application raising dispute in regard to their seniority, as according to them, the Departmental Promotion Committee which met in August, 2008 for the purpose of promotion to the grade of Assistant Commissioner of Income Tax against the vacancy year of 2008-09 ignored their case for promotion. The specific relief claimed by the Applicants is as under:

- "(i) To direct the Respondents not to finalize/accept/act upon the recommendation, if any, made based on the gradation list of ITOs prepared as on 1.1.1999, as intimated by the Respondents under Annexure-A/8 for promotion to the post of ACIT;
- (ii) To direct the Respondents to hold the DPC and consider the cases of the ITOs as per the up-to-date gradation list under Annexure-A/6 for promotion to the post of ACIT;

(iii) To direct the Respondents to promote the Applicants to the post of ACIT with all consequential service and financial benefits retrospectively for the vacancy years 2008-09;

(iv) To pass any other order/orders as deemed fit and proper.”

2. The most important ground advanced by the Applicants in support of their claim is that the Departmental Promotion Committee for promotion from ITO to ACIT was held based on the old and obsolete gradation list of ITOs as on 01-01-1999 though up-to-date gradation list of ITOs at Annexures-A/4,A/5,A/6 & A/7 were available.

3. The above facts are not disputed by the Respondents either in their counter or in the clarification filed on 29th June, 2012 pursuant to the order of this Tribunal dated 20-04-2012. Relevant portion of the clarification filed by the Respondents on 29-06-2012 is extracted herein below:

“2. That as per the order dated 09.08.2002 of the Hon’ble CAT, Cuttack Bench in OA No. 542/95 in the case of Shri K.C.Mohanty Vs UOI, the seniority of four ITOs under the Orissa Charge, viz; S/Shri H.C.Bhoi, A.K.Das, K.C.Mohanty and M.R.Rath was revised upward by CCIT, Orissa vide order dated 25.6.2003. The said revision of the seniority of these ITOs was the rider that it shall be subject to the final outcome of the judgment of the High Court of Orissa in the Writ Petition filed by Department as well as by one officer Shri S.C.Mohanty, ITO, vide WP(C) No.224/2003 & OJC No. 4493/2002 respectively;

3. As the DPC for promotion to the grade of ACITs held in August, 2008 was based on the All India Seniority Lists of ITOs published in 1999 and updated from time to time with the approval of competent authority the name of these four ITOs whose seniority was revised upward subsequently on the orders of the Hon’ble Tribunal were not included in the DPC as the Appeal filed by the Department against the Hon’ble CAT order was pending in the Hon’ble High Court. On aggrieved for non-inclusion in the DPC for ACIT, these four officers filed OA No.366/2008 in the Hon’ble CAT, Cuttack Bench. In the said

Original Application, the Hon'ble Tribunal by its interim order restrained the Government from filling up four vacancies of ACIT for the vacancy year 2008-2009. It was, therefore, decided to keep four vacancies unfilled and accordingly, appointment orders in respect of the last four officers in the Panel recommended by the DPC had not been issued.

Thereafter, CCIT, Orissa informed that the Hon'ble High Court vide order dated 31.10.2008 has allowed the Appeal filed by the Department in WP (C) No 224 of 2008 whereby the orders passed by the Hon'ble CAT, Cuttack Bench had been set aside. Consequently, the CCIT, Orissa had issued an order dated 7.11.2008 withdrawing their order dated 25.6.2003 whereby the seniority of the ITOs was revised. By the said order the CCIT had restored the seniority amongst the ITOs as it was existing prior to their order dated 25.6.2003 as per the revised seniority list, these four ITOs had been pushed down in the seniority to the positions they were occupying earlier.”

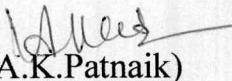
4. It is crystal clear, from the above, that the Applicants were not included in the DPC on the plea that the WP (C) No. 224 of 2008 filed by the Department against the order dated 09-08-2002 of this Tribunal in OA No. 542 of 1995 was pending before the Hon'ble High Court of Orissa.

5. Heard and perused the records. There is no doubt that when OA was filed on 22-09-2008 the seniority list of ITOs which was in existence (Annexure- A/4,A/5,A/6 & A/7) had not been taken into account by the DPC which met in August, 2008. The DPC ought to have considered the names of the ITOs based on the up-to-date gradation list wherein the names of the Applicants figured. We find that the complexion of the case has taken a dramatic turn due to the order dated 31.10.2008 of the Hon'ble High Court of Orissa in WP (C) Nos.224/2003 & OJC No. 4493/2002.. By virtue of this order, the seniority list of the ITOs which had been updated because of the order dated 09-08-2002 of this Tribunal in OA No. 542 of 1995 underwent

change and the date of promotion of the Applicants from the post of Inspector was severely affected. As such seniority position of these four Applicants in the ITO Gr.B which is the feeder grade for promotion to ACIT consequently, underwent change. Thus, the seniority list which was taken into account by the DPC in August, 2008 got eventually vindicated due to the order of the Hon'ble High Court (supra).

6. As regards various clarifications given by the CBDT, New Delhi referred to in the note of arguments submitted by the Applicants (referring to the case of Gangadhar Rout), we refrain from giving any observation on the same as the Hon'ble Apex Court's judgment in the case of Shri A.K.Das still holds the field regarding eligibility based on date of passing departmental examination.

7. In the above facts and circumstances, it would not be proper for this Tribunal to interfere in the proceeding of the DPC held in the month of August, 2008 for promotion of ITO Gr. B to ACIT and issue direction to convene the review DPC at this point of time. Accordingly, this OA stands disposed of. Parties to bear their own costs.


 (A.K. Patnaik)
 Member (Judicial)


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