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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

O.A.No. 622 of 2010

Cuttack, this the *04th* day of November, 2011

A.K.Rout & Ors

.... Applicants

-v-

Union of India & Others

.... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *yes*
2. Whether it be circulated to Principal Bench,  
Central Administrative Tribunal or not? *yes*.

*lsl*  
(A.K.PATNAIK)  
Member(Judl.)

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(C.R.MOHAPATRA)  
Member (Admn.)

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**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK**

O.A.No.622 of 2010

Cuttack, this the 04th<sup>day</sup> of November, 2011

C O R A M:

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

A N D

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

.....

1. Shri Akshaya Kumar Rout, aged about 42 years, Son of Hadibandhu Rout, Superintendent of Central Excise and Customs and Service Tax, Bhubaneswar-II.
2. Shri Manoj Kumar Rout, aged about 42 years, Son of Sridhar Rout, At-Mutunia, Post. Bhandisahi, PS Kakatpur, Dist. Puri working as Superintendent of Central Excise, Customs and Service Tax, Bhubaneswar-I.
3. Shri Debi Prasanna Das, aged about 42 years, Son of Shri Bimal Prasanna Das, N-3/60, IRC Village, Bhubaneswar, working as Superintendent, Central Excise Customs and Service Tax, Bhubaneswar-I.
4. Shri Brundaban Rath, aged about 43 years, Son of Balbhadra Rath, 1102 Dak Bangala Old Town, Bhubaneswar-20, Dist. Khurda Orissa working as Superintendent, Central Excise Customs and Service Tax, Bhubanswar-I.
5. Shri Subash Chandra Mohanty, aged about 44 years, Son of Loknath Mohanty, At/Po.Oranda, Via-Athagarh, working as Superintendent, Central Excise, Customs and Service Tax, Bhubaneswar-II.

.....Applicants

Legal practitioner :Mr.G.Rath, Sr. Counsel

And

Mr.D.K.Mohanty, Counsel.

- Versus -

1. Union of India represented through Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, North Block, New Delhi-110 001.
  2. The Secretary to Government of India, Department of Revenue, Ministry of Finance, North Block, New Delhi-110 001.
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4. The Chief Commissioner, Central Excise and Customs, Bhubaneswar Zone, C.R.Building, Rajaswa Vihar, Bhubaneswar-751 007.
4. Commissioner, Bhubaneswar-I Commissionerate, Central Excise and Customs and Service Tax, C.R.Building, Rajaswa Vihar, Bhubaneswar-751 007.
5. Commissioner, Central Excise and Customs and Service Tax, Bhubanswar-II Commissionerate, C.R.Bulding, Rajaswa Vihar, Bhubaneswar-751 007.

....Respondents

Legal Practitioner :Mr.U.B.Mohapatra, SSC

## ORDER

MR. C.R.MOHAPATRA, MEMBER (JUDL.):-

Five Applicants who are continuing as Superintendent in the Central Excise and Customs and Service Tax under Bhubaneswar Commissionerate-I&II in this Original Application filed U/s.19 of the A.T Act, 1985 have challenged the Office Memorandum dated 11<sup>th</sup> July, 2002 and the Office Memorandum No. 36012/45/2005-Estt.(Res.) dated 10<sup>th</sup> August, 2010 alleging to be contrary to the master circular initially issued vide Memorandum No. 36012/2/96-Estt.(Res.) dated 2<sup>nd</sup> July, 1997, by misinterpreting the law laid down by the Hon'ble Apex Court in the case of **R.K.Sabharwal V State of Punjab**, AIR, 1995 SC 1371 and without taking into consideration the laid down law in the case of **M.Nagaraj and Others V Union of India**

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**and Others**, (2006) 8 SCC 212. Their prayer in this OA is to declare that the OM dated 11.7.2002 and 10.08.2010 (Annexure 7, & 8) being bad in law have no application in so far as the promotion of the Applicants vis-à-vis others to the grade of Superintendent Gr. B Gazetted is concerned and accordingly quash the process of review as contained at Annexure-9.

2. Despite adequate opportunity no separate counter has been filed by the DOP&T, Respondent No.1. However, in the counter filed by the Respondents 3,4 and 5 it has been stated that the applicants have challenged the policy of Reservation in Promotion of SC/ST candidates where they are promoted on their **own merit** as contained in OM dated 11.7.2002 and 10.08.2010. It has been stated that this being a policy matter falls within the purview of the DOP&T alone. The Commissionerate being an authority subordinate to DOP&T cannot offer any comment as the matter regarding framing of policy of reservation for SC &ST rests with DIOP&T of the Government of India.



Respondents 3,4 and 5 are duty bound to implement the policy of the Government and to carry out the orders of the Respondent Nos. 1 & 2. However, it has been contended that the judgment of the Hon'ble Apex Court in the case of M.Nagaraj and others V UOI and others is not applicable in the instant case inasmuch as both the DOP&T OM dated 11.7.2002 and 10.08.2010 deal with the matter pertaining to SC/ST candidates who are appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualification and their adjustment against UR points of reservation rosters irrespective of the fact whether the promotion has been given to them by selection method or non selection method. Accordingly Respondent Nos. 3,4 and 5 have opposed the prayers of the applicant and have prayed for dismissal of this OA.

3. Besides reiterating more or less the points raised in the OA, by placing reliance on the judgment dated 29.9.2010 in Civil Appeal No. 2379 of 2005 in the

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case of **K.Manorama V Union of India and others**, the Applicants have prayed for the relief claimed in this OA.

4. In course of hearing, by placing reliance on the decision of the Hon'ble Apex Court in the case of **K.Manorama v Union of India represented by General Manager, Southern Railway and Others** in Civil Appeal No. 2379 of 2005 and the decision dated 3.1.2011 in OA Nos. 1830 of 2009 and others of the Full Bench of the Tribunal in the case of **Ram Narain Verma and others v UOI and others** and the opinion reached by the DOP&T, Respondent No.1 **after the decision of the Hon'ble Apex Court in the case of K.Manorama (supra)**, Mr. Rath, Senior Counsel appearing for the Applicants submitted that OM under Annexures-7&8 being opposed to the decisions of the Hon'ble Apex Court in the case of K.Manorama are liable to be set aside. Mr. Mohapatra, Learned SSC had sought time to obtain instruction as to the action taken after DOP&T reference dated 6.4.2011 to the Ministry of Law, Department of Legal Affairs. But despite grant of time,



Mr. Mohapatra, Learned SSC clarified on 25.10.2011 that no decision from the Ministry of Law, Department of Legal Affairs has been received so far.

5. The OM under Annexure-A/7 dated 11.07.2002 provided as under:

"The undersigned is directed to say that this Department has been receiving references from various Ministries etc regarding adjustment of SC/ST candidates promoted on their own merit in the reservation rosters introduced vide DOPT's OM No. 36012/2/96-Estt.(Res) dated 2.7.1997. While it is clear from the OM dated 2.7.1997 that the SC/ST/OBC candidates appointed by direct recruitment on their own merit and not owing to reservation will be adjusted against unreserved points of the reservation roster, doubts have been raised about SC/ST candidates promoted on their own merit. It is hereby clarified that:-

- (i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will be adjusted against the reserved points of the reservation roster. They will be adjusted against unreserved points.
- (ii) If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade, such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion along with other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point.
- (iii) SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.
- (iv) 50% limit on reservation will be computed by excluding such reserved category candidates who are appointed/promoted on their own merit.

2. All Ministries/Departments are requested to bring the contents of the OM to the notice of all authorities under them for information and compliance."



6. The OM under Annexure-A/8 dated 10<sup>th</sup> August, 2010 provided as under:

"The undersigned is directed to refer to this Department's OM No. 36028/17/2001-Estt.(Res.) dated 11<sup>th</sup> July, 2002 which clarified that SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of the reservation roster and not against reserved points. It was subsequently clarified by this Department's OM No. 36028/17/2001-Estt.(Res.) dated 31.1.2005 that the above referred OM took effect from 11.7.2002 and that concept of own merit did not apply to the promotions made by non-selection method.

2. Central Administrative Tribunal, Madras Bench in OA No.900/2005 (S.Kalugasalamoorthy v/s Union of India & Others) has set aside the OM No. 36028/17/2001-Estt.(Res.) dated 31.1.2005 and held that when a person is selected on the basis of his own seniority, the scope of considering and counting him against quota reserved for SCs does not arise. The High Court of Judicature at Madras in the matter of UOI v/s S.Kalugasalamoorthy ( WP No. 15926/2007) has upheld the decision of the Central Administrative Tribunal.

3. The matter has been examined in the light of the above referred judgments and it has been decided to withdraw OM No. 36028/17/2001-Estt.(Res.) dated 31.1.2005 referred to above. It is clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non selection method. These orders will take effect from 2.7.1997, the date on which post based reservation was introduced.

4. These instructions may be brought to the notice of all concerned."

7. The relevant portion of the Full Bench of the Tribunal in the case of Ram Narain Verma and others v UOI and others (surpa) is extracted herein below:-

"13. Since the judgment of Hyderabad Bench has already been overruled and it has already been held that the SC/ST candidates who qualify the departmental examination with relaxed standards would not be eligible for promotion

*[Handwritten signature]*



against unreserved vacancies, nothing more remains to be adjudicated upon.

24. We agree with the views expressed by the earlier Full Bench. No other point is involved, it would, therefore, be futile exercise to send the matters back to the Division Benches. Accordingly, OAs are dismissed. No costs."

8. The relevant portion of the decision of the Hon'ble Apex Court in the case of K.Manorama (supra) is extracted herein below:

".....even otherwise the principle that when a member belong to a Scheduled Caste gets selected in the open competition field on the basis of his own merit, he will not be counted against the quota reserved for Scheduled Castes but will be treated as open candidate will apply only in regard to recruitment by open competition and not to the promotions effected on the basis of seniority cum suitability."

9. The relevant portion of the view taken by the DOP&T on 06.04.2011 is quoted herein below:-

"7. The Supreme Court, in its judgment dated 29.9.2010 in the matter of K.Manorama vs Union of India has held that "the principle that when a member belonging to a Scheduled Caste gets selected in the open competition field on the basis of his own merit, he will not be counted against the quota reserved for Scheduled Castes, but will be treated as open candidate, **will apply only in regard to recruitment by open competition** and not to the promotions effected on the basis of seniority cum suitability.


8. Apparently, the decision of the Apex Court in the above matter supercedes the decision of the CAT, Madras Bench in the matter of S.Kalugasalamoorthy. The decision of the Supreme Court is the law of land and it appears necessary to issue fresh orders withdrawing the OM dated 10.8.2010 and reinstating the OM dated 31.1.2005 referred to in para 4 of this note. However, before taking such an action, Department of Legal Affairs may give their opinion on the following points:

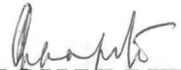
- (i) Is it necessary to withdraw this Department's OM No.36012/45/2005-Estt.(Res.) dated 10.8.2010 in view of the decision of Supreme Court in the case of K.Manorama?.
- (ii) Are there any other consequences of the said judgment?."

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10. In view of the law laid down by the Hon'ble Apex Court in the case of K.Manorama (supra), the review exercise proposed vide Annexure-A/9, pursuant to Annexure-A/8 dated 10<sup>th</sup> August, 2010 will not be legally sustainable. Hence, the operation of such review shall be kept in abeyance till the Respondent No.1 takes a final decision in the matter.

11. In the result, this OA stands disposed of. There shall be no order as to costs.

  
(A.K.PATNAIK)  
Member(Judl.)

  
(C.R.MOHAPATRA)  
Member (Admn.)