

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.819 of 2011
Cuttack this the 25th day of May/2016

Narayan Chandra Samal...Applicant

-VERSUS-

Union of India & Os....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *NO*
2. Whether it be referred to CAT, PB, New Delhi for being referred to various Benches of the Tribunal or not? *NO*

Ree
(R.C.MISRA)
MEMBER(A)

Ales
(A.K.PATNAIK)
MEMBER(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.819 of 2011

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HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Narayan Chandra Samal
Aged about 66 years
S/o-Late Balaram Samal
Plot No.53A,
Sahid Nagar
Bhubaneswar
Dist-Khurda

...Applicant

By the Advocate(s)-Mr.B.S.Tripathy-I

-VERSUS-

Union of India represented through:

1. The Chairman,
Central Board of Direct Taxes
North Block,
New Delhi-110 001
2. The Chief Commissioner of Income Tax
Aayakar Bhawan,
Rajaswa Vihar
Bhubaneswar-751 007

...Respondents

By the Advocate(s)-Mr.J.K.Nayak

ORDER

R.C.MISRA, MEMBER(A)

Applicant is a retired Income Tax Officer, who has retired from service on attaining the age of superannuation with effect from 31.12.2004. He has invoked the jurisdiction of this



Tribunal in this Original Application under Section 19 of the A.T.Act, 1985, seeking the following relief.

- i) Quash the impugned order under Annexure-8 by holding the same as bad, illegal & an outcome of gross non-application of mind and contrary to Articles 14, 19 & 300A of the Constitution of India; and thereby,
- ii) direct/order/command the respondents to forthwith review/reconsider the case of the applicant for notional fixation of pay in the cadre of UDC from the deemed date of joining, i.e. December-1967.
- iii) Pass such other order(s) as would be deemed fit and proper in the facts and circumstances of the case.

2. Undraped facts of the matter as revealed in the O.A. are thus: Applicant had appeared in a recruitment test for the post of U.D.C. in the office of erstwhile Commissioner of Income Tax, Bihar & Orissa on 18.12.1967 and was selected. There was inordinate delay in issuing appointment letter, which, however, was issued on 21.04.1970. Consequently, applicant joined the post of U.D.C. with effect from 1.05.1970. Thereafter, he submitted a representation for re-fixation of his seniority by taking into account his date of entry into service as December, 1967. This representation having been rejected, applicant had approached this Tribunal in O.A.No.69 of 1988. Vide order dated 15.11.1991, the Tribunal disposed of the said O.A. with the following observation and direction.

"The undisputed position before us is that the appointment of the applicant relates back to the vacancy of 1967 and his selection for the same year. In such circumstances, we think

that there was absolutely no justification on the part of the administrative authority for delaying issuance of order of appointment till a time after the appointment orders were issued in favour of Respondents 4 to 59. Even though the appointment order of the applicant was issued in the year 1970, it must be deemed to have been effective for the vacancies occurring in 1967. Therefore, we hold without least hesitation in our mind that the appointment of the applicant to the cadre of U.D.C. would relate back to the year 1967 and it must be held that the applicant is deemed to have been appointed with effect from 1967".

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"In view of the circumstances stated above and in view of the discussions made above, we hold that the applicant should be treated as senior to Respondents 4 to 59 and the deemed date of appointment and joining of the applicant should relate back to the year 1967. Accordingly, we would further direct that a fresh seniority list be prepared and we further direct that the applicant, if eligible for promotion, prior to filing of this application, his case should be considered and if found suitable, he should be given due promotion with all financial benefits but such promotion should not affect the services prospects of Respondents 4 to 59, if necessary arises, supernumerary post be created to give effect to this judgment."

3. In compliance with the above direction of the Tribunal, respondent-department restored and re-fixed the seniority of the applicant in the grade of U.D.C. with effect from December, 1967. Subsequently, applicant was promoted to the grades of Head Clerk and Inspector of Income Tax with effect from 23.2.1981 and 26.2.1988, respectively, with notional fixation of pay in both the grades. Challenging the action of the

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respondents in giving the benefit of notional fixation of pay with effect from the dates of promotions to the grade of Head Clerk and Inspector of Income Tax and thus claiming the financial benefits in terms of the judgment of this Tribunal in O.A.No.69 of 1988, applicant again approached this Tribunal in O.A.No.629 of 1996. This Tribunal, vide judgment dated 05.01.2000 held the action of the respondents in that behalf illegal. While the matter stood thus, applicant preferred a representation dated 25.06.2009(A/3) claiming fixation of his pay on notional basis from the deemed date of his appointment in the grade of UDC from December, 1967 and payment of consequential arrears dues thereon. This representation was forwarded by the office of Chief Commissioner of Income Tax (CCIT), Bhubaneswar vide letter date 16.09.2010(A/6) to the Central Board of Direct Taxes (CBDT), seeking advice whether applicant's pay could be fixed on notional basis from the deemed date of appointment as UDC with effect from December, 1967. It is stated that the CBDT has remitted the matter to CCIT, Bhubaneswar to take a view in the matter based on the direction of this Tribunal in O.A.No.69 of 1988. In the meantime, CCIT, Bhubaneswar vide order dated 13.06.2011(A/4) rejected the representation of the applicant in the following manner.

- i) In the order dated 15.11.1991, the Hon'ble CAT has considered your application, wherein you had claimed seniority over respondents no.4 to 59

and subsequently promotion to the higher grades, and directed the department to treat the year 1967 as the deemed date of your appointment and joining for the purpose of seniority and promotion. The order of the Hon'ble CAT has been implemented in full long back and the claim you are making now in your representation in respect of notional fixation of pay from December, 1967 was not the subject matter of consideration before the Hon'ble CAT.

- ii) There is nothing in the order of the Hon'ble CAT dated 15.11.1991 to show that your claim made in the representation with regard to notional fixation of pay in the grade of UDC was adjudicated upon by the Hon'ble CAT. It is therefore, not correct on your part to presume that notional fixation has to be fixed in the grade for UDC from December, 1967 as a corollary to the direction to treat the year 1967 as deemed date of your appointment and joining.
- ii) Admittedly, you joined the department as UDC only in the year 1970 and, therefore, by no stretch of imagination it cannot be considered that you had worked in the department from December, 1967. It is therefore, highly illogical, unreasonable and incorrect to accede to your request that you are entitled to notional fixation of pay from 1967.

4 Upon receipt of the above communication, applicant submitted another representation dated 12.09.2011(A/7) for reconsideration of the matter, which was turned down too vide A/8 dated 29.09.2011 CCIT, Bhubaneswar. Aggrieved with the above decision of the respondents, applicant has moved this

Tribunal in the instant O.A. seeking relief as already quoted above.

5. It is the case of the applicant that his date of appointment and joining in the grade of U.D.C. having been directed to relate back to December, 1967 by the orders of this Tribunal in O.A.No.69 of 1988 and the same having been implemented by the respondents, his pay in the grade of UDC ought to have been fixed on notional basis from December, 1967. Based on this, it has been submitted that respondent No.2, without considering the aforesaid aspect has merely paraphrased the claim of the applicant and rejected the same in a casual and mechanical manner. It has been pointed out that this Tribunal had the occasion to observe that even though the appointment order of the applicant was issued in the year 1970, it must be deemed to have been effective for the vacancies occurring in the year, 1967 and therefore, appointment must relate back to the year 1967, whereas the impugned order would clearly demonstrate that the respondent no.2 has completely ignored this aspect and on mere surmises and conjectures, has rejected his claim for fixation of pay on notional basis in the grade of U.D.C. with effect from December, 1967. It is the contention of the applicant that the reasons assigned by the respondents while rejecting his are whimsical and discriminatory inasmuch as, if at all the same are considered to be valid, in such eventuality, the notional promotion and consequential pay fixation granted

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to him in the cadre of Head Clerk and Inspector of Income Tax with effect from 23.02.1981 and 26.02.1981, respectively, in terms of the judgment of this Tribunal in O.A. No.69 of 1988 would be held to be illegal, as admittedly, applicant had neither worked in the post of Head Clerk with effect from 23.02.1981 nor in the post Inspector of Income Tax with effect from 26.02.1988, when he was granted the benefit of fixation of pay. Therefore, it has been urged that the findings of the respondents that applicant having not worked in the post of UDC from December, 1967 is not entitled to notional fixation of pay are perverse and baseless in the face of the fact that he being so granted in the grade of Head Clerk and Inspector of Income Tax from 23.02.1981 and 26.02.1988 respectively, when admittedly, he never rendered any service in those grades. Based on this argument, it has been submitted that applying the same principle as in the case of Head Clerk and Inspector of Income Tax, applicant is entitled to notional fixation of pay notwithstanding the fact that he had not worked in the post of UDC from December, 1967.

6. With the above submissions, applicant has urged that the relief sought in this O.A. should be granted to him.

7. In the counter-reply filed by the respondent-department factual position of the matter is not in dispute. However, it has been submitted that the direction issued by this Tribunal in O.A.No.69 of 1988 was not regarding notional fixation of pay in

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the grade of UDC from 1967 even though applicant's deemed date of joining and appointment to UDC related back to 1967. Further, it was directed to prepare a fresh seniority list and if the applicant was found eligible for promotion, to give him promotion with all financial benefits. In the subsequent order dated 5.1.2000 in O.A.No.629 of 2011, the direction of this Tribunal was to pay the actual emolument in the post of Head Clerk and Inspector from the date applicant had been given notional promotion to the above two posts. However, there was no direction for fixation of pay from December, 1967 from the deemed date of joining of the applicant in the grade of UDC. Applicant having not challenged the orders of this Tribunal, the same attained finality, respondents have added. Therefore, according to respondents, the competent authorities have rightly turned down the claim of the applicant for fixation of his pay notionally on the ground that he had not actually performed the duties of an UDC from the year 1967. Respondents have countered the claim of the applicant based on the observation of this Tribunal in O.A.No.69 of 1988 wherein it has been observed that "**even though the appointment order of the applicant was issued in the year 1970, it must be deemed to have been effective for the vacancies occurring in 1967 and the appointment must relate back to the year 1967. Therefore, we hold, without least hesitation in our mind that the appointment of the**



applicant to the cadre of UDC would relate back to the year 1967 and it must be held that the applicant is deemed to have been appointed with effect from 1967 and directed to re-fix the seniority of the applicant by considering the deemed date of appointment and joining as 1967. This Tribunal further directed that if applicant is found eligible for promotion on the basis of re-fixation of his seniority, he should be given due promotion with all financial benefits".

8. It has been submitted by the respondents that having regard to the above orders, seniority was re-fixed and notional promotion was given to the applicant to the post of Head Clerk and Inspector of Income Tax with effect from 23.02.1981 and 26.02.1988, respectively, considering the deemed date of joining as UDC in the year 1967.

9. With the above submissions respondents have prayed that the O.A. being devoid of merit is liable to be dismissed.

10. Applicant has not chosen to file any rejoinder to the counter. However, by filing an additional statement, he has brought to the notice of the Tribunal some development that has taken place during pendency of this O.A. In this connection, applicant has produced A/9 dated 12.11.2014, wherein he has been asked to clarify the position as indicated therein and to provide some documentary evidence that might be in his possession. According to applicant, this Annexure-A/9 is indicative of the fact that his initial pay fixation had been



worked out with effect from 1.5.1970 with the date of next increment due on 01.05.1971 and therefore, it is quite clear that his pay fixation from the deemed date of his appointment as UDC from December, 1967, has not been done. However, applicant has submitted that consequent upon receipt of the above letter, he has clarified the position by bringing out the discrepancies in the initial pay fixation, which ought to have been related back to December, 1967. Thereafter, applicant was asked to furnish his pay fixation calculation based on his deemed date of appointment, which he could not submit due to illness. However, the pay fixation statement prepared by him along with order dated 1.9.2015 of res.no.2 by virtue of which a list of persons promoted to the Grade of Income Tax Officer during the Recruitment Year 1994-95 to 2008-09 as per Review DPCs held pursuant to the orders of the Hon'ble Supreme Court dated 27.11.2012 in Civil Appeal No.7414-7415 of 2005 with a specific comment at inner page-3 of the pay fixation statement about the existing anomaly in the fixation of pay amongst juniors and seniors, has been brought to the notice of the Tribunal vide A/10. In the above background, applicant has made a prayer to direct the respondents to reconsider the matter of fixation of pay with effect from the deemed date of his appointment in the grade of UDC from December, 1967 based on Annexure-9 & 10.



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11. We have perused the pleadings of the parties and heard the learned counsel for both the sides at great length. We have also gone through the written notes of submission filed by the parties concerned.

12. Before coming to decide the matter on merit, we would like to note that the claim of the applicant for fixation of pay in the grade of U.D.C. on notional basis with effect from December, 1967 stirred his mind in the year 2009, only when this Tribunal, vide order dated 5.1.2000 in O.A.No.629 of 1996 held that the denial of financial benefits on his notional promotion to the grades of Head Clerk and Inspector of Income Tax was held illegal and the same was implemented. Therefore, applicant rose from the slumber in the year 2009 claiming the benefit of fixation of pay on notional basis from the deemed date of appointment as UDC from December, 1967, notwithstanding the fact that prior to O.A.No.629 of 1996, he had moved this Tribunal in O.A.No.69 of 1988 which had been disposed of by this Tribunal 15.11.1991 by holding that even though appointment order was issued in the year 1970, it must be deemed to have been effective for the vacancies occurring in 1967 and the appointment must relate back to the year 1967. No doubt, this Tribunal in O.A.No.69 of 1998 had never expressed any opinion regarding admissibility of fixation of pay on notional basis from the deemed date of appointment of the

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applicant as UDC from December, 1967. Apparently, applicant had also never agitated his grievance regarding fixation of his pay on notional basis as UDC from December, 1967 and as indicated above, he could realize existence of such a right only after the decision of this Tribunal in O.A.No.629 of 1996 was taken. Although the claim relates to the year 1967 which has been laid in the year 2011, i.e., after about 43 years, but, no petition for condonation of delay has been filed by the applicant, probably on a presumption that the cause of action concerning fixation of pay is a continuing one.

13. But the fact of the matter is that the applicant should have agitated his claim before the respondents much earlier. The order dated 15.11.1991 of the Tribunal in O.A.No.69 of 1988 did not pass specific order that pay of the applicant should be notionally fixed from 1967. But there is a *prima facie* justification for this, since if the year of appointment is antedated to 1967, pay fixation on notional basis from that date appears to be reasonable, although actual benefits are ruled out, since the applicant did not work from the year 1967. But it was incumbent upon the applicant to lay such claim before the authorities. The respondents have fully complied with the directions of the Tribunal, and since there was no specific order with respect to notional fixation, by the Tribunal, no blame can lie at the door of the respondents for not complying with any



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order. If the applicant would have agitated his grievance, respondents could have considered the same. Even if there was no specific direction on this point, there could have been a reasonable inference from the orders of the Tribunal that if a date of appointment is decided, pay fixation has to be made from that date, albeit, on a notional basis. But applicant has certainly failed to ventilate and pursue his grievance well in time and this delay stares us in the face.

14. However, the applicant has submitted as mentioned in Paragraph-10(supra) that the respondents have issued letter dated 12.11.2014 to him calling for certain clarification and documents. The applicant has been asked to draw up a pay fixation statement based upon notional fixation in the year 1967. It gives us an impression that respondents are still seized with the matter and are prepared to consider the claim of the applicant with an open mind. This also confirms the impression that the respondents are not considering the claim as wholly illogical and unreasonable, a stand that they had adopted earlier. In the overall view of the latest developments that are brought to our notice, we would direct the respondents to reconsider the grievance of the applicant for fixation of pay on notional basis with effect from the year 1967, as per the spirit of orders of this Tribunal dated 15.11.1991 in O.A.No.69 of 1988 and pass appropriate orders within a period of ninety

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days from the date of receipt of this order. In the circumstances, impugned communications dated 13.06.2011(A/4) and dated 29.09.2011(A/8) are quashed and set aside.

With the above observations and directions, the O.A. is disposed of, with no costs to the parties.

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(R.C.MISRA)

MEMBER(A)

Alley
(A.K.PATNAIK)

MEMBER(J)

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