

17

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

O.A.Nos.484 & 485 of 2009
Cuttack, this the 19th day of October, , 2010

Radha Kanta Seth & Ors. Applicants
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?

M.R. Mohanty
(M.R. Mohanty)
Vice-Chairman(J)

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

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. Nos.484 & 485 of 2009
Cuttack, this the 19/11 day of October, 2010

C O R A M

THE HON'BLE MR.M.R.MOHANTY, VICE-CHAIRMAN (J)
AND
THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

O.A.No.484 of 2009

Shri Radha Kanta Seth, aged about 48 years, Son of Late Karunakar Seth, at present working as Inspector of Income Tax, Office of the Additional Commissioner of Income Tax, Range-2, Sambalpur under the control of Chief Commissioner of Income Tax (CCA), Ayakar Bhawan, Bhubanewar, Dist. Khurda, Orissa.

....Applicant

By legal practitioner: M/s. H.M.Dhal, S..Sarangi, B.C.Mohanty, S.P.Mohanty, D.K.Das, P.K.Dash, Counsel.

-Versus-

1. Union of India represented through its Secretary, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, North Block, New Delhi-110 001.
2. The Chairman, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, North Block, New Delhi-110 001.
3. The Chief Commissioner of Income Tax (CCA), Orissa Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007.
4. The Commissioner of Income Tax, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007.
5. Sri Narasingha Behera, aged about 57 years, Income Tax Officer (TDS), Income Tax Office, At/Po.Ambapua, Berhampur-10.
6. Sri Sachipati Behera, aged about 50 years, Income Tax Officer (Ward-2), Income Tax Office, At-Bhaskarganj, Station Square, Balasore.
7. Sri Bijay Kumar Behera, aged about 46 years, Income Tax Officer (Ward-2), Income Tax Office, At-Jagannath Marg, Madhuban, Paradip, Dist. Jagatsinghpur.
8. Shri Lingaraj Muduli, aged about 50 years, at present working as Income Tax Inspector, Office of the CCIT, Rajaswa Vihar, Saheednagar, Bhubaneswar.

.... Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC
Mr.P.R.J.Dash,
M/s.P.C.Sethi, J.M.Patnaik, Counsel
(For Res.Nos.5&6)
M/s.S.K.Ojha, D.K.Mohanty, Counsel
(for intervener).

OA No. 485 of 2009

Sri Niranjan Behera, aged about 40 years, son of Late Rama Chandra Behera, at present working as Inspector of Income Tax, Office of the Commissioner of Income Tax (Audit), under the control of Chief Commissioner of Income Tax (CCA), Ayakar Bhawan, Bhubaneswar, Dist. Khurda, Orissa.

....**Applicant**

By legal practitioner: M/s.H.M.Dhal, S..Sarangi, B.C.Mohanty, S.P.Mohanty, D.K.Das, P.K.Dash, Counsel.

-Versus-

1. Union of India represented through its Secretary, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, North Block, New Delhi-110 001.
2. The Chairman, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, North Block, New Delhi-110 001.
3. The Chief Commissioner of Income Tax (CCA), Orissa Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007.
4. The Commissioner of Income Tax, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751 007.
5. Sri Narasingha Behera, aged about 57 years, Income Tax Officer (TDS), Income Tax Office, At/Po.Ambapua, Berhampur-10.
6. Sri Sachipati Behera, aged about 50 years, Income Tax Officer (Ward-2), Income Tax Office, At-Bhaskarganj, Station Square, Balasore.
7. Sri Bijay Kumar Behera, aged about 46 years, Income Tax Officer (Ward-2), Income Tax Office, At-Jagannath Marg, Madhuban, Paradip, Dist. Jagatsinghpur.
8. Shri Lingaraj Muduli, aged about 50 years, at present working as Income Tax Inspector, Office of the CCIT, Rajaswa Vihar, Saheednagar, Bhubaneswar.

.... **Respondents**

By legal practitioner: Mr.U.B.Mohapatra, SSC

M/s.P.C.Sethi, J.M.Patnaik, Counsel

(For Res.Nos.5&6)

M/s.S.K.Ojha, D.K.Mohanty, Counsel

(for intervener).

O R D E R

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

Since common question of facts and law are involved

in both these Original Applications, though we have heard these two OAs, one after the other, for the sake of convenience, this



common order is passed which will govern these two Original Applications.

It is not in dispute that both the Applicants are senior to the Respondents 5 to 8 in the grade of Inspector. Accordingly, in the seniority list of Inspectors of Income Tax of Orissa Region published as on 01.01.2007, name of Applicant in OA No. 484/2009 (Radhakanta Seth) was shown at Sl.No.1 and name of the Applicant No.2 in OA No. 485/2009 (Niranjan Behera) was shown at Sl.No.19 and the names of Respondents 5,6 & 7 were shown at Sl.Nos.51, 53 & 64 in the said gradation list.

Also it is not in dispute that Respondents 5, 6 & 7 appeared and passed the departmental examination for Income Tax officer earlier than both the Applicants. The Respondents 5, 6 & 7 appeared and passed the departmental examination for Income Tax Officer in the years 2000, 2002 & 2006 respectively whereas both the Applicants appeared and passed the Departmental Examination in the year 2008. Both Applicants and Respondents 5, 6 & 7 belong to reserved community and all of them have qualified the departmental examination for ITO in a relaxed standard with lesser percentage of marks. The next promotion of an Income Tax Inspector is to the post of Income Tax Officer and as per the Recruitment Rules, 2004 an Income Tax Inspector is eligible to be promoted to ITO Gr. B provided he/she

has three years regular service in the feeder grade and has qualified in the departmental Examination for ITO.

The grievance of the Applicants in both the OAs, is that though Respondents 5 to 7 became eligible for consideration to ITO Gr.B by availing lesser qualifying marks meant for reserved community employees in the departmental examination, Respondent No.4 promoted them against unreserved vacancies treating them to have qualified on their own merit against unreserved vacancies on 28-02-2008 & 12-06-2008 thereby jeopardizing their interest for promotion/abridging their scope for consideration for promotion against reserved vacancies in the DPC held in the month of June, 2009 and on 03-08-8-2009 showing the adjustment of the Respondents 5 to 7 against the vacancies earmarked for reserved community employees.

Hence, in both these OAs filed under section 19 of the Administrative Tribunals Act, 1985, the Applicants have prayed for the following relief:

"(i) The impugned promotion order No.20/2007-08 dated 28-02-2008 and Ordr No.24/2008-09 dated 12-06-2008 issued by the Commissioner of Income Tax, Orissa, Bhubaneswar, Respondent No.4 in favour of Respondent Nos.5,6&7 under Annexure-A/6 and A/8 should be quashed;

(ii) Issue direction to the Chief Commissioner of Income Tax (CCA), Orissa, Bhubaneswar, RespondentNo.3 and the Commissioner of Income Tax, Orissa, Bhubaneswar to implement the Office Memorandum dated 11-07-2002 issued by Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, New Delhi and letter dated 01-08-2007

issued by the Central Board of Direct Taxes under Annexures-A/2 & A/5 series and conduct the review DPC within the stipulated as fixed by this Hon'ble Tribunal;

(iii) Issue direction to the Chief Commissioner of Income Tax (CCA), Orissa, Bhubaneswar, Respondent No.3 and the Commissioner of Income Tax, Orissa, Bhubaneswar to conduct the review DPC and to promote the Applicant to the post of Income Tax Officer.

(iv) Pass any other order/orders, direction/directions as this Hon'ble Tribunal deem fit and proper."

2. Respondent-Department in their counter have maintained that as the applicant had qualified the departmental examination for ITO's in the year 2008 in a relaxed standard with lesser percentage of marks and there were no reserve vacancies as per the roster requirement available in the R/Y 2009-10 his name could not find place in the select list for the R/Y irrespective of his position in the seniority list of IIT maintained in the Orissa Region. As regards the assertion of the applicant that Respondents 5,6 &7 were illegally and arbitrarily promoted against UR vacancies by treating them as if they have passed the departmental examination on their 'own merit', it was contended by the Official Respondents that the issue of 'own merit' is still debated and some of its aspects are yet to be clarified. In this connection it is submitted by the Respondents that the CBDT vide letter dated 1.8.2007 forwarded the DoP&T instruction dated 24.7.2007 in which it is provided that "*the SC/ ST candidates falling in the consideration zone cannot be denied promotion on the plea that no post is reserved for them. When no post is*

reserved, SC/ST candidates falling in the consideration zone should be considered for promotion along with other candidate treating them as if they belong to general category. If any of them selected he should be appointed to the post and should be adjusted against unreserved point. Candidate so promoted are treated as promoted on their 'own merit'. To determine whether an SC/ST candidate in the consideration zone can be promoted or not when there are no reserved posts, it should be seen whether the candidate would have been promoted if he did not belong to SC or ST category. If yes, he should get promotion otherwise not." On receipt of the clarification a letter was written to CBDT by Respondent No.3 seeking the Board's clarification regarding the fate of implementation of the same and pending receipt of such clarification it was decided that the DoP&T instruction was to be implemented prospectively. Accordingly, Respondents 5&6 were promoted for the R/Y 2007-08 for which the DPC was held on 28.05.2007 (i.e. prior to the receipt of the above said clarification of the DoP&T dated 24.7.2007). Respondent No.7 was also promoted in the same R/Y 2007-08 against the unanticipated vacancy arose during 2007-08 in the DPC held on 11.06.2008. In the order of their promotion it was made clear that such promotion was subject to the outcome of the clarification of the CBDT's letter dated 01-08-2007 read with DoP&T OM dated 11-07-2002 on the issue of 'own merit' in respect of SC/ST category of employees. Further they have denied the allegation of applicants that the promotion of Respondents 5 to 7 was in any way illegal by stating that

candidates for the R/Y. 2007-08 and their empanelment was made prior to receipt of the letter from the Board dated 01.08.2007 enclosing thereto the DoP&T OM dated 24-07-2007 on the subject of 'own merit' in respect of SC/ST category. Since the clarification came in the year 2007 it was decided to implement the same prospectively without upsetting the case where DPC recommendation was accepted by the cadre controlling authority and candidates were empanelled on the basis of the same. This is the reason why the DoP&T clarification dated 24/7/2007 was not considered applicable to Respondents 5 & 7 and accordingly, as per the previous practice, the Respondents 5 to 7 were promoted against UR vacancies. Similar is the situation in so far as Respondent No. 7 is concerned. As he came out successful in the departmental examination prior to the applicant he was considered eligible for promotion against UR vacancy for an unanticipated vacancy in the DPC convened for filling up of the vacancies of the R/Y 2007-08. Therefore, second DPC was convened which recommended the name of Respondent N.7 for filling up of the unanticipated vacancy of the R/Y 2007-08. Name of Shri Behera was recommended in the line with the precedent being followed for other candidates whose names were recommended by the earlier DPC for R/Y 2007-08. The clarification sought from the CBDT vide letter dated 28.02.2008 is still awaited. After receipt of clarification from the Board appropriate action will be taken to implement the DoP&T

25 - 8 -

instruction dated 11.7.2002 read with ID dated 24.7.2007.

Therefore, the OM of the DoP&T has been implemented in the Orissa region prospectively i.e. from the R/Y 2008-09 and onwards. Accordingly, Respondents have prayed for dismissal of this OA.

3. In the same line two separate counters have been filed by Respondents 5 & 6. The main stand of the Respondents is that though Applicant is senior to the Respondents 5 to 6, as the applicant has not passed the departmental examination which is a precondition for promotion to ITO against the vacancies in which on the recommendation of the DPC the Respondents 5 to 6 were promoted, he has no right to either claim that the promotion of Respondents 5 to 6 was in any manner irregular or illegal. According to the Applicant he has passed the Departmental Examination in the year 2008. As such he can claim if any of the juniors to him got promoted ignoring his case. But passing the departmental examination later does not mean he would be treated eligible retrospectively. In the above line the Respondents 5 & 6 opposed the contention of the Applicants made in this OA.

4. Intervener Respondent by filing MA No. 234 of 2010 sought vacation of the interim order staying filing up of the vacancies of the ITO. It is the contention of the Intervener-Respondent that he has passed departmental examination for Income Tax Officer in the year 1995 and already completed 03 years of

regular service in the grade of Inspector of Income Tax as on 01.01.2009 becoming eligible to be considered for promotion to the post of Income Tax Officer during the R/Y 2009-10. For the R/Y 2009-10 there were eleven vacancies available in the grade of ITO for which DPC was already held in the month of June, 2009. The sanctioned strength in the grade of Income Tax Officer in the Orissa Region is 66. Taking into account 200 point roster, requirement of SC in the grade as per post based roster is 09. But position of SC before filling up of 11 vacancies in the grade during the year 2009-10 is 10. So there was no requirement of SC candidate for the R/Y 2009-10. As such all the 11 posts of ITO are meant for the UR. Names of ten candidates on the recommendation of the DPC have been empanelled and one post is kept vacant in compliance of the order of this Tribunal in OA no. 517 of 2008. Further contention of the Intervener Respondent is that he has good service track having fulfilled all the criteria for being considered and promoted to the post of ITO. The applicants were not at all eligible to be considered for the vacancies of 2009-2010 as they have acquired the eligibility only after the crucial date of 01.01.2009. In this connection he has also relied on the decision of the Hon'ble High Court of Orissa in WP (C) No.224 of 2003 dated 31.10.2008 -**Union of India and others v K.C.Mohanty** and of this Tribunal in the case of **Subrat Ray v UOI and others** in OA

L

No. 482/2007. Accordingly, Intervener Respondent prayed for vacation of the interim order.

5. Learned Counsel appearing for both the sides have reiterated the stand taken in their respective pleadings. Having heard them at length, perused the materials placed on record. From the pleadings and submissions made in course of hearing, it reveals that the Applicants were not even in the pipe line of consideration for promotion for the vacancies against which the private Respondents were considered and promoted. Their promotion against UR vacancies even if, is in any manner against the Rule or judge made laws; the Applicants have no *locus standi*, to challenge the same; especially when they were not eligible when vacancies arose and the cases of the Applicants were considered. Subsequent passing of the departmental examination cannot restore their position on the ground of seniority so as to claim retrospective consideration over the private Respondents. This is not a public interest litigation nor does this Tribunal have any power to entertain any such litigation. The contention that the Respondents are adjusting the private Respondents who have already been promoted against UR vacancies against reserved vacancies and thereby depriving the applicants for being considered against the future reserved vacancies does not hold any water as except bald allegation no material has been placed by the Applicants in support of such contention.

7. In view of the discussions made above, we hold that these two OAs sans any merit. Hence both the OAs stand dismissed by leaving the parties to bear their own costs.

Mohanty
~~(M.R.Mohanty)~~
Vice-Chairman (J)

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