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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO.60 OF 2010
Cuttack, this the 27th Day of February, 2013

P. C. Mishra..... Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *No*

2. Whether it be circulated to all the Benches of the Central
Administrative Tribunal or not? *No*


(R.C. MISRA)
MEMBER(A)


(A.K. PATNAIK)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK
O. A. NO.60 OF 2010
Cuttack the 27th day of February, 2013

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

Purna Chandra Mishra,
aged about 66 years,
S/o. Biswambar Mishra,
Residing at Flat No.10,
Dasarathi Enclave,
Plot No.333, Jayadev Vihar,
Bhubaneswar-751013,
Dist-Khurda.

(Advocates: M/s-B. Panda, D.K. Das, B. Panda)

...Applicant

VERSUS

Union of India Represented through

1. The Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110001.
2. The Chairman,
Central Board of Direct Taxes,
Department of revenue,
North block,
New Dehi-110001.
3. The union Public Service Commission,
Represented through it's Secretary,
At-Dholpur House,
Saahjahan Road,
New Dehi-110001.
4. The Chief Commissioner of Income Tax,
Orissa Region,
Central Revenue Building,
Aayakar Bhawan,
Rajaswa Vihar,
Bhubaneswar-751007
Dist-Khurda.
5. The Commission of Income-Tax,
Bhubaneswar Charge having jurisdiction
Over the assignment of the applicant
Holding office at Central Revenue Building,
Rajaswa Vihar,
Bhubaneswar-751007,
Dist-Khurda.

... Respondents

(Advocate: Mr. U.B. Mohapatra)

ORDER

HON'BLE MR. R.C. MISRA, MEMBER (A)

The applicant in this case is a retired Income Tax Officer who has approached this Tribunal with a prayer that his pension and other retirement benefits should be refixed on the basis of his seniority accrued from the date of declaration of departmental examination for promotion as ITO Group-B, and not from the actual date of promotion, since the Hon'ble High Court in W.P.(C) No.4493/2002 and W.P.(C) No.224/2003 have set aside the orders of this Tribunal passed in O.A. No.542/1995 based upon which the Review DPC granted notional promotion to the applicant from 18.06.2001.

2. The facts of the case are that the applicant had joined the post of Inspector of Income Tax on 25.09.1990. The next promotional post from the cadre of Inspector of Income Tax is the post of Income Tax Officer, Group-B. The guidelines issued by the Department regarding eligibility of Inspectors of Income Tax to become ITO Group B are as follows:-

“Inspector of Income Tax are considered for promotion as Income Tax Officer Group-B, provided that they have passed the Departmental examination prescribed for Income Tax Officers and put in service as Income Tax Inspector for at least three years and are otherwise approved promotion.”

3. The present applicant was promoted as ITO Group-B on 13.10.1995 on the basis of recommendations of DPC of the same date. He had appeared in the Departmental examination in June, 1991, the result of which was published in January, 1992. According to the instruction in force at that time, the passing of Departmental examination was reckoned from the last day of the examination in accordance with the instructions of Directorate of Inspection dated 13.02.1974 (Annexure-R-1). In the case of the applicant therefore, the date of the passing of departmental examination was taken as June, 1991. The applicant has made a mention of O.A. No.542/1995 decided in the case of Sri K.C. Mohanty Vs. Union of India by this Tribunal, and also orders of the Hon'ble High Court of Orissa in W.P(C) No.224 of 2003 in which the orders of this Tribunal were reversed, as relevant facts that will apply to his case, and will be material in granting relief. It is, therefore, incumbent upon us to go through the facts and circumstances of these judicial pronouncements in order to set the context of examining the claim of this applicant.

4. In O.A. No.542/1995, one Kishore Chandra Mohanty, Inspector of Income Tax approached this Tribunal challenging the action of the Departmental Promotion Committee in overlooking his claim for promotion to the grade of ITO, Group-B. He had taken the Departmental examination in June-July, 1995, the results of which were published on 12.02.1996. His case was that during the period intervening between the last date of the examination, and publication of result thereof, a DPC was held which should have considered his case, and kept his case in a sealed cover, on the precedent decision of the Department that last date of departmental examination should be revoked as the date of passing of the examination. However, this principle was given a go-bye, and his promotion in the said DPC was not considered.

5. This Tribunal in that O.A relied upon the order of the Hon'ble High Court of Orissa in the case of Ajay Kumar Das Vs. Union of India in OJC No.1594/1999 decided on 28.03.2001. That was the case of induction of an Asst. Audit Officer into Audit and Accounts Service. The ratio of that Judgement was that the petitioner's qualification shall relate back to the date of examination. This Tribunal, therefore, allowed the application with a direction to the Department to hold a review of the DPC, and consider the case of the applicant for retrospective promotion. This order of the Tribunal is dated 9th August, 2002.

6. Subsequently, this order of the Tribunal was assailed in the Hon'ble High Court of Orissa in two Writ Petitions, i.e., W.P. (C) No.224 of 2003 and W.P. (C) No.4493 of 2002. On going through the judgement of the Hon'ble High Court dt. 31.10.2008, we find that the case of Ajay Kumar Das Vs. Union of India in OJC No.1594 of 1999 has been exhaustively examined. The Hon'ble High Court of Orissa relying on a decision of the Allahabad High Court had taken a view that the qualification of Ajay Kumar Das for the purpose of consideration of promotion shall relate back to the date of examination and allowed the Writ application. This Judgement of the Hon'ble High Court was challenged before the Hon'ble Apex Court in SLP (Civil) No.10995 of 2001. The Apex Court reversed the judgement of the Hon'ble High Court with the following observations:-

“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 proposition of law. There can be no question of relating back."

7. While examining the orders of the Tribunal, the Hon'ble High Court further observed that the case of Sovesh Chandra Mohanty who had approached the Tribunal in O.A. No.207 of 1996 claiming retrospective promotion had been turned down by the Tribunal on the basis of ratio laid down in the case of Ajay Kumar Das in the Hon'ble Apex Court Judgement, and the same ratio was followed in dismissing the case of L.N. Majhi in O.A. No.543 of 1995.

8. The further relevant observation of the Hon'ble High Court is that unfortunately in the case of Kishore Chandra Mohanty, the decision of the Hon'ble Apex Court was not cited, and the Tribunal passed the impugned judgement relying upon the Judgement of the Hon'ble High Court, which however, had been reversed by the Hon'ble Apex Court.

9. In the consequence, therefore, the Hon'ble High court set aside the judgement of this Tribunal in O.A. No.542 of 1995, and passed the following further orders:

" All consequential orders passed in pursuance of the judgement of the Tribunal impugned before this Court shall also stand automatically recalled."

10. The prayer of the applicant in the present O.A. is that on the basis of orders of this Tribunal in O.A. No.542/1995 the Review DPC was held which granted notional promotion to the applicant from 18.06.2001. Since the said orders have been reversed by the Hon'ble High Court, the seniority of the applicant has to be refixed from the date of publication of results of the ITO Departmental examination. Accordingly, his retirement benefits should be revised.

11. In the counter filed by the respondents, the position of facts has been agreed to. But, they have opposed the claim of the applicant on the ground that he can not raise the claims of seniority after a gap of 17 years, and also the fact that the judgement of the Hon'ble Apex Court dt.10.09.2001 will not have universal or retrospective applicability. It is further averred that recommendation of the DPC in the recruitment years 1992-93, 1993-94, 1994-95 and 1995-96 were based upon the existing instructions of the Department according to which, DPCs reckoned date of passing of the Departmental

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examination from the last date of examination. The orders of the Courts will only have prospective effect in this case.

12. It is further submitted in the counter that the petitioner's seniority was pushed down to 18.06.2001 from 13.10.1995 as per the judgement dated 09.08.2002 of the Tribunal in O.A. No.542/1995. But after the judgement of the Hon'ble High Court reversing the orders of this Tribunal, the seniority position was restored to 13.10.1995. His claim for restoring seniority to 1992-93, the year of his passing the Departmental examination could not be considered, since his senior R.K. Dalai who was also eligible was promoted against the available vacancy.

13. In the rejoinder filed by the applicant, it is alleged that two of his juniors got the promotion from 1993-94 on the basis of the results of the Departmental examination. It is further alleged that even though his juniors are drawing higher retirement benefits, he has been denied his promotion as per the principle laid down by the Hon'ble Apex Court, and his repeated representation for higher retirement benefits have gone completely unheeded by the Department. The non-holding of DPC in the year 1994 has been alleged by the applicant as illegal.

14. We have heard the learned Counsels for both parties, and gone through the documents. Having examined the contentions of both parties, we have to see the specific order of the Hon'ble High Court, which set aside the judgement of this Tribunal and also directed that "**all consequential orders passed in pursuance of the judgement of the Tribunal impugned before this Court shall stand automatically recalled.**" The judgement of Tribunal had directed the Department to hold a review of the DPC and consider the case of the applicant and such other similarly placed Income Tax Inspectors for retrospective promotion. The order of the Hon'ble High Court was therefore specific, and in pursuance thereto all consequential orders passed in pursuance of the judgement of this Tribunal impugned before the Hon'ble High Court have to be treated as automatically recalled. It is very obvious that consequent to the implementation of the directions of Hon'ble High Court the Department would have to accordingly recast the seniority positions of the ITO grade-B, based upon their correct date of promotion based upon the ratio of judgement of the Hon'ble Apex Court. There being a specific direction, the submission about retrospective or prospective

application is merely theoretical. In the counter it is averred that the seniority position of the petitioner was restored to 13.10.1995 vide an order dated 07.11.2008 of respondent No.4 which is placed at Annexure-R/2.

Annexure-R/2 is an order dated 07.11.2008, of the Chief Commissioner of Income Tax, Bhubaneswar. This mentions that an order dated 25.06.2003 was passed by that office as per the recommendations of the review DPC giving effect to judgement of CAT, Cuttack Bench in O.A. No.542/1995, and accordingly 10 (ten) ITOs were granted notional promotion from specific dates. In case of the P.C. Mishra the present applicant, the date of notional promotion was 18.06.2001 whereas date of actual promotion was 13.10.1995. After the judgement of Hon'ble High Court of Orissa setting aside the orders of the Tribunal, the inter-se seniority of ITOs resulting from the order of 25.06.2003 stood annulled and the inter-se seniority existing prior to said order stood restored. This amounts in the case of the applicant to the fact that his date of promotion has been restored to 13.10.1995.

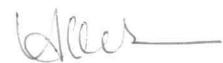
15. The above indicates that the respondents have complied with the directions of the Hon'ble High Court which have been discussed earlier in this order.

16. Since the applicant is retired on 31.08.2005, it would go without saying that the Department is expected to revise the retirement benefits of the applicant on the basis of their order dated 07.11.2008, which we presume they must have done, with no averment made to the contrary. However, regarding the further claim made by the applicant regarding fixation of seniority in 1992, we are of the considered view that we have no scope for interference with the orders of the Department in the matter, since they have been passed in compliance of the judgement of the Hon'ble High Court in W.P.(C) No.224/2003 and W.P. (C) No.4493/2002 on 31.10.2008.

The O.A. is accordingly, dismissed. No costs.



(R.C. MISRA)
MEMBER(A)



(A.K. PATNAIK)
MEMBER (J)