

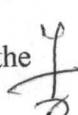
3
O.A.No.91 of 2010
Ashok Kumar Gautam Applicant
Versus
Union of India & Others Respondents

Order dated: 8th March, 2010.

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

.....
Heard Mr. J.M.Pattnaik, Learned Counsel appearing for the Applicant and Mr. S.Mishra, Learned Additional Standing Counsel for the Union of India, representing for the Respondents and perused the materials placed on record.

2. Applicant is working as Commissioner of Income Tax (ITAT, Cuttack Bench) at Cuttack/Orissa. A selection Committee/DPC (for considering officers for promotion to the post of CCIT) was held on 22/23.10.2009. Approval of the select list that was drawn by the said DPC was taken from Cabinet Committee on 30.12.2009. An order granting promotion was issued (on 31.12.2009) to the seniors of the Applicant. On 22.01.2010 a promotion order was issued in favour of his juniors. A Memorandum of charge sheet (shown to have been issued on 23.12.2009) was served on the Applicant on 05.01.2010.

3. In spite of representations dated 25.01.2010 and dated 09.02.2010 (directed against the injustice caused to him in the decision making process of giving effect to the recommendations of the Selection Committee/DPC dated 22/23.10.2009 for promotion to CCIT) nothing has yet been communicated to him. For the above reason (and for the reason of grant of promotion to his juniors on 22.01.2010) the Applicant has approached this Tribunal with the 

present Original Application filed (on 26.02.2010) under section 19 of the Administrative Tribunals Act, 1985.

4. Applicant has alleged that the Respondents intentionally and deliberately (with a view to deprive him of his legitimate right to get promotion) acted in a clandestine manner, for although his case was recommended by the Selection Committee/DPC and accepted by the Cabinet Committee, the authorities have taken a calculated step to throttle his actual promotion.

5. Applicant has relied upon the law laid down by the Hon'ble Apex Court in the cases of **Union of India vs K.V.Jankiraman**, [reported in AIR 1991 SC 2010], **Union of India and others v Sangram Keshari Nayak**, [reported in Supreme Court Service Rulings (2008) Page 463]; **Coal India Ltd and Others v Saroj Kumar Mishra**, [reported in AIR (2007) SC 1706]; and **Badrinath v Government of India Tamilnadu and Others**, [reported in AISLJ SC (2001) Part 2 Vol. 77 page 460] in order to support his case.

6. It has been argued, on behalf of the Applicant, that as there were no charge sheet served on him on the date of Meeting of the Selection Committee/DPC and its acceptance by the Cabinet Committee, the Applicant (who was recommended) ought to have been promoted along with his juniors.

7. While praying for issuance of notices to the Respondents; as an interim measure, Learned Counsel for the Applicant seeks a direction for considering his case for promotion to CCIT. This was opposed by Learned ASC representing for the Respondents and has sought time to obtain instruction and file counter.

J

8. Since, it is the positive case of the Applicant that, in order to seek removal of injustice caused to him in the decision making process, he has submitted two representations (under Annexure-A/10 dated 25.01.2010 and A/11 dated 09.02.2010) which are stated to be still pending with the Respondent No.1; with the consent of the Learned Counsel for both sides, without any ~~west~~ of time and without expressing any opinion on the merit of this matter, this case is disposed of with direction to Respondent No.1 to consider and dispose of the pending representations of the Applicant with a reasoned order (by keeping in mind the law laid down by Their Lordships of the Hon'ble Apex Court in the aforesaid cases) and communicate the result thereof to the Applicant within a period of 60 (sixty) days from the date of receipt the copies of this order. No costs.

9. Send copies of this order (along with copies of the OA) to the Respondents (by Regd. Post) at the cost of the Applicant. Learned Counsel for the Applicant undertakes to file the postal requisite for the said purpose within a period of two days hence. Copies of this order be also handed over to Learned Counsel appearing for both sides for onward transmission.


Member (Admin.)


Vice-Chairman