

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/00195 OF 2016
Cuttack, this the 2nd day of May, 2016

CORAM

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

.....

Sri Swapan Kumar Mohanty, aged about 48 years, son of late Biswanath Mohanty, permanent resident of Vill. Basantamal, P.O. Badala Sasan, P.S. Balipatna, Dist. Khurda, presently working as Inspector of Income Tax, in the office of Income Tax Officer, Jaipur Ward, Jaipur at Ayakar Bhawan, Shelter Square, Cuttack-753008.

.....Applicant

By the Advocate(s)-M/s. S.K. Ojha, S.K. Nayak

-Versus-

Union of India, represented through

1. Secretary, Department of Revenue, Ministry of Finance, New Delhi-110001.
2. The Chairman, Central Board of Direct Taxes, North Block, Central Secretariat, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Odisha, PIN-751007.
4. Sk. Rajan Jaan, Presently working as Inspector of Income-Tax, O/o the Joint Commissioner of Income-Tax, Range-1, Ayakar Bhawan Shelter Square, Tulsipur, Cuttack-753008.
5. Sri Durga Prasad Acharya, presently working as Inspector of Income-Tax, O/o the Principal Commissioner of Income-Tax-I, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007.
6. Sri Manas Ranjan Mishra, Presently working as Inspector of Income-Tax, O/o the Principal Commissioner of Income-Tax-I, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007.

.....Respondents

By the Advocate(s)- S.K. Singh

ORDER (ORAL)

A.K.PATNAIK, MEMBER (J):

Heard Mr. S.K. Ojha, Ld. Counsel appearing for the applicant and Mr. S.K. Singh, Ld. ACGSC appearing for the Respondents on whom a copy of this O.A. has already been served, and perused the materials placed on record.

2. The fact of the case is that the applicant joined in the Income Tax Department as Stenographer Grade-III on 18.03.1996. Thereafter the applicant has been promoted to the post of Stenographer Gr.II and



Stenographer Gr.I in due course. Thereafter he was promoted to the post of Inspector of Income Tax on the basis of regular DPC held on 11.06.08 for the Recruitment Year 2008-09. Thereafter Respondent No.3 has passed the order No.41/215-16 dated 14th Sept., 2015 recommending persons for promotion to the grade of Inspector Income-tax after making review DPCs for the Recruitment Year 2009-10 to 2014-15. The said DPC was held to (i) recommend persons for promotion to the grade of "Inspector of Income-tax" for different recruitment years and (ii) to re-fix the inter-se-seniority between Direct Recruits and Promotees for different recruitment years, in compliance to decision made in the case of N.R. Parmer & Ors Vs. Union of India by Hon'ble Supreme Court vide Civil Appeal No.7414-7515 of 2005. For the Recruitment year 2009-10, the applicant's name has been placed below the names of Respondent No.4 to 6 despite the fact that the applicant's scale of pay in the feeder cadre is higher than that of them. Where the applicant has been promoted from the feeder cadre of Stenographer (Gr.1) having pre-revised scale of pay of Rs.5500-175-9000, the Respondents No.4 to 6 have been promoted from the feeder cadre of 'Head Clerk/Assistant/Sr. Tax Assistant having pre-revised scale of pay of Rs.5000-150-8000. Such action of the Respondent No.3 violates the guiding principles laid down by the DOP&T for fixation of inter-se-seniority among the persons who are eligible for promotion to a higher grade from different multi-feeder cadres. Against such illegal action and wrongly published seniority list, applicant has made a representation dated 18.08.2015 (Annexure-A/5 Series). Thereafter, Respondent No.3 has published the final seniority list by rejecting the representation dated 18.08.2015 of the applicant in a cryptic manner vide order dated



05.11.2015 (Annexure-A/7). Hence, the applicant approached this Tribunal in the present O.A. under Section 19 of the Administrative Tribunals Act, 1985 with the following prayer:-

- (i) To admit the OA;
- (ii) To declare that the applicant is senior to the Respondent Nos. 4 to 6 in the Inspector of Income Tax Cadre as per the DoP&T Circular issued to that effect;
- (iii) To modify the seniority list (Annex.A/6) published vide office order dated 14.09.2015 to the extent assigning the seniority to the applicant above the private Respondents Nos. 4 to 6;
- (iv) To extend all consequential benefits as due and admissible;
- (v) To pass any other order/orders as deem fit and proper for the ends of justice.

3. Perused the records vis-à-vis the order of rejection dated 05.11.2015. "Duty to act fairly" is part of the fair procedure envisaged under Articles 14 and 21 of the Constitution of India. It is the settled proposition of law that even in administrative matters, the reasons should be recorded as it is incumbent upon the authorities to pass a speaking and reasoned order. In the case of S.N. Mukherjee v. Union of India, AIR 1990 SC 1984 the Hon'ble Apex Court unequivocally held that the object underlying the rules of natural justice is to prevent miscarriage of justice and secure fair play in action. The expanding horizon of the principles of natural justice provides for requirement to record reasons as it is now regarded as one of the principles of natural justice, and it was held in the above case that except in cases where the requirement to record reasons is expressly or by necessary implication has been dispensed with, the authority must record the reasons for its decision. We notice that in the instant case, the Respondents in letter dated 05.11.2015 has intimated that " (iii)...the contentions of all other applicants listed in Annexure-1 to this letter (except applicants mentioned at (i) & (ii) above) lack substance and merit and hence, with the approval of the




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competent authority, these representations are treated as disposed of as rejected. This to our mind does not meet the requirement of law as enumerated above. The Respondents should have given detailed reasons for dismissal of applicant's representation.

4. It is trite law that public orders, publicly made in exercise of a statutory authority cannot be construed in the light of the explanation subsequently given by the officer making the order of what he meant, or of what was in his mind or what he intended to do. Public orders made by public authorities are meant for public effect and are intended to effect the action and conduct of those to whom they are addressed to and must be construed objectively with reference to a language used in the order itself - **Commissioner of Police Bombay Vs Gordhan Das Bhanji**, AIR (39) 1952 SC 16.


5. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reason so mentioned and cannot be supplemented by fresh reasons in the shape of an affidavit or otherwise. Otherwise an order bad in the beginning may, by the time it comes to court on account of a challenge, gets validated by additional grounds - **Mohinder Singh Gill Chief Election Commissioner**, AIR 1078 SC 851=(1978) 1 SCC 405.

6. When the order of rejection is not capable of passing the test of reasonableness as enshrined in Articles 14 and 16 of the Constitution of India and as per the law, reasons are to be provided in support of the rejection cannot revalidate the order of rejection, admitting this OA in our considered view will be only delay the rights of the applicants for proper consideration of his case. In view of the above, without expressing any



opinion on the merit of the matter, we quash the order of rejection dated 05.11.2015 so far as it relates to the present applicant and remit the matter back to the Respondents to give proper consideration to the case of the applicants as raised in the representation dated 18.08.2015 and communicate the reason thereof to him, in a well-reasoned order within a period of 60(sixty) days from the date of receipt of copy of this order. The OA is accordingly disposed of. There shall be no order as to costs.

7. Registry is directed to send copy of this order, along with paper book, to Respondent No. 3 by Speed Post for which Mr. S.K. Ojha, Learned Counsel appearing for the applicant, undertakes to file the postal requisites by 05.05.2016.


(R.C.MISRA)
MEMBER (A)


(A.K.PATNAIK)
MEMBER(J)

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