

11

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. No. 569 of 2013

Cuttack this the 22nd day of August, 2013

CORAM

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

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

.....

Shri Subhas Chandra Mohanty, aged about 59 years, Son of Late Krushna Mohan Mohanty a permanent resident of Village/Post/PS. Paralakhemundi, Dist. Gajapati at present working as Assistant Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-I Commissionerate, Rajaswa Vihar, Bhubaneswar-751 007, Dist. Khurda.

.....Applicant

(By the Advocate(s)-M/s.J.M.Pattnaik & C.Panigrahi)

-VERSUS-

Union of India represented through

1. The Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Joint Secretary (Administration), Central Board of Excise and Customs, Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi.
3. The Chief Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar Zone, Rajaswa Vihar, Bhubaneswar, PIN-751 007.
4. The Commissioner, Central Excise Customs and Service Tax, Bhubaneswar-I Commissionerate, Rajaswa Vihar, Bhubaneswar, PIN-751 007.
5. The Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-II Commissionerate, Rajaswa Vihar, Bhubaneswar, PIN-751 007.



6. The Additional Commissioner (Law), Office of the Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-II Commissionerate, Rajaswa Vihar, Bhubaneswar, PIN-751 007.
7. Shri Chandra Kanta Dalai at present working as Superintendent of Central Excise, Customs & Service Tax, Paradeep Range, customs House, At/Po.Paradeep -754 142, Dist. Jagatsinghpur, Odisha.

.....Respondents

(By the Advocate(s)-Ms.S.Mohapatra)

O R D E R

(Oral)

A.K.PATNAIK, MEMBER (JUDL.):

The Applicant who is at present working as Assistant Commissioner, Central Excise, Customs and Service Tax, Bhubaneswar-I Commissionerate, Rajaswa Vihar, Bhubaneswar-751 007, Dist. Khurda has filed this Original Application praying therein to quash the order dated 13.08.2013 (Annexure-A/9), the order dated 27.11.2007 (Annexure-A/6) and the gradation list circulated on 10.5.2013 (Annexure-A/7) in placing the Respondent No.7 above him. In alternatively, he has prayed to direct the Respondent-Department to show his name above Respondent No.7 in the gradation list by applying the ratio of the decision in Annexure-A/1.

2. Advance copy of the OA has been served on Ms.S.Mohapatra, Learned Additional CGSC for the Union of India to appear for the Respondent-Department. We have heard Mr.J.M.Pattnaik, Learned Counsel appearing for the Applicant and

Allen

Ms.S.Mohapatra, Learned Additional CGSC appearing for the Respondent- Department and perused the materials placed on record.

3. The case of the Applicant, in nut shell, is that the Applicant joined the post of Inspector (OG) on 12.5.1976, confirmed in the said grade on 1.8.1979, became Inspector SG on 28.5.1985 and was promoted to the post of Superintendent on 9.7.1992 whereas, Respondent No.7 joined as Inspector (OG) on 3.12.1980, confirmed in the said grade on 6.9.1982, became Inspector (SG on 30.5.1985 and was promoted to the post of Superintendent on 30.9.1996. Therefore, he was all along senior to Respondent No.7. But Respondent-Department unsettled the settled thing, after long lapse of time, without giving him any opportunity by way of issuing the order dated 27.11.2007 (Annexure-A/6) and thereby placing him below Respondent No.7 in the gradation list circulated vide memo 10.5.2013 (Annexure-A/7). Further case of the Applicant is that the order dated 27.11.2007 is not in accordance with the order dated 11th August, 2000 in OA No. 58 of 1991 in which this Bench have held that while fixing the seniority of the Respondent No.7 in the combined list of Inspectors inclusive of the pre-fourth Pay Commission Inspectors (Senior Grade) and Inspectors (Ordinary Grade), the Respondent No.7 has to be given credit of his



14

appointment as Inspector (Senior Grade), i.e. he should be given his position above **all those Inspectors over whom he became Inspector (Senior Grade) with effect from 30.5.1985**. It has been stated that the present applicant was not made as one of the Respondents in the said OA nor was he allowed any opportunity before the order dated 27.11.2007 was issued by the Respondent-Department in compliance of the said order of this Tribunal ^{has} nor

2 ^{ed} unsettling the settled things in placing the Respondent No.7 above him in the gradation list circulated vide Memo dated 10.5.2013. It has emphatically been submitted that in no circumstances Respondent No.7 can be shown senior to the present Applicant. Next contention of the applicant is that no sooner the gradation list dated 10.5.2013 was published and circulated in the grade of Superintendent showing Respondent No.7 above him without complying with the principles of natural justice, he has ventilated his grievance praying removal of the injustice caused to him in the decision making process of the matter of placement in the gradation list before the Respondent No.5 who has turned down the grievance of the applicant by stating therein that as the applicant was not a party to OA No. 58 of 1991 the ratio of the said decision is not applicable to him. His main grievance at this stage is that when he has raised his grievance with justification the Respondent No.5 ought

Allen

not to have rejected his representation by cryptic order and Mr.Pattnaik, Learned Counsel for the Applicant at this stage sincerely prayed for quashing the impugned order of rejection dated 13.8.2013 (Annexure-A/9) with direction to reconsider all the points raised in his representation dated 12.8.2013 (Annexure-A/8) and communicate the decision in a well-reasoned order. Mr.Pattnaik, Learned Counsel for the Applicant has also submitted as the Respondent-Department are going to take further action based on the tainted seniority list direction may be issued by way of ad interim measure not to take any further ^{of} course action based on the said seniority list pending final decision on this OA.

On the other hand Ms.Mohapatra, Learned Additional CGSC appearing for the Respondent- Department strongly opposed the prayer of the Applicant and has prayed some time to obtain instruction and file a detailed reply.

4. We have considered the rival submissions of the parties and perused the records. Placement in the seniority list is a vital aspect as based on the said placement an employee knows the position of his/her future prospects in the promotional hierarchy in the cadre. If Rule/law does not permit an employee who joined earlier can, in no circumstances, be placed above a person who joined later in a particular grade/cadre. Be that as it may, on X-Ray of the order of



rejection dated 13.8.2013 (Annexure-A/9) vis-à-vis the contentions raised by the applicant in his representation dated 12.8.2013 (Annexure-A/8) in no circumstances it can be held that the order of rejection is a reasoned one meeting/answering all the points raised by the applicant in his representation. In this context, we would like to state that right to reasons is an integral and indispensable part of a sound system of judicial review. Natural justice may provide the best rubric for it since the giving of reasons is required by the ordinary man's sense of justice. The reasoned decision inspires confidence. A society is well governed when the people who are in the helm of the affairs obey the command of the law. Absence of reasons (meeting/answering all the points raised by an employee) is contrary to the mandate of the law and that makes the decision sensitively susceptible. Reasoned decisions (meeting/answering all the points raised) are not only vital for the purpose of showing the citizen that he is receiving justice they are also a valuable discipline for Authority itself. It is quite obvious that when an authority passes an order accepting or rejecting the claim of an employee it is the reasoning which is subject to consideration of appellate authority or the Court/Tribunal as the case may be. Therefore, it is quite essential that unless such reasons are given (meeting/answering all the points raised an employee in the representation/appeal) the

Allen

higher/appellate/revisonal authority and/or the Court/Tribunal would not be able to administer justice ^{effctly} efficiency and speedily. Because it is the reasoning alone that can enable the higher/appellate authority and/or Courts/Tribunal to appreciate the controversy in issue in its correct ^{perspective} ~~prospective~~ and to hold whether the reasoning recorded whose order is impugned is sustainable in law and whether it has adopted correct legal approach. Therefore, the decision is vitiated and it can never come within the realm of curability for there has been statutory noncompliance from the very inception of the consideration given by the authority.


5. We are of the view that the issues raised in this Original Application needs determination at the first instance by the Respondent-Department as this Tribunal cannot sit on a decision as an appellate authority and, therefore, unless reasons are assigned in the order of rejection, the Tribunal may be debarred from justifying an order which is *ab initio* void in absence of reason taking into consideration the reasons to be provided in the counter. In the aforesaid facts and circumstances of the case, we find force in the contentions of the Learned Counsel for the Applicant and accordingly, we quash the order of rejection dated 13.8.2013 (Annexure-A/9) and remit the matter back to the Respondent No.5 to reconsider his representation dated 12.8.2013 (Annexure-A/8) and communicate the




to
decision in a well-reasoned order ~~at~~ the applicant within a period of 60 (sixty) days from the date of receipt of copy of this order and until then, the Respondents are hereby directed not to take any further course of action based on the gradation list of Superintendent circulated vide Memo dated 10.5.2013 (Annexure-A/7).

6. In the result, without expressing any opinion on the merit of this matter, this OA stands disposed without ~~the~~ the observation and direction made above. There shall be no order as to costs.

7. As prayed for by Mr.Pattnaik, Learned Counsel for the Applicant, copy of this order along with OA be sent to the Respondent Nos. 2 to 5 at his cost for which he undertakes to furnish the required postal requisite in the registry within two days hence.


(R.C.MISRA)
Member (Admn.)


(A.K.PATNAIK)
Member (Judl.)