

3

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

O. A. NO. 71 OF 2013

Cuttack, this the 20th day of March, 2013

**CORAM
HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)**

.....

Abhimanyu Behera,
aged about 56 years,
Son of Late Biswanath Behera,
Superintendent of Customs,
Paradeep,
At/Po-Paradeep,
Dist-Jagatsinghpur,
At present Plot No-3835/14,
G.G.P. Colony,
Champti Vihar,
Bhubaneswar.

.....Applicant

Advocate(s) -M/s. S.K. Pattnaik, U.S.Mohanty, P.K.Pattnaik, S.P.Satpathy, D.Pattnaik, S.P.Das.

VERSUS

Union of India represented through

1. The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 001.
2. Chief Commissioner,
Central Excise, Customs & Service Tax,
Bhubaneswar Zone,
Central Revenue Building,
Rajaswa Vihar,
Bhubaneswar-751 007



3. Commissioner,
Central Excise, Customs & Service Tax,
Bhubaneswar-1,
Central Revenue Building,
Rajaswa Vihar,
Bhubaneswar-751 007

..... Respondents

Advocate(s) - (Mr.S.B.Jena).

O R D E R

A.K.PATNAIK, MEMBER (I):

Heard Mr.S.K.Pattnaik, Learned Senior Counsel appearing for the Applicant assisted by Mr.P.K.Pattnaik, Advocate and Mr.S.B.Jena, Learned Additional CGSC appearing for the Respondents and perused the records.

2. It is the case of the Applicant that one Shri Chandrakant Dalai got notional seniority by virtue of the order of this Tribunal dated 11/08/2000 in OA No. 58/1991 wherein it has been held by this Tribunal that all Inspector (SG) as on 01/01/1986 are to be placed enblock senior to Inspector (OG) as on 01/01/1986. The above order of this Tribunal was a judgment in rem and as such was to be followed by the Commissioner of Central Excise and customs while recasting the seniority list of all the Inspectors as on 01/01/1990. But

W. K. Pattnaik

while doing so, the Commissioner, of Central Excise and Customs did not follow the principle laid down by this Tribunal and confirmed by the Hon'ble High Court of Orissa and the benefit of the decision has only been extended to Chandrakant Dalai alone forgetting about the case of the applicant and other similarly placed Inspectors (SG) promoted before 01/01/1986 from Inspector (OG) to Inspector (SG). Further case of the applicant is that although he is entitled to be placed above Shri Chandrakant Dalai in the grade of Superintendent while recasting the seniority the Respondents did not do so. Hence by filing this Original Application the Applicant (Abhimanyu Behera) prays the following reliefs:

- "i. The applicant may be declared as senior above all the Inspectors (OG) in the seniority list as published as on 01.01.1990 and thereafter by giving him appropriate position on the basis of date of promotion as Inspectors (SG);
- ii. The applicant may be declared as notionally promoted as Superintendent of Central Excise, Custom and Service Tax w.e.f. 21.02.1990 when Sri Bibhuti Bhusan Mishra was so promoted or with all consequential service benefits like scale of pay, arrears of salary, increments etc and seniority and;

Abhimanyu Behera

- 6 -4-
- iii. the respondents may be directed to promote the applicant to the rank of Asst. Commissioner of Central Excise, Customs & Service Tax with effect from 16.12.2002 and as Deputy Commissioner w.e.f. 30.06.2009 when Shri Bibhuti Bhusan Mishra was so promoted with all consequential benefits.”

3. Mr.Jena, Learned Additional CGSC appearing for the Respondents at the out set submitted that the applicant sought direction to declare him senior above all the Inspectors (OG) in the seniority list as published as on 01.01.1990 and thereafter by giving him appropriate position on the basis of date of promotion as Inspectors (SG) but none of the persons who are likely to be affected in case the prayer is allowed, through are necessary and proper parties have not been made as parties and as such this Original Application is liable to be dismissed in limine.

4. Mr.Pattnaik, Learned Senior Counsel appearing for the Applicant submitted that there is no necessity to make any of them as parties as the applicant seeks the benefits of the decision of this Tribunal as upheld by the Hon'ble High Court

Auct

of Orissa as also by the Full Bench of the Tribunal in the case of Chandrakanta Dalai.

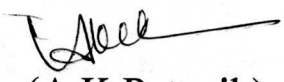
5. Be that as it may, I find the applicant submitted representations ventilating his grievance before the Respondent No.2 on 25.7.2012 & 15.1.2013 and according to the Learned Counsel for the Applicant no decision has been communicated to him till date. Hence Learned Counsel for the applicant submitted that he will be satisfied if this OA is disposed of at this stage with direction to the Respondent No.2 to consider the grievance of the applicant as raised in the said representations and communicate the decision in a reasoned order to the applicant within a stipulated period. In view of the above, I do not find any reason to keep this matter pending and, therefore, without expressing any opinion on the merit of this OA as also on the point of non-joinder of necessary party this OA is disposed of with direction to the Respondent No.2 to take a decision on the representations dated 25.7.2012 & 15.1.2013 and communicate the result thereof in a reasoned order to the Applicant within a period of 90(ninety) days from the date of receipt of copy of this order. There shall be no order as to costs.



8

-6-

6. Copy of this order along with paper book be transmitted to the Respondent No.2 by post at the cost of the applicant for which Learned Counsel for the Applicant undertakes to furnish the required postal requisite by 22.03.2013.


(A.K.Patnaik)
Member (Judicial)