

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

Original Application No. 260/00797 of 2010  
Cuttack, this the                      day of September, 2017

CORAM  
**HON'BLE MR. S.K.PATTNAIK, MEMBER (J)**  
**HON'BLE DR. M. SARANGI, MEMBER (A)**

.....

Balakrushna Sahu,  
aged about 45 years,  
S/o Late Laxmidhar Sahu,  
Plot No. 751, At/PO- Baramunda,  
Bhubaneswar, Dist-Khurda,  
At present working as Inspector of Income Tax  
in the Office of the Commissioner of Income Tax (TDS), Bhubaneswar.

...Applicant

Advocates: Mr. B.B.Mohanty .

**VERSUS**

Union of India represented through

1. Secretary to Govt. of India,  
Department of Revenue, North Block,  
New Delhi-110001.
2. Chairman,  
Central Board of Direct Taxes,  
North Block, New Delhi-110001.
3. Director General of Income Tax (Administration),  
E-2, Jhandewalan Extension, Caunaught Circus,  
New Delhi-110055.
4. Chief Commissioner of Income Tax,  
Ayakar Bhawan, Rajaswa Vihar,  
Vani Vihar, Bhubaneswar- 9.
5. Ranjan Kumar Mohanty,  
Income Tax Officer, Ward No.1,  
Dhenkanal, At/PO/Dist- Dhenkanal.
6. Ravinesh Kumar,  
Income Tax Officer, Ward No.11,  
Jharsuguda, At/PO/Dist- Jharsuguda.

7. C.R.Patra,  
Income Tax Officer, Phulbani,  
At/PO- Phulbani, Dist- Kandhamal.

..... Respondents

Advocate(s) : Mr. S.Behera for UOI  
Mr. P.P.Mohanty for (Private Resp. 5, 6 & 7)  
.....

## O R D E R

### **S.K.PATTNAIK, MEMBER (JUDL.):**

Heard Mr. S.Mohanty, Ld. Counsel for the applicant, and Mr. H.K.Tripathy, Ld. Counsel appearing for the Respondents-KVS, and perused the materials placed on records.

2. The applicant seeks quashing of the order of promotion dated 20.10.2010 (Annexure-A/6) so far as it relates to private Respondent Nos. 5, 6 and 7 and further prays to strike down the paragraph-4 of the letter of Central Board of Direct Taxes, Department of Revenue, Ministry of Finance issued vide instruction dated 22.05.2009 (Annexure-A/3).

3. In a case of this nature, where the circular of CBDT has created more confusion than resolving a dispute, it is necessary to quote the circular dated 22.05.2009, in extenso.

“To

*All Cadre Controlling Chief Commissioners of Income Tax,  
All CIT (Incharge of exam) (By name)*

*Madam/Sir*

*Sub: Effective date of passing of Examinations-Instruction reg.*

*In terms of CBDT Instructions F.No. A-32013/3/2000-Ad-VI dated 18.07.2000, the date of passing Examination is reckoned from the last date of the Examination.*

2. *The matter has been reconsidered in the light of decision of the Hon'ble Orissa High Court in W.P.(C) No. 224 of 2003 dt. 31.10.2008 in the case of Union of India & Ors. Vs. Kishore Chandra Mohanthy &*

*Ors. In the said judgement Hon'ble Orissa High Court has also referred to the decision of the Hon'ble Supreme Court in UPSC Vs. Ajaya Kumar Das & Ors. [ Civil Appeal No. 6295 of 2001 dt. 10.09.01].*

3. *Accordingly, it has been decided that henceforth, the effective date of passing Examination shall be the date of declaration of the result by the Directorate of Income Tax (IT) in the case of ITO/ITI Examination and by the CCIT/CIT (In-charge Examination) in the case of MS Examination.*

4. *However, in a case where the Examination is held in a particular calendar year and the result thereof is declared in any subsequent calendar year, the effective date of passing of Examination shall be deemed to be the 1<sup>st</sup> of January of the calendar year in which the result has been declared.*

5. *The above instruction shall operate prospectively i.e. with effect from Departmental Examination-2008 onwards."*

4. There is no dispute about the fact that due to various judicial pronouncements referred in the circular, it was necessary to issue a direction that henceforth the effective date of passing of examination shall be the date of declaration of the result by the Directorate of Income Tax. This instruction is inconsonance with the pronouncement of dictum laid down by the Hon'ble Apex Court in the case of UPSC Vs. Ajaya Kumar Das & Ors. [Civil Appeal No. 6295 of 2001 dt. 10.09.2001]. Even in the case of Union of India Vs. Kishore Chandra Mohanty & Ors. [ 2009 (1) OLR 262], Their Lordships of the Hon'ble High Court of Orissa have emphatically held that the candidate must have cleared the departmental examination by the time the DPC was convened and must be eligible to be considered for promotion. In the light of aforesaid authoritative pronouncement, the instruction imparted under Paragraph-4 that the effective date of passing the examination shall be deemed to be 1<sup>st</sup> of January of the calendar year in which the result has been declared is arbitrary and violative of fundamental right and liable to be struck

down. For all practical purposes, only when result of an examination is declared, the effective date has to be the date of declaration of result and it has nothing to do with the date of the examination. The Department under a misconception and rather under a wrong notion promoted Respondent Nos. 5, 6 and 7 even though they were not eligible for consideration and wrongly debarred the applicant from the list of eligible candidates. Since the eligibility has to be decided on the date of DPC and by the time the DPC considered for the relevant year, Respondent Nos. 5, 6 and 7 had not passed the departmental examination and, therefore, they should have been kept out of zone of consideration and since their inclusion was based on a wrong circular, such promotion order dated 20.10.2010 in respect of Respondent Nos. 5, 6 and 7 becomes vulnerable and is liable to be set aside. Since the pleadings of both the parties are not disputed, same are not discussed. Hence ordered.

5. O.A. is allowed. The order of promotion dated 20.10.2010, so far as the promotions of Respondent Nos. 5, 6 and 7 are concerned, is hereby quashed. So also, the instruction imparted in CBDT guideline dated 22.05.2009 (Annexure-A/3) under Paragraph-4 being contrary to established judicial pronouncement is also hereby quashed. Respondents are directed to take consequential action in terms of the instruction imparted under Paragraph-3 of the letter dated 22.05.2009 ignoring Paragraph-4, which for all practical purposes shall be treated as non-existent. The effective date shall be the date of declaration of result and not the date of examination. Respondents are directed to take consequential action immediately preferably within a period of one month from today. No costs.

(M. SARANGI)  
Member (Admn.)

(S.K.PATTNAIK)  
Member (Judl.)