

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 260/00524 of 2011
Cuttack, this the 26th day of September, 2017

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

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Goutam Kumar Das,
aged about 37 years,
S/o Upendranath Das,
At- Jagannath Sahi, P. O:- Chandinichowk,
P. S: Bidanasi, Dist-Cuttack, Odisha
at present working as Inspector of Income-tax
under the control of Commissioner of Income-tax,
Arunodaya Market Building, Link Road, Cuttack.

...Applicant

By the Advocate-M/s. P. C. Sethi, A. K. Moharana

-VERSUS-

Union of India Represented through

1. Secretary Finance, Ministry of Finance, North Block, New Delhi-110001.
2. The Central Board of Direct-taxes, represented through its Chairman, Department of Revenue, North Block, New Delhi-110001.
3. The Chief Commissioner of Income-tax, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007.
4. The Commissioner of Income-tax, Aayakar Bhawan, Rajaswa Vihar, Dist- Khurda, Bhubaneswar-751007.
5. The Commissioner of Income Tax, Arunodaya Market Building, Link Road, Cuttack.

...Respondents

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

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ORDER

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

The applicant has filed this O.A. to declare the order of promotion dated 05.05.2011 (Annexure-A/1) as valid and legal and also has prayed to hold the order of reversion dated 05.08.2011 (Annexure-A/6) as illegal.

2. Applicant's case in short runs as follows:

Applicant was promoted to the post of Inspector of Income Tax on 05.05.2011 having duly considered for promotion by the Departmental Promotion Committee (DPC). The grievance of the applicant is that Respondent No.4 without giving an opportunity of being heard passed the order of reversion. According to the applicant, reversion of the applicant to a lower post of Office Superintendent from the post of Inspector of Income Tax without giving him an opportunity of being heard was blatantly illegal and, even though the applicant made a representation, it was not considered and was dismissed.

3. Respondents contested the case by filing a counter to the interim prayer so also a counter to the original O.A. According to the Respondents, the applicant, Shri Goutam Kumar Das, who belongs to SC community, was promoted to the cadre of Inspector of Income Tax from the feeder cadre of Office Superintendent for the Recruitment Year 2010-2011 vide order dated 05.05.2011. In Para-2 of the said order, it was categorically mentioned that his promotion was subject to the final outcome involving eligibility, seniority or any other related issues pending in any Bench of the CAT/in any High Court or any clarifications

from CBDT. The Respondents have further clarified that one Niranjan Behera, who was an Inspector of Income Tax (IIT), had approached this Tribunal in O.A. No. 484/2009 challenging the order dated 28.02.2008 and order dated 12.06.2008 of Commissioner of Income Tax promoting three persons of SC category to the grade of Income Tax Officer. This Tribunal by a common order dated 19.10.2010 dismissed the O.A. Being aggrieved by the said order, the said Shri Niranjan Behera challenged the same before the Hon'ble High Court of Orissa in W.P.(C) No. 19289/2010. The Hon'ble High Court setting aside the order of this Tribunal allowed the Writ Petition vide judgment dated 10.05.2011 (Annexure-R/1) with the following directions:

“The Department shall examine the roster and find out as to whether in the year 2008 any vacancy in the Grade of I.T.O. Grade B for S. C. Candidates was available or not. If any post or posts were available, the private opposite parties have to be adjusted against the said reserved category posts in I.T.O. Grade B. In the event, it is found that no such posts for reserved category were available to adjust the private opposite parties on promotion, the three posts against which the said private opposite parties have been adjusted considering their promotion on their own merit can only be taken out from the quota meant for general category candidates. If the Department is of the view that because of the clarification obtained in the meantime, the private opposite parties could not have been adjusted on promotion against unreserved vacancies, appropriate steps must be taken to revert them to the post of Inspector of Income Tax. If the said private opposite parties are adjusted against the reserved vacancies on promotion or if the Department decides to retain their promotion by adjusting them against vacancies meant for unreserved category, the roster must be adjusted accordingly by taking out the said three posts occupied by the private opposite parties from the quota meant for the general category without affecting the quota meant for the reserved category. After adjusting the roster, if it is found that a post is available for consideration of the case of the petitioner for promotion, his case may be placed before the D.P.C. for consideration. The entire exercise be completed within three months from today.”

4. Positive case of the Respondents is that in order to implement the direction of the Hon'ble High Court, there was need to hold a Review DPC for the grade of ITO from Recruitment Year 2007-08 to 2010-11. The name of the present applicant, Shri Goutam Kumar Das, was dropped out from the list of promotion as he could not find place for the combined select list of persons meant for Ministerial Sub-Group of the post of IIT for Recruitment Year 2010-11 and 2011-12, for which he was reverted to the appropriate lower grade of Office Superintendent vide order dated 05.08.2011. According to the Respondents, in course of implementation of the direction of the Hon'ble High Court, in the case of Niranjan Behera one R.K.Sahu, belonging to SC community earlier selected from Ministerial Seniority Sub-Group having been dropped out from the select list for the Recruitment Year 2007-08, was selected for the Recruitment Year 2010-11 and one Sri D.K.Mallick, dropped out from the select list for the Recruitment Year 2008-09, was adjusted against the Recruitment Year 2011-12, as a result of which, the applicant was to be reverted to the appropriate feeder grade of Office Superintendent from which he was erroneously selected for the Recruitment Year 2010-11 and could not be adjusted in the Recruitment Year 2011-12 as both Sri R.K.Sahu and Shri D.K.Mallick were senior to the applicant in the Gradation List mentioned in this region.

5. According to the Respondents, since the reversion of the applicant was due to implementation of the direction of the Hon'ble High Court in W.P.(C) No. 19289/2010, in the case of Shri Niranjan Behera

Vs. Union of India & Ors., which lead to review the earlier DPC in the grade of ITO and as a consequence thereof there was review of earlier DPC in the grade of IIT, there was no question of giving an opportunity of being heard before passing the impugned order.

6. In case of this nature, the primary grievance of the Ld. Counsel for the applicant is that without giving opportunity of show cause the applicant was reverted. Outwardly, this *prima facie* may amount to denial of natural justice but going deep into the factual scenario, it may be worthwhile to mention, at the outset, that the Department has not conducted a review DPC *suo motu* but to give effect to the direction of the Hon'ble High Court the Review DPC was held in which the applicant could not make it to the promoted position as senior to him was adjusted.

7. In the speaking order dated 05.08.2011 (Annexure-A/6), the competent authorities have categorically mentioned that on the recommendation of the Review DPC for the Recruitment Year 2007-08 to 2010-11 and holding Review DPC for Recruitment Year 2011-12 in the grade of Inspector of Income Tax several persons were given promotion but the present applicant belonging to SC category and another candidate, viz. F.C.Hansdah belong to ST category, were reverted to the grade from which they were promoted as persons senior to them were adjusted in the higher post. Since the Commissioner of Income Tax has acted as per the recommendation of the Review DPC, no fault can be found in his action calling for judicial intervention. The

applicant could not show any document to demonstrate that persons junior to him in the seniority list have been promoted ignoring his case. Since no malafide is found in the action of the Respondents, no interference is called for. That apart, this Tribunal cannot venture to pass an order which will have serious repercussion on the orders of the Hon'ble High Court passed in the Writ Petition filed by Shri Niranjan Behera. Hence ordered.

8. O.A. being devoid of merit is dismissed. No costs.

(M. SARANGI)
Member (Admn.)

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

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