

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O. A. No. 260/608 OF 2016
Cuttack, this the 10th day of May, 2018

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

Shri Nathan Raul, aged about 60 years, Son of late Suryanarayan Raul, permanent resident of Surya Nagar, Bhubaneswar, Dist-Khurda, PIN-751003.

...Applicant

(By the Advocate- In Person)

-VERSUS-

Union of India Represented through

1. Secretary (Revenue), Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Member (P&V), Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
4. The Secretary, Department of Personnel and Training, North Block, New Delhi, PIN-110001.
5. The Under Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, North Block, New Delhi.

...Respondents

(By the Advocate- Mr. S. Behera)

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ORDER

S. K. PATTNAIK, MEMBER (J):

The applicant has filed this O.A. for the following relief as enumerated in paragraph-8, which is extracted below:

- “i) To call for the concerned records from the Respondents;*
- ii) To quash the order of rejection dated 15.03.2016;*

iii) To direct the Respondents to upgrade the gradings made in the ACRs of the Applicant for the financial years 1983-84, 1984-85, 1986-87 and 1987-88 as the same were given without any opportunity to the applicant as per the decision of the Hon'ble Apex Court in the case of Dev Dutt Vrs Union of India and others (Civil Appeal No. 7631/2002), Abhijit Ghosh Dastidar (2009) 16 SCC 146, A.K.Goel & Ors Civil Appeal No. 2872 of 2010, Sukhdev Singh Vs. UOI (2013) 9 SCC 566 and Prabhu Dayal Khandelwal vs. UPSC Civil Appeal No. 8006-8007/2003 dated 23.07.2015 AND/OR to direct the Respondents to upgrade the grading made in the aforesaid ACRs and, consequently, restore the inter-se seniority of the applicant and grant him all concomitant service and financial benefits retrospectively;

iv) PASS any other appropriate order.....”

2. Before delving into the merit of this case, it may be stated at the outset that the applicant himself in para 4.5 of the O.A. has categorically pleaded that for redressal of his present grievance he had approached CAT, Kolkata Bench vide O.A. No. 1157/2003. The CAT, Kolkata Bench vide order dated 12.06.2009 dismissed the petition primarily on the ground of inordinate delay and laches and after that the applicant did not pursue the litigation before the Hon'ble High Court. So, this is a closed chapter and the applicant is estopped from reviving a dead issue as it is clearly barred by res judicata. However, since the applicant appeared in person and argued at length to dispel all apprehension, we make an endeavour to give a detailed reasoning to show that how he has no soil to stand.

3. Earlier, the applicant had approached CAT, Cuttack Bench in O.A. No. 233/2015. A Single Bench of this Tribunal vide order dated 01.05.2015 had directed Respondent No. 1, i.e. Secretary (Revenue),

Ministry of Finance, Department of Revenue, to consider and dispose of the representation, if same is pending, in a well reasoned order and communicate the same to the applicant within a period of 30 days. After disposal of the O.A., the Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, has passed the impugned order dated 15.03.2016 reiterating therein that the representation of the applicant was examined in consultation with DoP&T in terms of the DoP&T O.M. dated 13.04.2010 and the competent authority after due consideration is of the considered view that the prayer of Shri N.Raul regarding restoration of his inter se seniority in the 1980 batch of IRS (IT) Officers cannot be acceded to.

4. Cause of action for the present case arose way back on 10.04.1989 (Annexure-A/2) when vide order of Central Board of Direct Taxes, the applicant was promoted to the grade of Deputy Commissioner of Income Tax (presently, known as Joint Commissioner of Income Tax), however, his inter se seniority stood reduced by 64 positions. The grievance of the applicant is that instead of being placed at Sl. No. 55 below the name of Shri N.D. Wariah, he was placed much below his erstwhile junior at Sl. No. 119. Applicant claims that he was never communicated any adverse entry of below bench mark grading and as such his down grading in the merit list/promotion list was arbitrary and illegal. So, virtually, in this O.A., the applicant challenges the illegality and tenacity of the impugned order passed way back in 1989. The applicant claims impetus from recent judgment of the Hon'ble Supreme

Court passed in the case of *Dev Dutt Vrs Union of India and others* (Civil Appeal No. 7631/2002), *Abhijit Ghosh Dastidar* (2009) 16 SCC 146, *UOI Vs. A.K.Goel & Ors* Civil Appeal No. 2872 of 2010, *Sukhdev Singh Vs. UOI* (2013) 9 SCC 566 and *Prabhu Dayal Khandelwal vs. UPSC* Civil Appeal No. 8006-8007/2003 dated 23.07.2015.

5. Respondents contested the case by pleading that the claim of the applicant has become a stale claim and is hopelessly barred by limitation. The Respondents further clarified in their counter that after passing of the judgment by the Hon'ble Supreme Court, the DoP&T has issued O.M. dated 13.04.2010 (Annexure-A/4) and O.M. dated 27.04.2010 (Annexure-A/5) by clarifying that no representation to be accepted from the employees in whose cases, respective DPCs stood completed prior to 2008 whereby their promotions and other career prospects were denied to them. There is nothing wrong in the DoP&T circular calling for our intervention as the same circular has been issued on the basis of latest pronouncement of the Hon'ble Supreme Court.

6. Before delving into the merit of this case, it may be clarified at the outset that there is no dispute on the ratio propounded in the case of *Dev Dutt Vrs Union of India and others* [(2008) 8 SCC 725], *Abhijit Ghosh Dastidar* (2009) 16 SCC 146. Both the judgment, along with other judgment were referred to a larger Bench which was headed by three Hon'ble Judges of the Hon'ble Supreme Court in the case of *Sukhdev Singh Vs. UOI* [(2013) 9 SCC 573] wherein Their Lordships have upheld the ratio propounded in the case of *Dev Dutt* and *Abhijit*

Ghosh Dastidar and clarified that every entry in the ACR has to be communicated to the public servant and that is how the DoP&T circular came into existence. This judgment of the Hon'ble Supreme Court has no retrospective effect and is prospective. If every entry of the ACR is to be communicated irrespective of date of promotion then in that event persons, who were denied promotion in all previous years will also approach the judicial forum now and in that event the law courts will be flooded with the service matter cases which were closed long back. The applicant has not made any effort to challenge the order of 1989 during 1989-90 and lived with the said promotion order till his retirement and luxuriously filed this litigation knowing fully well that his claim is a stale claim and no relief can be extended at this distance of time which will create a topsy turvy position if seniority list of 1989 shall be altered by judicial intervention in 2018.

7. There is considerable force in the submission of Mr. S. Behera, Ld. Counsel for the Official Respondents that in 1989 when the applicant's case was considered with his batchmates at that time there was prevailing law of communicating only adverse entry and there was no law of communicating below bench mark entries, if it was not adverse. So, no fault can be found in the action of the Respondents which they had taken in 1989 considering prevailing law. Right of the applicant having not been established within the stipulated period of limitation, cannot be permitted after two decades, as such claim is hopelessly barred by limitation as has been observed by the Hon'ble

Supreme Court in the case of *Union of India Vs. Surjit Kaur (2010) 1 SCC (L&S) 735*. Hence ordered.

8. O.A. being devoid of merit is dismissed, both on the ground of res judicata, so also on the ground of limitation.

(M. SARANGI)
Member (Admn.)

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

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