

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

Original Application No. 260/00208 of 2018

Cuttack, this the 12th day of July, 2018

CORAM:

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

THE HON'BLE DR. M.SARANGI, MEMBER (ADMN.)

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Shri Kishore Chandra Mohanty, Aged about 53 years, Son of Shri Kailash Chandra Mohanty, a permanent resident of Bidanasi, Cuttack at present working as Assistant Commissioner of Income Tax, Aayakar Bhawan, Shelter Chhack, Cuttack.

.....Applicant

For the Applicant : M/s. S.K.Ojha, S.K.Nayak, Advocate

-Versus-

1. Union of India represented through its Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001.
2. The Central Board of Direct Taxes, Department of Revenue, represented by the Chairman, North Block, New Delhi- 110 001.
3. The Principal Chief Commissioner of Income Tax, Orissa, Aayakar Bhawan, Rajaswa Vihar, Vanivihar, Bhubaneswar, PIN-751 007.
4. Shri S.P.Choudhury, Pr. Chief Commissioner of Income Tax, Odisha, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007.

For the Respondents: Mr. S.Behera, SCGPC

.....

....Respondents

ORDER

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

Heard Mr.S.K.Ojha, Learned Counsel for the Applicant and
Mr. S.Behera, Learned SCGPC appearing for the Respondents and
perused the records.

2. The Applicant, who is working as Assistant Commissioner of Income Tax has filed this Original Application praying as under:

“ 8. RELIEF SOUGHT:-

- (i) Quash the order of rejection dated 06/04/2018 (**Annexure-A/4**);
- (ii) To direct the Respondent Nos.3/4 to comply with the direction of the Hon'ble High Court of Orissa dated 25.10.2017 in WP (C) No. 22165 of 2017 (**Annexure-A/3**) in letter and spirit and grant the applicant benefits as per the recommendation dated 13.14/08/2012 (**Annexure-A/1**) within a stipulated period to be fixed by this Hon'ble Court;
- (iii) To allow this OA with costs;
- (iv) To pass any other order/orders as this Hon'ble Court be deemed fit and proper.”

3. The relevant portion of the order of the Hon'ble High Court of Orissa dated 25.10.2017 in WP (C) No. 22165 of 2017 (**Annexure-A/3**) is quoted as under:

“5. Considering the above and with consent of learned counsel for parties, this court modified the impugned order to the extent that the Principal Chief Commissioner of Income Tax Odisha – opposite Party No.3 being the competent authority, shall take appropriate steps as per his recommendation dated 13.08.2012 under Annexure-1 and complete the exercise within the stipulated time fixed by the Tribunal.”
(emphasis added)

4. The recommendation dated 13/13th August, 2012 (**Annexure-A/1**) of the Chief Commissioner of Income Tax, Odisha reads as under:

“With reference to the representation dated 02.08.2012 of Shri Kishore Chandra Mohanty, ITO I have examined the points raised in the said representation in consultation with the records maintained by this office. As requested by him, personal hearing was also given to Mr. Mohanty.

2. As it reveals from the record so also from the representation, the grievance of Shri Mohanty, ITO relates to filling up of the vacancies of ITO on promotion for the RY 1995-96. The Departmental Promotion Committee for the above purpose was held in October, 1995 prior to the declaration of the Departmental Examination conducted for the year 1995-1996 whereas the precedence was to convene the DPC only after declaration of the Departmental Examination (for the vacancy years 1993-1994 & 1994-1995 DPCs were convened in the months of July, 1994 & July, 1995 respectively after the results of the Departmental examinations for the years 1993-1994 & 1994-1995 were declared on 10/02/1994 & 15/02/1995 respectively). His name was not taken into the zone of consideration as the result of the Departmental Examination held in June-July, 1995 was not published by the date of the DPC i.e. 13/10/1995. As a result he was superseded by his juniors.

3. The result of the Departmental Examination was declared on 14.02.1996 and the same was rightly given effect to from 03.07.1995 in obedience to the policy decision of the CBDT, New Delhi dated 13.02.1974, subsequently reiterated vide order dated 18.11.1996, 18.07.2000 & 12.09.2002. This practice has been followed all through all over the country in so far as the Income Tax Department is concerned. IN view of the above, the cases of Shri Mohanty, ITO ought to have received due consideration through a Review DPC for the vacancy year 1995-1996; especially when his juniors got promotion on the recommendation of the said DPC.

4. The Hon'ble CAT, Cuttack Bench, Cuttack in its order dated 09/08/2002 in OA No. 542 of 1995 filed by Mr. Mohanty prior to the holding of the DPC for the vacancy year 1995-1996, virtually reiterated what has been contemplated in Rules for holding the Review DPC and instruction/clarification issued by CBDT, New Delhi dated 18.07.2000. The Writ Petition filed before the Hon'ble High Court of Orissa (WP (C) No. 224 of 2003) against the order of Hon'ble CAT, Cuttack Bench, Cuttack is conspicuously silent about the long standing instruction of the CBDT, New Delhi dated 13.02.1974. Because of the order of the Hon'ble High Court in the said case delivered on 31.10.2008 wherein the date of passing of the Departmental Examination was decided to be the date of declaration of the result, in effect nullifying the long standing principle operating in the field, several avoidable litigations have been cropped up before the Department.

5. Be that as it may, the policy decision issued by the CBDT, New Delhi which has been prevailing all through since 13.02.1974 got modified in compliance of the order of the Hon'ble High Court of Orissa only for the Departmental Examination, 2008 onwards by Board's order dated 22.05.2009. Hence the policy decision of the CBDT, New Delhi dated 13.02.1974 was the guiding factor for the RY 1995-1996 also. As such, his prayer falls within the scope and ambit of the policy decision of the CBDT, New Delhi dated 13.02.1974, the benefit of which has been given to similarly situated employees and, therefore, denying him the benefit of the said policy decision would be discriminatory.

In the given circumstances, I am of the considered opinion that the representation of Shri Mohanty, ITO merits favourable consideration. The representations of Shri Mohanty, ITO are enclosed herewith along with the relevant documents submitted by him during the course of the personal hearing."

5. From the above, it is crystal clear that the Chief Commissioner of Income Tax, Odisha took note of all the policy decision of the CBDT, New Delhi, the order of the Hon'ble High Court of Orissa in WP (C) No. 224 of 2003 and recommended the case of the applicant for consideration against the vacancy year 1995-1996 since when his juniors got promotion on the recommendation of the DPC. In view of the specific recommendation of the Chief Commissioner of Income Tax, Odisha, in favour of the Applicant, the Hon'ble High Court of Orissa vide order dated 25.10.2017 in WP (C) No. 22165 of 2017, that too with the consent of the parties was pleased to modify the order of this Tribunal with specific direction that the Principal Chief Commissioner of Income Tax Odisha – opposite Party No.3 being the competent authority, **shall take appropriate steps as per his recommendation dated 13.08.2012** under Annexure-1 and complete the exercise within the stipulated time

fixed by the Tribunal. After such an order of the Hon'ble High Court of Orissa, there was no option except to implement the recommendation dated 13.08.2012 but surprisingly the Principal Chief Commissioner rejected the claim of the Applicant vide order dated vide order dated 06/04/2018 (Annexure-A/4) by stating what the Respondents' counsel did and did not do and by reiterating some of the facts which facts had taken note of while recommending the case of the applicant for favourable consideration. The relevant portion of the order of rejection dated 06.04.2018 is extracted as under:

“16. Now in obedience of Hon'ble High Court's direction as mentioned supra, the undersigned has duly considered Shri Mohanty's **impugned representation dated 06.08.2012**. It is found to be devoid of any merit & sustainability at this point in time, especially because the very issue has attained finality in the wake of Hon'ble Supreme Court's order dated 14.05.2010 **quashing Shri Mohanty's own SLP**. Hence, I hereby reject the said representation. “

6. The order quoted above is reflective of the total non-application of mind on the part of the Principal Chief Commissioner of Income Tax. The recommendation made by the Chief Commissioner of Income Tax, Odisha is dated 13/14.08.2012 which was after taking note of the order of the Hon'ble High Court in earlier case (OA No. 224/2003), policy decision existing before and after the order in the aforesaid case, describing as to how injustice by way of discrimination will be caused unless the applicant is given the benefit. Further the recommendation of the CCIT, Bhubaneswar was much after

the order of the Hon'ble Supreme Court dated 14.05.2010. Therefore, if recommendation is given effect to, as the applicant has in the meantime been promoted to the post of Assistant Commissioner of Income Tax, his name will be placed above his juniors promoted against the vacancies of 1995-1996 in ITO grade. The Hon'ble High Court of Orissa after taking note of the policy decision of the CBDT, discrimination etc has elaborately discussed the recommendation of the CCIT, Bhubaneswar dated 13.08.2012 and took a conscious decision by directing the PCCIT, Bhubaneswar to take appropriate steps as per the said recommendation. Therefore, the decision taken in the impugned order by the PCCIT, Bhubaneswar is based on conjecture and surmises and thus is not sustainable in the eyes of law. Therefore, the Principal Chief Commissioner of Income Tax, Orissa became *functus officio* to take contrary view what has been recommended earlier after the order of the Hon'ble High Court of Orissa to take step on the recommendation dated 13.08.2012. It is seen that the PCCIT, BBSR instead of acting upon the recommendation has considered the impugned representation dated 06.08.2012 and rejected the same on the ground of the order in WP (C) No. 224/2003 by holding that "the very issue has attained finality in the wake of Hon'ble Supreme Court's order dated 14.05.2010 quashing Shri Mohanty's own SLP" which at no stretch of imagination can be said to have been passed in compliance with the order of the Hon'ble High Court of Orissa passed in subsequent order of the Hon'ble High Court of Orissa dated 25.10.2017 in WP (C) No. 22165 of 2017.

It is needless to state that the Hon'ble Apex Court and various Hon'ble High Courts have held that passing order contrary to the order/direction of the competent court having jurisdiction to decide the matter is a travesty of the rule of law which is one of the basic structures of the Constitution. The Hon'ble Courts in many occasions have held that the executive cannot set at naught a judicial order. The executive cannot sit in an appeal or review or revise a judicial order as has been done in the present case. The order of the Hon'ble High Court of Orissa is not only binding on the Principal Chief Commissioner of Income Tax, Orissa but on the Tribunal also.

7. As we find that the consideration and rejection of the case of the applicant was in violation of the specific order of the Hon'ble High Court of Orissa dated 25.10.2017 in WP (C) No. 22165 of 2017, the impugned order of rejection dated 06.04.2018 (Annexure-A/4) is quashed and, the Respondent No.3 i.e. the Principal Chief Commissioner of Income Tax, Orissa is directed to take appropriate steps as per his recommendation dated 13.08.2012, in compliance with the order of the Hon'ble High Court of Orissa (supra) and grant him the consequential service benefits within a period of 30 (thirty) days from the date of receipt of a copy of this order to avoid unnecessary litigation at the cost of state exchequer. In this result, this OA stands disposed of. No costs.

(M.Sarangi)
Member(Admn.)

(A.K.Patnaik)
Member(Judl.)

RK/CM

