

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 761 of 2017

OA No. 614 of 2018

OA No. 631 of 2018

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

OA No. 761 of 2017 - Asis Kumar panda, aged about 49 years, S/o Late Sarat Chandra panda, Superintendent, GST Central Excise & Customs, Bhubaneswar, on deputation as Assistant Director, Enforcement Directorate, Bhubaneswar Sub Zonal Unit, N-3/134, Nayapalli, Bhubaneswar, Dist. – Khurda.

Rabinarayan Mahapatra, aged about 49 years, S/o Shri Baidyanath Mahapatra, working as Superintendent, GST & Central Excise, Audit Commissionerate, C.R.Building, Rajaswa Vihar, Bhubaneswar – 751007.

Surendra Kumar Patra, aged about 52 years, S/o Bansidhar Patra, working as Superintendent, GST & Central Excise, C.R.Building, Rajaswa Vihar, Bhubaneswar – 751007.

Subhendu Mohanty, aged about 49 years, S/o Sri Pramod Kumar Mohanty, working as Superintendent GST & Central Excise, Keonjhar Division, near Collectorate, Keonjhar.

S.C.Praharaj, aged about 52 years, working as Superintendent, GST & Central Excise, Jajpur Division, Jajpur Road, near Railway Station, Jajpur Road, Dist. Jajpur.

OA No. 614 of 2018 - Nihar Ranjan biswal, aged about 58 yers, S/o Kedar Nath Biswal, At/PO-Lataharan, PS _ kakatpur, Dist. – Puri, presently working as Superintendent in GST and Central Excise, Khurda-I Range, At-Bhaliabadi, Pallahat, Khurda – 752056.

OA No. 631 of 2018- Muralidhar Panigrahi, aged about 59 years, S/o Adikanda Panigrahi, At/PO – Abhimanpur, Via – Nuapatna, PS – Baramba, Dist. – Cuttack – 754035, presently working as Superintendent in GST and Central Excise, Bhubaneswar-I Division, 258 District Centre, Chandrasekharapur, Bhubaneswar – 751016.

VERSUS

1. Union of India represented by the Secretary to government of India, Ministry of Finance, Deptt. of Revenue, North Block, New Delhi – 110001.
2. Chairman, Central Board of Indirect Tax and Customs, Deptt. of Revenue, North Block, New Delhi – 110001.

3. The Chief Commissioner of GST, Central Excise and Customs, Bhubaneswar Zone, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751007.
4. The Commissioner of GST, Central Excise and Customs, Bhubaneswar Commissionerate, Central Revenue Building, Rajaswa Vihar, Bhubaneswar – 751007.

.....Respondents.

For the applicant : Mr.S.K.Ojha, counsel (OA 761/2017)
Dr. J.K.Lenka, counsel (OA 614/2018
& OA 631/2018))

For the respondents: Mr.A.K.Mohapatra, counsel (OA 761/2017)
Dr.J.K.Lenka, counsel (OA 761/2017)
Mr.A.C.Deo, counsel (OA 614/2018)
Ms.S.B.Das, counsel (OA 631/2018)

Heard & reserved on : 20.2.2019

Order on : 1.3.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

Since in three OAs as above the main dispute is the inter-se-seniority of the applicants in these OAs as per the decision of the respondents, it was decided to consider all the OAs together after taking the opinion of the learned counsel for the parties in these OAs. Another reason for considering the OAs together is that the applicant in OA No. 614/2018 (Sri N.R. Biswal) had filed the MA No. 442/2018 in OA No. 761/2017 to be an intervener in OA No. 761/2017, stating that grant of relief to the applicant in OA No. 761/2017 will adversely affect his promotion which is the main relief sought by him in OA No. 614/2018.

The OA No. 761/2017 is filed seeking the following reliefs:-

- “(i) To quash the order dated 5.5.2017 (Annexure A/6) revising/reversing the order dated 26.6.2009 (Annexure A/3) earlier issued ante dating the date of promotion of the applicants in compliance of the order of this Hon’ble Court under Annexure A/1.
- (ii) To direct the respondents to restore the date of promotion of the applicant to Superintendent as has been assigned in order dated 26.6.2009 (Annexure A/3) and accordingly place their names in the seniority list of Superintendent issued vide Memo dated 4.1.2017 (Annexure A/5) taking into consideration their respective date of promotion as per order dated 26.6.2009.
- (iii) To direct the respondents to grant the applicants all their service and financial benefits retrospectively as per their date of promotion to Superintendent shown in order dated 26.6.2009.
- (iv) To pass any other order/orders as deemed fit and proper.”

The OA No. 614/2018 is filed seeking the following reliefs:-

- “(a) Direct the Resp. No.2 (CBIC) to incorporate the name of the applicant in appropriate place in All India Seniority list in the grade of Superintendent of GST and Central Excise as per recommendation of Resp. No.3, dtd. 28.8.2017 at Annexure A/15 keeping in mind the final seniority list dated 4.8.2017 of Bhubaneswar Zone at Annexure A/14.
- (b) Direct the Resp. No. 2 to prepare the final All India Seniority list in the grade of Superintendent afresh;
- (c) And pass any other order(s)/direction(s) which would afford complete relief(s) to the applicant in the facts and circumstances of the case.”

The OA No. 631/2018 is filed seeking the following reliefs:-

- “(a) Direct the Resp. No.2 (CBIC) to incorporate the name of the applicant in appropriate place in All India Seniority list in the grade of Superintendent of GST and Central Excise as per recommendation of Resp. No.3, dtd. 28.8.2017 at Annexure A/14 keeping in mind the final seniority list dated 4.8.2017 of Bhubaneswar Zone at Annexure A/13.
- (b) Direct the Resp. No. 2 to prepare the final All India Seniority list in the grade of Superintendent afresh on the basis of final seniority list dtd. 4.8.2017 of Bhubaneswar Zone at Annexure A/13;
- (c) And pass any other order(s)/direction(s) which would afford complete relief(s) to the applicant in the facts and circumstances of the case.”

OA No. 761/2017

In this OA, the applicants are aggrieved since the seniority position assigned to them in pursuance of the order of the Tribunal in an earlier OA filed by the applicants have been changed by the official respondents after holding a review DPC on 27.4.2017. The applicants in other 2 OAs are aggrieved due to delay in implementing the decision of the review DPC held on 27.4.2017 and consequent delay in their promotion to the next higher grade. The applicant in OA No. 614/2018 (Sri N.R. Biswal) has filed the MA No. 442/2018 in OA No. 761/2017 to intervene in the OA, which was vehemently opposed by the applicant's counsel in OA No. 761/2017. The said MA was heard on 11.1.2019 and the order on it was reserved. Since the relief sought by Sri N.R. Biswal in his OA No. 614/2018 was considered together with the reliefs sought in OA No. 761/2017 and all three connected OAs were heard together and are being disposed of by this common order, we are of the view that no point will be served in making Sri N.R. Biswal an intervener in the OA No. 761/2017. Accordingly, we dismiss the MA No. 442/2018 filed by Sri N.R. Biswal in OA No. 761/2017.

2. The factual matrix in this OA is that the applicants have a dispute regarding their seniority in the grade of Superintendent, in view of the decision of the respondents to change their date of promotion to the post of Superintendent, which was earlier ante-dated to 23.9.2002 vide order dated 26.6.2009. Due to this dispute, the all India revised seniority list for the

Superintendents is not being finalized by the official respondents, which has resulted in delaying promotions to the next higher post of Assistant Commissioner. It is undisputed that the applicants in OA No. 614/2018 and OA No. 631/2018 are senior to all 5 applicants of the OA No. 761/2017. All the applicants are direct recruit Inspectors under the official respondents. The dispute in the matter arose after the respondents promoted two Inspectors i.e. Sri AK Sethi and Sri KB Nandan, who belonged to Scheduled Caste (in short SC) category as Superintendent w.e.f. 23.9.2002.

3. The applicants in the OA 761/2017 (referred hereinafter as 'applicants') also claimed seniority w.e.f. 23.9.2002 at par with both Sri AK Sethi and Sri KB Nandan who were admittedly juniors to the applicants. They had moved the Tribunal in OA No. 1127, 1157, 1158, 1159 and 442 of 2004, which were disposed of vide order dated 17.2.2009 (Annexure-A/1 of the OA No. 761/2017) with direction to the respondents to ante-date the promotion of the applicants with effect from the date of promotion of Sri AK Sethi and Sri KB Nandan if they were promoted in excess of the quota earmarked for SC/STs, since the applicants were admittedly senior. Sri AK Sethi and Sri KB Nandan were found to have been promoted w.e.f. 23.9.2002 in excess of the reserved quota and hence, as per the order of the Tribunal dated 17.2.2009, the respondents ante-dated their promotion to 23.9.2002 and fixed the seniority of the applicants in OA No. 761/2017 above Sri AK Sethi and Sri KB Nandan vide order dated 26.6.2009 (Annexure-A/3).

4. Sri AK Sethi had filed a Writ petition before Hon'ble High Court challenging the order dated 17.2.2009 of the Tribunal and consequential order of the official respondents dated 26.6.2009. The said Writ petition was disposed of with a directing the petitioner to file a fresh application if he is aggrieved while vacating the interim order. Thereafter, the review DPC was held by the respondents on 27.4.2017 to review the entire issue since the order antedating the seniority of the applicants in OA No. 761/2017 created administrative difficulties, as a number of other employees including the applicants in OA No. 631/2018 and OA No. 614/2018, who are seniors to the applicants, also claimed similar ante-dating of their date of promotion and some of them also approached the Tribunal for similar orders. The matter was examined at higher level by the respondents and it was decided to review the entire issue involved in the dispute by convening another review DPC on 27.4.2017.

5. After holding the review DPC on 27.4.2017, modifying/changing the date of promotion of the officers as per the vacancy, the respondents issued an order dated 5.5.2017 (Annexure-A/6 to the OA No. 761/2017) in which the date of promotion of the applicants was earlier decided as per the order dated 26.6.2009, has been modified from the earlier date 23.9.2002 to subsequent dates depending on their seniority and vacancy. The applicants are aggrieved

by this order changing their seniority position, which they have urged to be a violation of earlier order dated 17.2.2009 of the Tribunal (Annexure-A/1 of the OA No. 761/2017). The applicants had individually submitted representations against the decision on the ground that there is denial of natural justice since the applicants have been made junior to their erstwhile juniors as per the order dated 26.6.2009 and that there was no justification for holding the review DPC which was done in isolation only for Odisha zone. The respondents have gone ahead to revise the seniority list based on the recommendation of review DPC held on 27.4.2017 after circulating the provisional list vide order dated 24.5.2017 (A/8) which was finalized after considering the representations received on the provisional list. The Tribunal vide order dated 5.1.2018 directed the respondents not to take any coercive action against the applicants in pursuance to the order dated 5.5.2017 and 24.5.2017.

6. When the matter stood thus, the respondents moved the Tribunal for vacation of the interim order since they are not able to proceed with the DPC and for further promotion. The Tribunal, vide order dated 18.12.2018 clarified that the respondents may go ahead with the promotion or any other action without affecting the status of the applicants. Thereafter, the matter was heard on 11.1.2019, 30.1.2019 and on 20.2.2019 along with other two OAs.

7. Learned counsel for the applicant in OA No. 761/2017 was heard. He also filed the written submissions. He emphasised on the following points in his oral as well as written submissions :

(i) The respondents have stated that in view of the Board's letter dated 7.1.2010 the review DPC was convened on 27.4.2017 and unsettled the settled position of the seniority of the applicants from the ante-dated position of 23.9.2002 allowed vide order dated 26.6.2009 and changed to different dates subsequent to 2002 and this was done without giving any opportunity of hearing to the applicants who are affected adversely. There is nothing in the letter dated 7.1.2010 of the Board for changing the settled position of seniority.

(ii) There was no reason for revisiting the seniority of two candidates of reserve category A.K.Sethi & K.B.Nandan in the review DPC and for modifying their seniority through review DPC held on 27.4.2017.

(iii) This action of the respondents is violation of the order of the Tribunal dated 17.2.2009 in the OAs filed by the applicants which the respondents have accepted without moving the higher forum.

(iv) The action of the respondents is in violation of the judgment of the Hon'ble Apex Court that settled position with regard to seniority after a lapse of time and without giving an opportunity of being heard to the affected persons is bad in law. Learned counsel also submitted a copy of the judgment of Hon'ble Orissa High Court in the case of Shiba Shankar Mohapatra & Ors. –vs- State of Orissa & Ors. [(2010) 12 SCC 471].

8. Learned counsel for the official respondents in OA 761/2017 was heard. He had submitted the written submission. It is stated that the respondents had complied with the order dated 17.2.2009 of the Tribunal by ante-dating the seniority of the applicants. However, subsequently N.R.Biswal and Muralidhar Panigrahi (applicants in OA No. 614/2018 and OA No. 631/2018) approached the Tribunal for similar benefits. One of the affected employee i.e. Sri A.K.Sethi moved Hon'ble High Court and the interim order was passed not to take any further action in pursuance of the order dated 17.2.2009 of the Tribunal and order dated 26.6.2009. Subsequently, this writ petition was disposed of after vacating the interim order. Then review DPC was held to review the seniority assigned to Sri K.B.Nandan and Sri A.K.Sethi as well as two other officers in pursuance to the instruction of the Board and the said review DPC was held on 27.4.2017. On the basis of the recommendation of the review DPC the order dated 5.5.2017 was passed revising the seniority of Sri K.B.Nandan and Sri A.K.Sethi from 23.9.2002 to 27.8.2004 which is the date when the reserved vacancies were available to accommodate the case of these two officers. Accordingly, the date of seniority was assigned to the applicants who had been earlier given the parity in terms of seniority with Sri K.B.Nandan and Sri A.K.Sethi and accordingly their dates of seniority was also re-assigned between the years 2003 to 2007 after changing the date of promotion of Sri K.B.Nandan and Sri A.K.Sethi so as to adjust them under vacancies earmarked for reserved category. Accordingly, the action has been taken for revising the seniority list after circulating the provisional seniority list among the officers. It was further submitted that the applicants have been given opportunity of hearing before revising the seniority since the provisional seniority list was circulated inviting objections vide memo dated 25.4.2017 (Annexure A/8).

9. Dr.J.K.Lenka, learned counsel for the applicant in OA No. 614/2018 and OA No. 631/2018 submitted that his clients are senior to the applicants in OA No. 761/2017 and that the Ministry of Finance vide letter dated 7.1.2010 (copy of which is annexed at Annexure A/7 in OA No. 614/2018) instructed the respondents that Sri A.K.Sethi and Sri K.B.Nandan were wrongly promoted to the rank of Superintendent, which led to giving similar benefits to other officers and that it has implication to disturb the all India seniority list of Superintendent of Central Excise. A direction was given by the Ministry of Finance to re-examine the entire issue. It was further submitted that the respondents had earlier convened the review DPC for the DPC held on 25.6.2009 to consider ante-dating the date of promotion of the applicants in OA No. 761/2017 in pursuance to the order dated 17.2.2009 of this Tribunal. In the review DPC held on 27.4.2017 in pursuance to the Ministry of Finance letter dated 7.1.2010, the applicants in OA No. 631/2018 and OA No. 614/2018 were given effective date of promotion from 23.9.2002 based on their

seniority and the date of promotion of Sri A.K.Sethi and Sri K.B.Nandan was modified to 27.8.2004 (instead of 23.9.2009) since on 27.8.2004 two vacancies of SC category were available to accommodate their case. Accordingly the dates of promotion of the applicants in OA No. 761/2017 were decided according to the availability of vacancy and their seniority position and thereafter the draft seniority list was revised and objection was invited.

10. We will first examine the grounds mentioned by the learned counsel for the applicant in OA No. 761/2017 justifying the applicants' claim that their ante dated seniority w.e.f. 23.9.2002 should not have been changed to a subsequent date on the basis of the review DPC by the respondents held on 27.4.2017 and it was done without giving any opportunity of hearing. It is seen from the record that a draft seniority list was prepared immediately after passing of the order dated 5.5.2017 and the applicants were given opportunity to represent their case if they are aggrieved by the draft seniority list. Hence, it cannot be said that the seniority of the applicants was changed without giving any opportunity of hearing.

11. The claim of the applicants in OA No. 761/2017 was based on the order dated 17.2.2009 of the Tribunal, copy of which is enclosed at Annexure A/1 of OA No. 761/2017. In the said order the respondents were directed as under :

"In view of the above, according to the applicants there was no need to keep Shri P.C.Das and A.C.Jena both belonging to SC in UR points and consequently there was no need to promote S/Shri K.B.Nandan and A.K.Sethi both belonging to SC w.e.f. 23.9.2002 vide order dated 31.12.2002 superseding the applicants who are senior to them. After hearing the parties and going through the record, we find some force on the above contentions and therefore, the respondents are hereby directed to examine/re-examine whether there has been any excess of reserved candidates (SC & ST) as on the date S/Shri K.B.Nandan and A.K.Sethi belonging to SC community were given promotion and if it is found that the promotion of S/Shri Nandan and Sethi was in excess of the quota provided in the Rules and though they are junior to the applicants but promoted by virtue of being reserved candidate, then the respondents should take step to ante date the date of promotion of the applicants with effect from the date they were given promotion but in that event the applicants shall not be entitled to any back wages except fixation of their pay notionally."

12. From above it is clear that the ante-dating of the seniority of the applicant was subject to the condition that Sri A.K.Sethi and Sri K.B.Nandan who are juniors to the applicants were given promotion w.e.f. 23.9.2002 vide order dated 31.12.2002 in excess of the quota provided in the rules as mentioned in the above order of the Tribunal. In compliance of the direction of the Tribunal the respondents held a DPC on 25.6.2009 and without considering the complications in the matter decided to ante date the date of promotion to 23.9.2002 of all five applicants vide order dated 26.6.2009 (Annexure A/3). It is seen from the letter dated 7.1.2010 of the Ministry of Finance (Annexure A/7 to OA No. 614/2018) where it was observed that the promotion of Sri A.K.Sethi and Sri K.B.Nandan was given erroneously which

led to litigation by number of officers. The following direction was given by the Ministry in the aforesaid letter dated 7.1.2010 :

"You are therefore, requested to re-examine the entire issue with a view to see whether review of undue promotion to Shri Nandan and Shri Sethi would set the controversy at rest, without coming into conflict with any court judgment, Govt. instruction, etc."

13. Accordingly, the respondents have taken steps to hold the review DPC on 27.4.2017 to review the entire issue. The reason for delaying the review DPC to 2017 when the instructions dated 7.1.2010 were very clear, is not clear from the pleadings of the respondents. But in view of the instructions dated 7.1.2010 of the Ministry of Finance and consequent litigations which arose after promotion of Sri A.K.Sethi and Sri K.B.Nandan clearly, implies that the applicants' seniority cannot be considered to be a settled issue. Hence the contention of the applicants in OA No. 761/2017 that their seniority/promotion as Superintendent w.e.f. 23.9.2002 vide order dated 26.6.2009 was a settled issue, is not based on the facts on record.

14. After the review DPC on 27.4.2017, the promotion of Sri A.K.Sethi and Sri K.B.Nandan w.e.f. 23.9.2002 against general category post has been cancelled and they have been accommodated under the reserved category post w.e.f. 28.7.2004. This action of the respondents is in pursuance of the instructions of the Ministry of Finance vide letter dated 7.10.2010 (Annexure A/7 to OA No. 614/2018) and is also justified because ante-dating the date of promotion of the applicants in OA No. 761/2017 would affect all India seniority position of their erstwhile seniors who would be juniors because of ante-dating their promotion date to 23.9.2002 and it is rightly observed in the Ministry's letter that it would have serious implications in all India Seniority List for the Superintendents.

15. Learned counsel for the applicant has cited the judgment of Hon'ble High Court in the case of Shiba Shankar Mahapatra (supra). In this case it has been held as under :

"30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."

As discussed earlier, in this case the seniority position of the applicants w.e.f. 23.9.2002 as per the order dated 26.6.2009 cannot be considered to be a settled issue since it was subject to the promotion of junior officers in excess of reserved quota w.e.f. 23.9.2002 and also in view of the instructions of the Ministry of Finance vide letter dated 7.1.2010. Further the order dated

26.6.2009 did not take into account the case of other officers who are senior to the applicants who should also have got the benefit of ante-dating their promotion because of the order of the Tribunal. On perusal of the Tribunal's order as extracted above, it is noted that the order was subject to the condition that two junior officers belonging to reserved category were promoted against general category post w.e.f. 23.9.2002. Once the promotion of reserved category officers was cancelled by the respondents and their date of promotion got shifted to a subsequent date to accommodate them against the reserved quota, (it was done after review DPC on 27.4.2017) the claim of the applicants for parity with these two junior officers belonging to SC community who were promoted in excess of reserved quota, will have no legs to stand.

16. In the facts and circumstances as discussed in preceding paragraphs, we do not find adequate justification to interfere in the decision taken by the respondents in the OA No. 761/2017, which is accordingly dismissed. The interim orders passed in OA No. 761/2017 stand vacated.

OA No. 614/2018 & OA No. 631/2018

17. In both these OAs the common prayer is to direct the respondents to take action for finalising the all India Seniority list in the grade of Superintendent GST & Central Excise taking into account the recommendation dated 28.8.2017 (Annexure A/15 of the OA No. 614/2018). In view of the findings as discussed earlier that holding of the review DPC on 27.4.2017 and passing of the subsequent order dated 5.5.2017 modifying the date of promotion of the applicants in these OAs are in order, both these OAs (No. 614/2018 and 631/2018) are disposed of with observation that the respondents will have the liberty to take necessary action for promotion of the officers in accordance with the provisions of law.

18. As discussed above, the OA No. 761/2017 is dismissed and the OA No. 614/2018 and the OA No. 631/2018 are disposed of with observations in para 17 above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath

