

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 708 of 2012

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

Michael Kullu, aged about 52 years, S/o Lucas Kullu, residing at Sarlakani, Gandhi Colony, Post-Dhankauda, in the district of Sambalpur-768001 and at present working as Asst. Commissioner of Income Tax, Berhampur Circle, Berhampur, Dist.-Ganjam.

.....Applicant

VERSUS

1. The Union of India, represented by the Secretary to Government of India, Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110001.
2. The Central Board of Direct Taxes, Department of Revenue represented by the Chairman, North Block, New Delhi-110001.
3. The Union Public Service Commission, represented through its Secretary, Dholpur House, Sahjahan Road, New Delhi-110011.
4. The Chief commissioner of Income Tax, Orissa Region, Central Revenue Building, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007. Dist.- Khurda.

.....Respondents.

For the applicant : Mr.B.Panda, counsel

For the respondents: Mr.L.Jena, counsel

Heard & reserved on : 4.11.2019 Order on : 14.11.2019

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant has filed the present OA seeking the following reliefs :

- (i) To pass order and issue further direction quashing the impugned intimation/order/letter issued and filed in Annexure A/1 and
- (ii) To pass order holding that, the seniority list communicated to the applicant vide Annexure A/4 is not as per the law laid down by the Hon'ble Apex Court so also the order passed in OA No. 143/2008 vide dtd. 30.3.12, hence that has no relevance to the case of the applicant and
- (iii) To pass order holding that the applicant's seniority should be fixed on the date of the result declared i.e. on 10.2.1994 and refixation of seniority from said date should be made and to allow all the consequential benefits of seniority from that date and
- (iv) To pass order holding that the applicant is entitled to get his seniority from the year 1994 for all subsequent promotions and to be placed in the seniority accordingly to his date of passing from 10.2.1994 and
- (v) To pass such further order/orders as deem fit and proper in the facts and circumstances of the case and allow the case with cost."

2. The applicant, an officer working under the respondents, was promoted as Income Tax Officer (in short ITO) on 25.1.1996 and his seniority was fixed as per his date of joining. The applicant claims that since he had passed the departmental examination for the post of ITO on 10.2.1994, his seniority should have been fixed for the financial year 1993-94. It is averred in the OA that although the applicant made several representations from 2003 claiming higher seniority, but his case was rejected by the respondents. It is stated that his seniority has not been fixed by the respondents as per the law settled by Hon'ble Apex Court in the case of UPSC vs. Ajay Kumar Das and others in Civil Appeal No. 6295/2001 and he was eligible for the seniority as ITO w.e.f. 10.2.1994 when he cleared the departmental examination for promotion to the post of ITO.

3. Being aggrieved, the applicant had filed the OA No. 143/2008 before the Tribunal, which was disposed of vide order dated 30.3.2012 (Annexure-A/7 series) with the directions to the respondents that the order dated 13.8.2008 passed by the Tribunal in OA No. 482/07 in the case of Subrat Roy will govern the OA No. 143/08. The applicant moved the respondents a representation dated 9.7.2012 (Annexure-A/8) for re-fixation of his seniority as per the order of the Tribunal. The applicant is aggrieved since no action has been taken by the respondents to implement the order of dated 30.3.2012 of the Tribunal passed in OA No. 143/2008 and to modify his seniority position accordingly. It is also stated that after modification of his seniority, the review DPC is required to be held for his consequential promotion to the post of ITO for the year 1993-94.

4. Counter filed by the respondents states as under:-

“That it is submitted that the Hon'ble CAT, vide order dated 13.8.2008, while disposing of OA No. 482/2007 in Subrat Roy's case, had directed the respondents to consider the case of the applicant (Shri Subrat Roy) in the light of principle decided by the Hon'ble Apex Court in the case of UPSC –vs- Ajay Kumar Das and Ors. In Civil Appeal No. 6295/2001. It may be mentioned here that the Supreme Court of India in Civil Appeal No. 6295/2001 had held that the effective date of passing of Departmental Examination should be the date of declaration of the results. Subsequently, the Hon'ble Orissa High Court in their judgment dated 31.10.2008 in WP(C) No. 224/2003 also followed the principle decided by the Hon'ble Apex Court in the case of UPSC –vs- Ajay Kumar Das (supra) and set aside the order dated 9.8.2002 passed by the Hon'ble CAT, Cuttack Bench, Cuttack in case of Kishore Chandra Mohanty –vs- UOI & Ors. In the said order the Hon'ble High Court also directed that all consequential orders passed in pursuance of the judgment dated 9.8.2002 of the Tribunal shall also stand automatically recalled. As a result the seniority of Shri Subrat Roy as well as the seniority of the applicant (Shri M.Kullu) was restored to the position that prevailed before the implementation of the Hon'ble CAT's order dated 9.8.2002.

That accordingly a revised seniority list in the grade of ITO as on 1.1.2007 in respect of Orissa Region was circulated by the Competent

Authority under Memo No. F.No.CCIT/Estt/2-5/2008-09/15228-72 dated 25/26.11.2008.

That as the direction of the Hon'ble CAT was already implemented, there was no need to take further action to fix the seniority of the applicant as has been directed by the Hon'ble CAT in order dated 30.3.2012. The said position was also communicated to the applicant vide letter F.No.CCIT/Estt/III-39/2012-13/10933 dated 24.8.2012 as per Annexure A/1 of the OA.

Now by filing the present OA the applicant has prayed that his seniority should be fixed with effect from 10.2.1994, i.e. from the date on which the result of ITO Examination 1993 was declared based on the principle decided by the Hon'ble Apex Court in Civil Appeal No. 6295/2001.

It may be submitted here that the order of the Hon'ble Apex Court in the case of UPSC –vs- Ajay Kumar Das was pronounced in the year 2001. It may not be, therefore, legally appropriate to adopt the principle decided by the Apex Court retrospectively from the year 1994 as more than 18 years have already elapsed since the seniority of the applicant was fixed on recommendation of a valid DPC conducted for the year 1993-94. Even the Hon'ble Apex Court in the case of Ashok Kumar Sharma and Ors. –vs- Chandrasekhar & Another . 1997 (4) SCC 18 held that upturning the inter se seniority at a distance of time will not be just and equitable.

Moreover, the applicant in this Original Application seeks change of his seniority and all consequential benefits without making the others who are likely to be affected by his prayer as respondents. The OA being devoid of any merit is liable to be dismissed.”

5. Rejoinder has been filed by the applicant stating as under:-

“That Shri D.K.Pradhan (ST) appeared in the Departmental Examination in 1994, but passed subsequently and joined as listed in sl.No.2 on 19.6.1995 as evident in ANNEXIRE A/4, page 15 but in the same list the applicant seniority has come down to Sl.No.12 showing the joining date 29.1.1996 and in fact the applicant should have gone up in the list since as passed the examination held in 1993 and got declared the result of passing of the Departmental Examination in the year 1994.

That the applicant's seniority has not been correctly fixed by the respondents department and at ANNEXIRE A/2 at page 11 the order dt. 10.2.1994 had clarified the seniority. The Opposite Parties conveyed the details of Departmental Examination commenced on 7.7.1993 and completed on 14.7.1993.

That the applicant being the senior in the passing list as ST candidate he should not have been ignored whereas Shri D.K.Pradhan got placed at Sl. No.2 as per their Seniority List declared filed before the Hon'ble Forum at page 15 at ANNEXIRE A/4 in the OA petition.”

6. Vide order dated 25.7.2019, learned counsel for the respondents raised the issue of maintainability of this OA on the ground that same grievance has already been adjudicated by this Tribunal in OA No. 143/2008, for which, this OA is hit by the principle of res judicata. He further submitted that the applicant has failed to implead other employees as essential parties who will be affected adversely in the event of his OA being allowed and hence, it is not maintainable for non-joinder of essential parties.

7. Learned counsel for the applicant argued that in OA No. 143/2008, the Tribunal directed to decide the case of the applicant as per the order of the Tribunal in Subrat Roy's case, which has not been complied by the respondents. Hence, he argued that the present OA is maintainable. He further submitted that the order of the Tribunal has not been implemented by the respondents.

8. Learned counsel for the respondents opposed to this contention and submitted that the order of the Tribunal has been complied as stated in the Counter. He also filed a copy of his written submissions stating that before passing of the order dated 30.3.2012 by this Tribunal in OA No. 143/08, the respondents had already restored the seniority of Sri Subrat Roy as well as of the applicant vide order dated 25/26.11.2008 (Annexure-A/4). It was therefore, submitted that there was no need to take further action to re-fix the seniority of the applicant as per the order dated 30.3.2012 (A/7).

9. We have considered the submissions by learned counsels for both the parties with reference to the pleadings on record. It is necessary to decide the issue of maintainability of the OA which has been raised by the respondents on the ground that the same issue had been already decided in the OA No. 143/2008. It is seen from the order dated 30.3.2012 (Annexure-A/7) that the reliefs prayed for by the applicant in that were as under:-

“....direction to the CCIT, the respondent No.4 and also other respondents may be made to reconsider the representations filed seeking the review of the DPC mostly giving proper adjudication in the matter without sending him down in the seniority list to hold the rank of 25.

May further be pleased to consider and hold the suffering made already to the applicant and the illegality cause denying his seniority which had accrued to him in the financial year 1993-94.

May hold that the order of the Hon'ble High Court of Orissa passed in the case of Ajay Kumar Das being not applicable and has been evoked and vacated by the Apex Court deciding the principles and the eligibility for promotion commenced from the date of passing of the department examination dt. 10.2.94 may please be implemented recalling the order passed.

And may pass any other order.....”

10. In this OA, the applicant has impugned the letter dated 24/27.8.2012 (Annexure-A/1) by which it was informed to the applicant that his case of seniority has been fixed in the seniority list at Annexure-A/4 which was prepared in accordance with the order of Hon'ble High Court in W.P.C. No. 224/2003 and the order dated 13.8.2008 of the Tribunal in OA No. 482/2007 filed by Sri Subrat Roy. Since the letter at Annexure-A/1 was issued to the applicant in compliance of the order passed by the Tribunal in OA No. 143/2008, it has to be taken as a fresh cause of action since the applicant is not satisfied with the manner in which the directions of the Tribunal were

complied as per the letter at Annexure-A/1. Hence, we are unable to agree with the contentions of learned counsel for the respondents that the issue raised in this OA was already adjudicated in OA No. 143/2008 and we are of the view that the present OA is not hit by res judicata.

11. Regarding the ground of non-joinder of the parties in the OA, it is seen that the main prayer of the applicant is for re-fixation of his seniority on the ground that his seniority has not been fixed as per the direction of the Tribunal in OA No. 143/2008 and to fix his seniority as per his date of passing the departmental examination i.e. from 10.2.1994 with consequential benefits. He is not claiming seniority above any particular employee, who will be adversely affected. In the event of the reliefs prayed for in this OA being allowed, the respondents would have to modify the seniority list after giving opportunity of hearing to the employees who will be affected by such modification. Hence, it cannot be said that this OA is not maintainable for non-joinder of essential parties.

12. Learned counsel for the respondents in his written notes has stated that the seniority of the ITOs was revised while implementing the judgment of Hon'ble Apex Court in the case of Union of India vs. NR Parmar and others. But subsequently, the CBDT vide circular dated 27.5.2019 has directed that as per the judgment of Hon'ble Delhi High Court in the case of Veena Kothawale vs. UOI, which was upheld by Hon'ble Apex Court, the judgment in the case of NR Parmar will not be implemented retrospectively prior to 27.11.2012. It is mentioned that the respondents have constituted a task force to implement the direction of the CBDT in circular dated 27.5.2019. This supports the contention of the respondents that modification in the seniority cannot be done retrospectively.

13. Regarding merit, it is noticed that no specific position has been claimed by the applicant in the seniority list with the justifications for the same. It was necessary for the applicant to clearly demonstrate that the respondents have not adopted the principle decided in the case of Sri Subrat Roy while finalizing the seniority of the applicant vis-a-vis other officials in the seniority list at Annexure-A/4. No averment is there in the pleadings of the applicant to specify the seniority position to which he is entitled in accordance with the order of the Tribunal in OA No. 143/2008. In the Rejoinder, the applicant has cited the case of Sri DK Pradhan, who is at serial number 2 of the seniority list at Annexure-A/4, without specifying whether the applicant's seniority should be above or below Sri DK Pradhan. From the averments in the Rejoinder, it is not clear if Sri Pradhan is senior or junior to the applicant. The applicant has also

not demonstrated if any of his junior has been placed at a higher position in the seniority list at Annexure-A/4.

14. Further, the averments in the Counter that respondents have already fixed the seniority of the applicant and other employees like Sri Subrat Roy in accordance with the judgment dated 31.10.2008 of Hon'ble High Court in W.P.(C) No. 224/2003, following the ratio of the decision of Hon'ble Apex Court in Civil Appeal No. 6295/2001 prior to the date of judgment in OA No. 143/2008 i.e. 30.3.2012, have not been contradicted by the applicant except for bland contention that the respondents have not done so. It is stated in the Rejoinder that the Sri DK Pradhan had got promotion in the DPC in 1995 for the recruitment year 1994 and applicant's case was not considered for promotion as ITO for the year 1994 like Sri DK Pradhan. No details have been furnished by the applicant regarding the vacancies available for the year 1994 after considering the seniors of the applicant for promotion as ITO. It is also not the case of the applicant that any of his junior has been promoted to the post of ITO in the DPC held in the year 1994, while ignoring the applicant's case.

15. In the circumstances as discussed above, we are unable to allow the reliefs prayed for by the applicant and the OA is dismissed being devoid of merit. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath