IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16042 of 2012

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1. Mohan Kumar S/O Late Ramanugrah Naryan Singh (Presently Working As Income-Tax Officer (Hqrs.), O/O Commissioner Of Income Tax-I, Central Revenue Building, Patna, R/O East Lohanipur, Kashi Nath Lane, P.S.- Kadamkuan, Distt.- Patna
2. Malti Kumari (Presently Working As Income Tax Officer) Ward-5(4), Lok Nayak Bhawan, Patna
3. Bimla Kumari (Presently Working As Income-Tax Officer) Ward-6(3), Lok Nayak Bhawan, Patna

.... Petitioner/s

Versus

1. Union Of India Through Secretary Finance Ministry Of Finance, North Block, New Delhi
2. The Secretary Cum Chairman Central Board Of Direct Taxes, North Block, New Delhi
3. The Deputy Secretary To The Government Of India, Ad IX Ministry Of Finance, Department Of Revenue, Central Board Of Direct Taxes, North Block, New Delhi
4. The Chief Commissioner Of Income Tax (CCA) Bihar & Jharkhand Region, Patna
5. The Dy. Commissioner Of Income Tax, Hqrs.(Admn.) Patna
6. The Assistant Commissioner Of Income Tax, Hqrs(Admn.), Patna
7. Ramajee Prasad Singh S/O Shri Prahlad Singh R/O Mohalla- Vijay Nagar, Rukunpura, P.S.- Rupaspur, Patna, at Present Working As Income Tax Inspector (Promoted as Income-Tax Officer And Presently Working As Income-Tax Officer, Hajipur)
8. Ishwar Chandra Jha, At Present Working As Income Tax Officer O/o The Chief Commissioner Of Income Tax-Ii, Patna (Presently Posted As Income Tax Officer, Madhubani Ward, Madhubani)
9. Bachneshwar Jha, Income Tax Officer O/o The Chief Commissioner Of Income Tax-II, Patna (Now Retired)
10. Dinesh Thakur, Income Tax Inspector Income Tax Officer, Darbhanga (Now Retired)
11. Kamlesh Kumar Sinha, Income Tax Inspector Income-Tax Office, Bokaro (At Present Working as Income Tax Officer, Sahebganj Ward, Sahebganj)
12. Bishwajit Kumar Sinha, Income Tax Inspector Income Tax Office, Ranchi (At Present Working As Income Tax Officer, Income Tax Office, Dhanbad)
13. Amit Kumar Choubey, Income Tax Inspector Income Tax Office, Bokaro (At Present Working As Income Tax Officer, Ward-3(1), Bokaro)
14. Sanat Kumar Pandey, Income Tax Inspector Circle Office, Patna (At Present Working as Income Tax Officer, Sitamarhi Ward, Sitamarhi)
15. Avinash Kumar, Income Tax Inspector Income Tax Office, Jamshedpur (At Present Working As Income Tax Officer, Income Tax Office, Jamshedpur)
16. Lalit Kishore Prasad Singh, Income Tax Officer Purnea (Now Retired)
17. Ram Vibhishan Thakur, Income Tax Officer (Retd.)
18. Shri Sudhendu Poddar, Income Tax Inspector Through Chief Commissioner Of Income Tax (Bihar & Jharkhand Region, CCA), Patna (At Present Income Tax Officer, Dhanbad)

19. Shri Bharat Bhushan Prasad, Income Tax Inspector Office of The Addl. CIT, Range-1, Lok Nayak Bhawan, Dak Bunglow Chowk, Patna (At Present Income Tax Officer, Chapra)
20. Md. Shaukat Ali, Income Tax Inspector O/o CIT (Central), C.R. Building, Patna
21. Shri K.K. Vishwanathan, Income Tax Inspector Office Of The Addl. C.I.T., Range-3, Bokaro Steel City (At Present Income Tax Officer, Jamshedpur)
22. Shri Ashok Kumar Gupta, Income Tax Inspector Office of Addl. C.I.T., Range-3, Bokaro Steel City (At Present Income Tax Officer, O/O DIT (Intelligence), Patna
23. Shri Sanjay Kumar, Income Tax Inspector, through the Chief Commissioner of Income Tax (Bihar & Jharkhand Region, CCA) Patna (At Present Income Tax Officer, MSTU, Patna)
24. Sri Surendra Choudhary, Income Tax Inspector Through The Chief Commissioner Of Income Tax (Bihar & Jharkhand Region, CCA), Patna (At Present Income Tax Inspector, Jamshedpur
25. Ramjee Prasad Srivastava, Income Tax Inspector Purnea (Retired As Income Tax Officer)
26. Shri Arun Kumar, Income Tax Inspector through Chief Commissioner Of Income Tax (Bihar & Jharkhand Region, CCA), Patna (At Present Income Tax Officer, Biharsharif)
27. Nand Kishore Sahi, Income Tax Inspector, Bhagalpur
28. Shri Kisto Parmanik, Income Tax Inspector Through The Chief Commissioner Of Income Tax (Bihar & Jharkhand Region, CCA), Patna (At Present Income Tax Officer, Ranchi)
29. Mahendra Murari Singh, Income Tax Officer, Dhanbad
30. Janab Juber Ansari, Income Tax Inspector through The Chief Commissioner Of Income Tax (Bihar & Jharkhand Region, CCA), Patna (At Present Income Tax Officer, Dhanbad)
31. Tripurari Sharan, Income Tax Inspector, Hajipur (At Present Working as Income Tax Inspector in Range-5, Patna)
32. Shri Vijay Ravidas, Income Tax Inspector, Through The Chief Commissioner Of Income Tax (Bihar & Jharkhand Region, CCA), Patna (At Present Income Tax Officer, Bhagalpur)
33. Smt. Laurel Khalko, Income Tax Inspector, Purnea (At Present Working As Income Tax Officer, Central Revenue Annexe Building, Main Road, Ranchi)
34. Ashok Kumar Srivastava, Income Tax Officer, Jharkhand
35. Uttam Prasad Kanojia, Income Tax Inspector, Patna (Now Retired)
36. Raman Gopal Venka, Income Tax Inspector, Jharkhand
37. Bhagwat Prasad, Income Tax Officer (Retd.)
38. Kanhai Shankar Prasad, Income Tax Officer Madhubani (At Present Working As Income Tax Officer (Audit), Income Tax Office, Muzaffarpur)
39. Prasun Kumar Sen, Income Tax Officer, Jharkhand
40. Abhay Kumar Das, Income Tax Officer, Jharkhand (Now Working As Tax Recovery Officer, Income Tax Office, Central Revenue Annexe Building, Main Road, Ranchi)

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Manan Kumar Mishra,Sr.Adv., Mr. Prabhaker Dwivedi, Mr. Vishwajeet KumarMishra & Ashutosh Tripathi, Advocates

For the Union of India: Mr. Sanjay Kumar,A.S.G

For the Respondents : Mr. Sandeep Kumar,Adv.& Ms Archana Sinha @ Archana Shahi,Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 03-03-2016

The challenge in the present writ petition is to an order dated 11th May, 2012, passed by the Central Administrative Tribunal, Patna Bench, Patna(for short Tribunal) in a Review Application, whereby the earlier order dated 17th August, 2009 was recalled. The respondents 2nd set in this writ petition were the Applicants before the Tribunal, who sought review or recall of an earlier order passed by the Tribunal on 17th August, 2009.

2. In the first order, the Tribunal has dismissed the Original Application holding that the pay-scale for promotees in the feeder cadre is the determining factor for seniority, and the guidelines framed by the Department of Personnel and Training had to be strictly followed. However, a review application was filed after none of the members of the Bench who decided the Original Application were available. Such review application had been allowed on 11th May, 2012. The operative part of the order reads as under:

> *"The applicant, apart from referring to, and filing, the seniority/gradation lists of Income Tax Inspectors in other Regions in the country which are said to have been prepared on the ratio of 3:1, the OM dated 07.02.1990 of DOPT which gives an illustration on how the inter-se seniority of promotees from more than one feeder category would be determined, has filed a copy of the letter of the CBDT dated 06.04.2009[which incidentally is anterior to the order of this Tribunal in OA No. 45 of 2007] giving instructions to CCIT[CCA], Bhubaneshwar*

> *to file a reply in OA Nos. 10 to 14 of 2009 in Cuttack Bench of the Tribunal indicating the position in the Rules in regard to determination of inter-se seniority. In view of the fact that some new matter relevant to the case which could not be produced at the time of initial decision and was, therefore, not taken into account by this Tribunal, has surfaced and has now been produced by the applicant in the RA, the RA is allowed. Consequently, the order dated 17.08.2009 passed in O.A. bearing No.45 of 2007 is hereby recalled, and it directed that the OA be listed in the first week of July for rehearing.”*

3. The sole basis of recall of the order is that the applicants had filed a copy of the letter of the Central Board of Direct Taxes dated 06.04.2009 i.e., prior to the decision of the Tribunal, indicating the position in the rules in regard to determination of inter-se seniority. Since such letter was not produced, therefore, the Tribunal has recalled the earlier order.

4. We do not find that such reason is available with the Tribunal to recall the order. All documents were to be produced by the parties before or at the time of hearing of the Original Application. Since such a Circular was not produced, which admittedly was prior to the decision of the Tribunal, the same cannot be made the basis to recall the order.

5. The provisions of Section 22 of the Administrative Tribunal Act, 1985 confer power on the Tribunal to review its decision, but such power can be exercised in terms of sub-section (3) of section 22 of the Act in the manner as vested under the Code of Civil Procedure 1908. Therefore, the review is permissible only on the grounds which are available under Order 47 Rule 1 of the Code of Civil Procedure. The ground is “apparent error on record”. The

Tribunal has not found any error apparent on record, but recalled order only on the basis of a circular issued prior to the decision of the Tribunal. The document was not produced at the time of hearing of the Original Application. A reading of the impugned order shows that the Tribunal has taken a different view on the same facts and that too by another set of members of the Tribunal. Such action is not warranted in law.

6. Consequently, we allow the writ petition, and quash the order dated 11.05.2012 passed by the Central Administrative Tribunal, Patna Bench, Patna. It shall be open to the parties to take recourse to the remedies available against the order dated 17-8-2009 in accordance with law.

(Hemant Gupta, J)

(Navaniti Prasad Singh, J)

B.K.Roy/-

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