

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

(2)

O.A.NO.1753/2002

Wednesday, this the 10th day of July, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman  
Hon'ble Shri S.A.T. Rizvi, Member (A)

Shri S.C.Parija  
s/o Late Shri Sarat C. Parija  
aged 61 years, at present Member  
Settlement Commission (IT & WT), Delhi  
R/O C-II/64, Tilak Lane  
New Delhi-1

..Applicant

(By Advocates: Shri A.K.Bhera & Shri Kalyan Dutt)

Versus

1. Union of India  
through its Secretary  
Department of Revenue  
Ministry of Finance  
North Block  
New Delhi-1
2. Secretary to Govt.of India  
Department of Personnel  
North Block  
New Delhi-1
3. Shri N.Shanmugavelu  
Member, Settlement Commission  
Addl. Bench, Chennai  
R/O C-2 CGO Quarters  
25, Haddows Road  
Chennai-600006

..Respondents

O R D E R (ORAL)

Shri S.A.T. Rizvi:-

The applicant, an Indian Revenue Service (IRS) Officer of 1965 batch was, while posted as Director General of Income Tax (Investigation) Delhi & North-Western Region, selected for appointment as a Member of the Settlement Commission (IT&WT) along with two others in the following order of selection:-

- (i) Shri V.P.Srinivasan
- (ii) Shri S.C.Parija (Applicant)
- (iii) Shri M.Shanmugavele (Respondent-3)

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Of them, the respondent No.3, who figures at the end of the selection order, joined at the earliest, i.e., on 24.11.2000, whereas the person at No.(i) of the select list joined on 29.11.2000, with the present applicant, though at No.(ii) in the selection order, joining the post of Member only on 30.3.2001 after a modified order in respect of his appointment as Member was issued on 28.3.2001 (A-5).

2. The learned counsel appearing on behalf of the applicant submits that even though the respondents are bound by the aforesaid order of selection, they have lately proceeded to accord preference to the respondent No.3 in the matter of promotion to the post of Vice Chairman, Settlement Commission, against a post available at Calcutta. The promotion of the said respondent, if it materializes, will adversely affect the promotional chances of the applicant not only to the post of Vice Chairman, but also to that of Chairman, Settlement Commission.

3. The learned counsel has drawn our attention to the Settlement Commission (IT/WT) (Recruitment and Conditions of Service of Chairman, Vice-Chairmen and Members) Rules, 2000 (hereinafter referred to "Rules of 2000") to contend that in matters of grant of seniority, the Settlement Commission is bound by the rules framed by the Ministry of Home Affairs and notified vide Office Memorandum dated 16.6.1980 (A-2). Such a provision has been made, according to him, in Rule 8 of the Rules of 2000, wherein it is provided as under:-

"8. Other conditions of service.- The conditions of service of the Chairman, Vice-Chairman and Members in respect of leave, travelling allowances, leave travel concession, accommodation, conveyance, medical facilities and matters for which no provision is made in these rules, shall be the same as may be applicable to other group 'A' officers of the Government of India of equivalent grade."

(emphasis supplied)

The aforesaid OM (A-2) clearly provides that in a case of re-employment before attaining the age of normal superannuation, which is the case in the present OA, the inter-se-seniority of persons so re-employed shall be determined in accordance with the order of their selection. The relevant provision made in the aforesaid OM is, for the sake of convenience, reproduced as under:-

"(2) However, where such officers are appointed to civil posts and the Recruitment Rules applicable thereto prescribe re-employment as a distinct mode of recruitment, their seniority will be determined as under;:-

(a) The inter se seniority of persons so re-employed shall be determined in accordance with the order of their selection."

4. The learned counsel also submits that the aforesaid rule position has been consistently followed by the Commission right from 1976 in which year the Commission was set up. From the details made available by the applicant in paragraphs 4.12 and 4.13 of the OA, it will be seen, according to him, that the aforesaid rule has been followed without any deviation. Further, the very same rule has been followed in respect of the aforesaid Shri V.B. Srinivasan also, who, though placed

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at No.(i) in the selection list, had joined after the respondent No.3, but, who has, all the same, been promoted as Vice Chairman, Chennai Bench on 16.1.2002. According to the learned counsel, the aforesaid argument advanced by him is further buttressed by the law laid down by the Hon'ble Supreme Court in N.Suresh Nathan & Anr. Vs. Union of India & Ors., decided on 22.11.1991 and reported in 1992 Supp.(1) SC 584. While interpreting service rules, it was held in that case that a construction of rules in consonance with long standing practice prevailing in a Department is to be preferred. In the circumstances, according to him, the applicant's claim for promotion to the post of Vice Chairman in preference over the respondent No.3 is well-established and duly supported by the rules as well as aforesaid court judgement, on the basis that he has to be regarded as senior to the aforesaid respondent No.3.

5. Insofar as the respondent No.3 is concerned, an averment has been made in the OA to the effect that the respondent No.3 in principle acknowledges the rules and the practice in the matter of fixation of seniority in the Commission and that, on this basis, he does not dispute the applicant's seniority over him. By drawing our attention to a letter dated 5.7.2002 (A-6) from the respondent No.3, the learned counsel has further argued that the aforesaid respondent is, in any case, not willing to be appointed as Vice Chairman of the Commission in the vacancy available at Culcutta. He also submits that the present applicant will not be averse to

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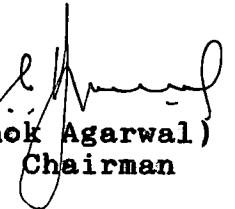
being considered for appointment as Vice Chairman against the aforesaid vacancy.

6. Aggrieved in the circumstances outlined in the preceding paragraphs, the applicant has filed a detailed representation on 1.4.2002 which has been forwarded by the Chairman of the Commission on the same date (A-7) with a positive recommendation in favour of the applicant stating in the letter, in clear terms, that the applicant's case for seniority over respondent No.3 is well-supported by the rules and the long standing practice. The said representation is yet to be decided. In the circumstances, we find that the interest of justice will be duly met by disposing of this OA at this very stage even without issuing notices with a direction to the respondents to consider the aforesaid representation along with <sup>the</sup> supporting letter of Chairman, Settlement Commission, and pass a reasoned and a speaking order thereon expeditiously and in any event within a period of one month from the date of receipt of a copy of this order. We direct accordingly. We also direct that until the respondents have passed orders as above, the respondent No.3 herein will not be promoted to the post of Vice Chairman, Settlement Commission, before the applicant is so promoted. It goes without saying that nothing will stand in the way of respondents, if they decide to promote the applicant in the meanwhile.

7. The present OA is disposed of in the aforesated terms.

Issue Dasti.

  
(S.A.T. Rizvi)  
Member (A)

  
(Ashok Agarwal)  
Chairman

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