

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

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Original Application No.2882 of 2002

New Delhi, this the 27th day of October, 2003

HON'BLE MR.KULDIP SINGH.MEMBER(JUDL)
HON'BLE MR.S.K. NAIK. MEMBER (A)

1. Shri T.U.K. Nair. DIT (RSP & PR)
Directorate of Income Tax
(Research, Statistics, Publications and Public Relations)
6th Floor, Mayur Bhawan, Connaught Circus,
New Delhi-110 001.
2. Mrs. Meena Wadhwa. PS. DIT (Recovery)
Directorate of Income Tax
(Research, Statistics, Publications & Public Relations)
6th Floor, Mayur Bhawan, Connaught Circus,
New Delhi-110 001.
3. Mrs. Shakuntala Kalra. Steno Grade-I, DIT
(RSP&PR)
Directorate of Income Tax
(Research, Statistics, Publications & Public Relations)
6th Floor, Mayur Bhawan, Connaught Circus,
New Delhi-110 001. ..Applicants

By Advocate: Ms. S. Janani.

Versus

1. Union of India Through Revenue Secretary,
Ministry of Finance,
Department of Revenue,
Central Secretariat, North Block,
New Delhi-110 001.
2. Chairman,
Central Board of Direct Taxes,
Central Secretariat,
North Block, New Delhi-110 001.
3. Director General of Income Tax (Admn)
7th Floor, Mayur Bhawan, Connaught Circus,
New Delhi-110 001.
4. Director of Income Tax (RSP & PR),
6th Floor, Mayur Bhawan, Connaught Circus,
New Delhi-110 001.
5. Jasbir Singh, Senior PS
Directorate of Income Tax (Audit)
ARA Centre,
E-2, Jhandewalan Extension,
New Delhi-110 055. ..Respondents

By Advocate: Shri V.P. Uppal, Counsel for respondents
No.1 to 4.

Shri Sarvesh Bisaria, Counsel for
respondent No.5.

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O R D E R (ORAL)

By Hon'ble Mr. Kuldip Singh, Member (Judicial)

This is a joint application filed by three applicants who are seeking a direction to the respondents to prepare a combined seniority list of all the Private Secretaries of the four Directorates under the DG IT (Admn) and further that the senior-most amongst them should be promoted to the upgraded post of Senior PS.

2. Facts in brief are that all the applicants are working as Private Secretaries in the Directorate of Inspection (RSP&PR) under respondent No.3. It is further stated that the hierarchy of post of the Income Tax Department is that first there is a Chairman under whom there are various Members. In the instant case we are concerned with Member (P). Under Member (P) there are two Director Generals, one is DGIT (Admn) and another is DGIT (System). The post of DGIT (Admn) was created by conversion of the post of DGIT (Spl. Inv).

3. Further there are 4 Directorates under the DGIT (Admn), i.e., Directorate of Inspection (IT), Directorate of Inspection (Audit), Directorate of Inspection (RSP&PR) and Directorate of Inspection (Recovery).

4. Under the DGIT (System) there are two Directorates, i.e., Directorate of Income Tax (O&MS) and Directorate of Income Tax (System).

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5. It is further stated that the DGIT (Admn) has not been provided any separate staff for looking after the work of his office and vide letter dated 26.9.1987 the DGIT (Admn) was to create small head quarter set up drawing from the existing administrative strength and it appears that the staff from all the 4 Directorates has been provided for DGIT (Admn).

6. It is further stated that the DGIT (Admn) has not been given any financial power and he drew his pay and allowances through DIT (Audit) and the post of Grade-I steno in this administration was also placed in the cadre of DIT (IT&Audit) for drawing pay and allowances.

7. All the applicants claim that they are senior to the person who has been appointed as Senior PS with the DGIT (Admn) and who has been drawn from DIT (IT & Audit) and the special grade Stenographic FS in the scale of Rs.6500-10500 may be upgraded when the Pay Commission recommended creation of post of Senior PS in the pay scale of Rs.7500-12000 has been drawn from DIT (IT & Audit). The applicants have also given a representation to the authorities to ensure that the upgraded post of Senior PS is given to the seniormost PS out of 4 Directorates. A reminder is also stated to have been sent but nothing has been done so far.

8. It is also pointed out that in the parallel office of the DGIT (System) the post of Senior PS are being rotated from the two Directorate who are working in the DIT (O&NS) and DIT (Systems) whereas the senior FS in

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the DGIT(Admn) is being appointed only from the DIT (IT and Audit). Thus it is stated that the impugned action of the respondents in allowing a junior person to officiate in a senior post is arbitrary, discriminatory and violative of the fundamental rights of the applicants.

9. The respondents are contesting the OA. The respondents pleaded that each Directorate is a independent Directorate having its own Recruitment Rules, separate sanctioned strength and there is no provision for fixing inter-Directorate seniority among different cadres working in different Directorates. These Directorates are watertight Departments, i.e., no-one can be transferred from one Directorate to the other.

10. Respondents further submitted that since the post of senior stenographic staff posted with DGIT (Admn) is included in the sanctioned strength of the DIT (IT&A) so all the incumbents to this post have to be borne on the strength of Directorate of Income Tax (IT&Audit). Similarly the post of Senior PS also belongs to the Directorate of Income Tax (IT&Audit), therefore, right to promotion to this post was vested in the eligible officials working in the Directorate of Income Tax (IT&A) so no employee of other Directorate has any claim on this post whatsoever.

11. Private respondent No.5 is also contesting the OA who has filed a separate reply. He has also submitted that the post of DGIT (Admn) was created by conversion of DGIT (Special Investigation) but no separate staff was

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provided for DGIT (Admn) vide letter dated 26.10.987. A provision was made empowering DGIT (Admn) to create small headquarters by drawing strength from existing administration strength of respective Directorates. It is also submitted that the controlling authority of the staff working in the office of DGIT (Admn) was listed in the Directorate of Inspection (IT).

12. It is further submitted that vide letter dated 26.10.1987 DGIT (Admn) opted to draw staff from the Directorate of Income Tax (IT&Audit) and the post was named as Stenographer Grade-I and due to this the working strength of the Directorate of Income Tax reduced and hence the DGIT (Admn) vide letter dated 24.2.88 requested CBDT to transfer one post of Stenographer Grade-I from the Directorate of Inspection (Special Investigation) to Directorate of Inspection (IT&Audit) and accordingly vide letter dated 16.3.88 the said post was transferred to the Directorate of IT&Audit.

13. It is further submitted that vide order dated 10.10.1990 the post of Steno Grade-I in the Directorate of IT&Audit was upgraded and redesignated as Sr.PA. That vide letter dated 9.8.2001 the post of Sr.PA was again redesignated as Private Secretary and all the three posts were in the Directorate of IT out of which only one was working with DGIT (Admn.)

14. It is further stated that vide letter dated 27.7.2001 the post of Sr.PA was classified into PS and Sr.PS and the claim on the post of Sr.PA also vested in the Directorate of IT and Audit because this post was

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created by the conversion and upgradation of one post of PS into the post of Sr.PS. Thus it is submitted that the other Directorates working under the DGIT (Admn) cannot have a claim over the said post.

15. We have heard the learned counsel for the parties and gone through the records of the case.

16. The main contention of the learned counsel appearing for the applicant is that since there are 4 Directorates working under the DGIT (Admn) so the seniormost PS out of 4 Directorates should be given the upgraded post of Sr.PS. Otherwise it amount to asking a junior person to work over his seniors as Senior PS.

17. Now the question arises whether the PSs working under the 4 Directorates under the DGIT (Admn) have a claim over the post of Senior PS attached with the DGIT or not or it is only the DIT (Income-Tax and Audit) who has a right to the post of Senior PS.

18. The respondents have pleaded that each Directorate working under the DGIT (Admn) has a separate cadre which fact is not denied by the applicants and the letters annexed by the respondent No.5 along with his reply go to show that the post of PS attached to the DGIT (Admn) was created by conversion of DGIT (Special Investigation) but no separate staff was provided for DGIT (Admn) vide letter dated 26.10.1987. A provision was made empowering DGIT (Admn.) to create small headquarters by drawing strength of respective directorates. It is submitted that the controlling authority of the staff



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working in the office of Director General (Admn) was listed in the Directorate of Inspection (IT) until reversion to his own Directorate. But the post of Sr.PS was taken from the DIT (Income Tax and Audit) and for that purpose out of these two stenogrpahers one stenographer was posted with the DGIT (Admn) to compensate the shortage caused in the Directorate of Income Tax (IT&Audit). The CBDT transferred one post of Stenographer Grade-I from DIT (Spl.Inv.) to DIT (IT&Audit). The cadre control of DGIT (Admn) office was vested with DIT (IT&Audit) and thus the sanctioned strength of Stenographer Grade-I was increased by one post and this increased strength was never withdrawn by the Board. This shows that it was the responsibility of DIT (IT&Audit) to provide SR.PS to DGIT (Admn) and which had been followed throughout and according to the counter-affidavit filed by the official respondents the post of senior Stenographic staff posted with DGIT (Admn) is included in the sanctioned strength of the DIT (IT&A) so that shows that the only a Stenographer from that cadre can man this post particularly so when all the other Directorates are having their independent rules and independent cadres which do not include the post of Senior Stenographic post to be included in the DGIT (Admn) so those stenographers of the other Directorates cannot have any right over those posts.

19. The counsel for the official respondents has also referred to a Supreme Court ruling in the case of P.U. Joshi & Others Vs. The Accountant General, Ahmedabad & Others reported in 2000(1) SC 231 wherein it has been held as under:-

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" Held that we have carefully considered the submission made on behalf of both parties. Question relating to the constitution, pattern, nomenclature of posts, cadre categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of Policy and within the exclusive discretion and jurisdiction of the State subject of course, to the limitations or restrictions envisaged in the constitution of India and it is not for the Statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/substruction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by underrating further classification, bifurcations or amalgamation as well as reconstitute and restructure the pattern and cadres/categories of service, as may be required from time to time by abolishing existing cadre/posts and creating new cadres/posts (emphasis supplied)".

20. On the the basis of this judgment the learned counsel for the official respondents submitted that since Government as a policy matter has taken decision that Stenographic Staff posted with DGIT (Admn) has to be included in the sanctioned strength of DIT(IT&A)) which shows that the Stenographers working with the DGIT (Admn) has to be a member of the stenographer cadre of the DIT (IT&A) so the stenographers working in the other cadre cannot claim any right over some.

21. In our view also the letter dated 24.10.1987 shows that the staff working under the DGIT (Admn) may be from different Directorates but the Cadre Controlling Authority for the staff is Director of Inspection (IT&A).

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22. However, the letter dated 24.2.88 goes to show that the post of Stenographer in the Directorate of Inspection (IT&A) was requested to be placed under the cadre of DIT (IT&A) which was allowed vide order dated 16.3.88. Thus these letters go to show that the post of Stenographer has been particularly allotted to Directorate of Inspection (Income-tax and Audit) and that the same may be supplied to DGIT (Admn) and as such we are of the view that the Stenographer staff posted with the other Directorates who are with independent cadre strength of their own Directorates cannot have any claim over the said posts.

23. In view of the above, OA has no merits and the same is dismissed. No costs.


(S.P. NAIK)
MEMBER (A)


(KULDIP SINGH)
MEMBER (JUDL)

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