



Central Administrative Tribunal Principal Bench, New Delhi

O.A. No.539/2019

Thursday, this the 13th day of February 2020

Hon'ble Sri Justice L. Narasimha Reddy, Chairman
Hon'ble Sri A. K. Bishnoi, Member (A)

S K Mehra
Son of (late) Shri P N Mehra
Aged about 68 years
Resident of 40/110, C R Park
New Delhi – 110 019
Presently a pensioner having retired as
Deputy Commissioner of Income Tax
New Delhi – 110 002

..Applicant

(Applicant in person)

Versus

1. Union of India through
Secretary, Department of Revenue
Ministry of Finance, North Block
New Delhi – 110 001
2. Central Board of Direct Taxes through
Chairman-CBDT, North Block
New Delhi – 110 001
3. Principal Chief Commissioner of Income Tax

3rd Floor, Central Revenue Building, IP Estate
New Delhi – 110 002

..Respondents

(Sri Gyanendra Singh, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:



The applicant was selected and appointed as Inspector in Income Tax Department in the year 1975. He earned promotions to the posts of Assistant Commissioner of Income Tax (ACIT) and Deputy Commissioner of Income Tax (DCIT). The next promotion is to the post of Joint Commissioner of Income Tax (JCIT).

2. There was long standing litigation between the direct recruit ACsIT on the one hand and promotees on the other hand. In O.A. No.1052/2010, a Full Bench of this Tribunal dealt with the issue and resolved the conflicting views expressed by the different Benches, through a detailed order dated 02.11.2010. That, in turn, was the subject matter of W.P.(C) No.8018/2010 & batch before the Hon'ble High Court of Delhi, which was decided on 06.07.2012.

3. During the pendency of the various cases, the Departmental Promotion Committee (DPC) for promotion to the post of JCIT met on 23.09.2010. While



the Full Bench of the Tribunal directed that the recommendations of DPC be not implemented till the seniority list is finalized, the Hon'ble High Court directed that the recommendations of DPC be implemented. It is stated that the resultant orders of promotion were issued on 12.11.2013.

4. The applicant retired from service on 31.01.2011. He filed this O.A. with a prayer to direct the respondents to promote him to the post of JCIT (JAG) w.e.f. 23.09.2010, the date on which the DPC cleared his name, along with 308 other IRS (IT) officers of 2000 and 2001 batch.

5. The applicant contends that once the meeting of DPC itself was delayed on account of litigation and it met on 23.09.2010, finding him fit, he is entitled to be granted the benefit.

6. The respondents filed counter affidavit opposing the O.A. It is stated that there was long standing litigation between the direct recruits ACsIT and promotees, and in the meanwhile, there existed an acute shortage of officers. It is stated that the qualifying service for promotion to JCIT is 5 years as DCIT and since adequate qualified



officers were not available, the permission was obtained from Department of Personnel & Training to consider the case of DCIT for promotion to JCIT, with 4 years of service, on *ad hoc* basis. According to them, the Screening Committee, for this purpose, met on 23.03.2011 and *ad hoc* promotions were made on 30.03.2011.

7. It is also stated that the DPC for regular promotion met on 23.09.2010 and the orders of promotion, based upon its recommendations, were issued on 12.11.2013. It is stated that the applicant retired from service much before that, and he cannot claim the benefit of promotion.

8. We heard the applicant, who argued the case in person, and Sri Gyanendra Singh, learned counsel for respondents, at length.

9. The applicant seems to be an unfortunate victim of delay in preparation of seniority list and convening of DPC. The matter reached this Tribunal in 2010 in the form of O.A. No.1052/2010, and he figured as respondent No.6 therein. A Full Bench of this Tribunal answered the reference as under:-



“38. Resultantly, we answer the reference as follows:

The official respondents shall, within a period of two weeks by applying the Rules, draw the seniority list and thereafter two weeks time will be allowed to the affected parties to represent. The official respondents, on receipt of the representation(s) within further two weeks time thereafter, finalize the representation(s) and also the seniority list, which shall be published and thereafter they are at liberty as per the seniority position to hold the DPC associating UPSC. In such an event, law shall take its own course. Meanwhile, the promotions effected by the DPC held by the official respondents shall not be acted upon and as per the settled final seniority list, claim of the promotees specifically shall be considered for promotion and those who have retired during this interregnum shall, if found fit on empanelment, be accorded the promotions with all consequences. The time limit laid down by us is to be scrupulously and meticulously followed on strict basis.”

10. The order passed by this Tribunal was carried to the Hon’ble High Court of Delhi. Through a detailed judgment, the Writ Petitions were disposed of with the following directions:-

“99. Therefore, in the facts and circumstances and for the foregoing reasons, the impugned order dated 2nd November, 2010 in O.A No. 1052 of 2010 and M.A Nos. 2410, 2415, 2427, 2428, 2562 and 2594 of 2010 titled Vikas Keraba Suryawanshi & ors Vs Union of India & ors impugned by the petitioners in WP (C) 8018 of 2010 titled as Union of India and ors. Vs Vikash Keraba Suryawanshi & ors is set aside. It is held that the Civil List operated by the petitioners is the seniority list for the officers of IRS Department and it will be liable to be



amended/modified according to the reference which is to be decided by the Tribunal. The Tribunal is directed to decide the reference made to it as expeditiously as possible in the facts and circumstances of the case. In the meanwhile the petitioners shall be entitled to implement the recommendations of the DPC held on 20th September, 2010 to 23rd September, 2010 subject to outcome of the reference to be decided by the Tribunal. All the pending application in the said petition being WP (C) 8018 of 2010 are also disposed of. The writ petition 8017 of 2010 titled Sanjay Pandey & ors Vs Union of India is also allowed in terms of the order passed in WP(C) 8018 of 2010 and the recommendation of DPC held on 20.09.2010 to 23.09.2010 be implemented by the petitioners subject to outcome of the reference which is to be answered and decided by the Tribunal. The writ petition 7990 of 2010 titled S.K.Mehra & ors Vs Union of India is also disposed of in terms of the order passed in WP(C) 8018 of 2010. The Union of India & ors are directed to give the petitioners in the said writ petition all the consequential benefits subject to outcome of the reference which is to be answered and decided by the Tribunal. Considering the facts and circumstances, the parties in the above noted writ petitions are left to bear their own costs.”

It is stated that the order passed by the High Court was affirmed by the Hon’ble Supreme Court in S.L.P. (C) No.21339/2012, through order dated 01.03.2017.

11. The result is that, the recommendations of the DPC, that met on 23.09.2010, were implemented, maybe with inordinate delay of about 3 years. The actual order of



promotion is not placed before us, but it is stated in the counter affidavit that the directions were implemented on 12.11.2013. By that time, the applicant retired from service.

12. We would have certainly granted the relief in the form of notional promotion to the applicant, if only any junior to him was promoted to the post of JCIT, with effect from a date, anterior to his retirement. Once the promotions were effected only on 12.11.2013, i.e., long after his retirement, the question of granting notional promotion does not arise. The promotions, that were effected in March, 2011, were on *ad hoc* basis and even by that time the applicant was not in service.

13. The applicant, who argued the case in person, submits that the denial of promotion would be contrary to the directions issued by the Hon'ble High Court. If that is so, he can pursue the remedy before the Hon'ble High Court. We are only applying the general principles of law in the instant case.



14. We do not find any merit in this O.A. It is accordingly dismissed.

There shall be no order as to costs.

(A.K. Bishnoi)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

February 13, 2020
/sunil/