

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 3122/2001
T.A. No.

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DATE OF DECISION 5 .9.2002

Sh.S.K.S. Rawat and Ors

... Petitioner

Shri P.P. Khurana, senior counsel ... Advocate for the
Petition(s)

Versus

UOI & Ors

... Respondents

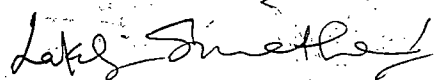
Sh.V.P. Uppal for Respondents 1&2... Advocate for the
None for respondent No.3 ... Respondents

CORAM :

The Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)

The Hon'ble Shri V.K. Majotra, Member (A)

1. To be referred to the Reporter or not.? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. 3122/2001
M.A. 2530/2001

New Delhi this the 5th day of September, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).
Hon'ble Shri V.K. Majotra, Member(A).

In the matter of:

1. Shri S.K.S. Rawat,
Commissioner of Income Tax-II,
Aaykar Bhawan,
Majuragate,
Surat-395001.
2. Smt. Bharti Dubey,
Commissioner of Income Tax,
29, Ameeta 6th Floor,
7, Jeet Bhosaly Marg,
Nariman Point,
Mumbai-400021. ... Applicants.

(By Advocate Shri P.P. Khurana, senior counsel)

Versus

1. Union of India,
through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.
2. Central Board of Direct Taxes,
through Chairman,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi.
3. Shri Ashutosh Prasad,
Commissioner of Income Tax,
C/o Chief Commissioner of Income Tax,
Aayakar Bhawan,
Calcutta. ... Respondents.

(By Advocate Shri V.P. Uppal - for Respondents 1&2,
None for respondent No.3)

Y.S.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

The applicants are aggrieved by the order issued by the respondents dated 02.08.2001 which they have prayed should be quashed and set aside. They have also prayed for ^{an} interim order to restrain the respondents from giving effect to this order which had been granted by Tribunal's order dated 13.11.2001, which has continued from time to time.

2. The brief relevant facts of the case are that the applicants who belong to 1971 batch of the Indian Revenue Service (IRS) joined the respondents as Assistant Commissioner, Income Tax (ACIT). They were later promoted as Dy. Commissioners of Income-Tax (DCIT) and thereafter Commissioners of Income-Tax (CIT) along with their batch-mates. They were promoted as DCIT in the years 1980 and 1981 and Non-Functional Selection Grade (NFSG) was granted to them w.e.f. 01.07.1986. Both the applicants were promoted to the post of CIT vide order dated 12.09.1994. The promotion order dated 12.01.1994 was challenged by respondent No.3 in OA 2694/93 which was later transferred to Lucknow Bench of the Tribunal and renumbered as TA 11/94.

3. The applicant in TA 11/94 had contended that recruitment to the grade of CIT is governed by the IRS Rules, 1988 (hereinafter referred to as 'the 1988 Rules') under which the eligibility for promotion to the grade of CIT is either 8 years of regular service in NFSG or 17 years of regular service in Grade 'A' of IRS,

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out of which at least 4 years should be in the grade of DCIT/Dy. Director of Income-Tax. The applicants have stated that neither they or any other officers who are likely to be affected by the outcome of the TA were made parties in that application. TA 11/94 was allowed by the Lucknow Bench of the Tribunal by order dated 03.07.1995. This order was recalled by order dated 30.10.1996 and the matter was reheard and disposed of by order dated 30.10.1996. By this order, the T.A. was partly allowed. The proceedings of the DPC held on 19, 20 and 21.10.1993 recommending promotions to the post of CIT were quashed and a fresh DPC was ordered to be convened as if held on the same dates for preparing panel for promotion to the level of CIT, based on number of vacancies taken into consideration by the DPC which met in October, 1993 and in the zone of consideration, determined on the basis of the extant rules (including amendment of 14.06.1995). It was also ordered that promotion to the posts of CIT will be made on the basis of the recommendations of the fresh DPC. A Special Leave Petition filed by the respondents against this order was dismissed by the Apex Court vide order dated 10.7.1997. Thereafter, the respondents issued the impugned order dated 2.8.2001. By this order, the names of applicants were deleted and the name of Shri Ashutosh Prasad, Respondent No.3 and one Shri A.K. Gupta, were included at serial No. 66A and serial No.71, respectively. Further, the names of applicants were included at serial No.244 (A) and serial No. 244(B) in the IRS Civil List 2000 (CIT portion).

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submitted that the applicants cannot be discriminated against in the matter of promotion post by adopting a different yardstick. According to him, under the 1988 Rules, the eligibility criterion is 8 years of regular service in the feeder grade of Dy. Commissioner/Dy. Director and only 8 years of Confidential Reports should be taken into consideration for every officer, for considering ^{for} promotion to the grade of CIT.

5. We have seen the reply filed by the respondents and heard Shri V.P. Uppal, learned counsel. In the reply, the respondents have stated that they have convened a review DPC as directed by the Tribunal (Lucknow Bench) (supra). The applicants were not included in the select panel. We are informed that Shri A.K. Gupta has retired from service. The respondents have stated that the applicants were also considered for the posts by the review DPC which met in October, 2000, against the vacancies for 1994-95. Accordingly, their seniority has been revised and they have submitted that their actions are in accordance with the directions issued by the Tribunal (Lucknow Bench). In reply to Ground 'F' of the O.A., that the eligibility of the officers is 8 years of regular service in the feeder grade of Dy. Commissioner/Dy. Director and 8 years of Confidential Reports have been taken into consideration for every officer, the respondents have merely stated that there has been no discrimination vis-a-vis the applicants and the DPC had found Respondent No.3 fit on the basis of the yardstick as directed by the

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Tribunal (Lucknow Bench). Learned senior counsel has relied on the judgement of the Hon'ble Supreme Court in Naseem Bano (Smt) Vs. State of U.P. & Ors. (1993 Supp (4) SCC 46), wherein it has been held that the averments made in the writ petition which is not controverted by the respondents is presumed to have been admitted. Shri V.P. Uppal, learned counsel has merely reiterated the averments in the reply which we also find are somewhat sketchy and the contention of the learned senior counsel for the applicants that only 8 years of regular service in the feeder grade of Dy. Commissioner/Dy. Director should have been taken into account has not been clearly answered by the respondents other than stating that there has been no discrimination against the applicants.

6. Respondent No.3 has filed a reply which we have seen but none has appeared for him. According to him, since the order dated 2.8.2001 has been issued in pursuance of the order of the Tribunal (Lucknow Bench) dated 30.10.1996 as confirmed by the Hon'ble Supreme Court on 10.7.1997, there is no ground available to the petitioners to challenge the validity of the order dated 2.8.2001.

7. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

8. In Tribunal's order dated 30.10.1996 (supra), the Tribunal had rejected the prayer of the applicants for quashing the IRS (Amendment) Rules but had partly allowed the application. It was ordered that the

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proceedings of the DPC held on 19,20 and 21st October, 1993 recommending promotions to the level of CIT are quashed and a fresh DPC should be held for the same dates for preparing a panel for promotion to the level of CIT based on the number of vacancies which had been taken into consideration by the DPC held in October, 1993 and the zone of consideration determined on the basis of such vacancies as per extant rules, including amendment of 14.6.1995. It was further observed that the assessment for empanelment shall be made in conformity with the observations made in para 19 which, inter alia, had stated that Confidential Reports should be considered for the number of years of service put in by them with minimum length of service included in the zone of consideration and particular attention has to be given to the CRs for the years in which the officers have served as DCIT or Dy. Directors of Income-Tax.

9. In the light of the above orders of the Tribunal, it would be necessary to see the relevant rules. Under the 1988 Rules, Schedule-II provides the method of recruitment in the field of promotion to the grade of Senior Administrative Grade (SAG) (Commissioner of Income Tax and Director of Income Tax). Column 4 provides as follows:

"Dy. Commissioners of Income-tax/Dy. Director of Income-tax with 8 years' regular service, if any, in the non-functional selection grade or 17 yrs. regular service in Gr. 'A' of Indian Revenue Service out of which at least 4 yrs should be in the Grade of Dy. Commissioners of Income-tax/Dy. Directors of Income-tax".

The above entry in the 1988 Rules, as amended on 14.6.1995 provides as follows:

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"Deputy Commissioners of Income-tax/Deputy Directors of Income-tax with eight years' regular service in the grade including service, if any, in the non-functional selection grade or 17 yrs. regular service in Group 'A' of Indian Revenue Service, out of which atleast four years should be in the grade of Deputy Commissioner of Income-tax/Deputy Director of Income-tax".

In the Explanatory Memorandum in the Notification of 1995, reference has been made to the aforesaid O.A. filed by Shri Ashutosh Prasad (OA 2694/93) in the Principal Bench which was later transferred to the Lucknow Bench. The discrepancy of the contents in Column No.4 as published in the Gazette of India and as approved by the UPSC were noticed after the filing of the aforesaid Original Application before the Tribunal and an error has crept in by omission of the words in the grade "including service" in the aforesaid column. It was explained that with a view to rectifying the mistake and in order to amend in Schedule-II, column 4 against serial no. 2 regarding method of recruitment in SAG/CIT/Director of Income-Tax, the amendment should take effect retrospectively from 12.5.1988, i.e. the date on which the principal Rules were notified in the Gazette of India. It was also certified that the amendment from the retrospective date will not affect any one adversely.

10. It is clear, therefore, from the above amendment of the 1988 Rules by Notification dated 14.6.1995 that the amendment to Schedule-II, Col. 4 against serial No.2 was to take effect retrospectively from 12.5.1988. Accordingly, DCITs/Dy. Directors of Income Tax with 8 years regular service in the grade,

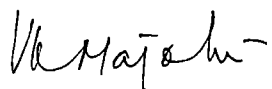
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including service, if any, in the NFSG or 17 years regular service in Group 'A' of IRS Rules out of which at least 4 years should be in the grade of DCIT/Dy. Directors of Income-tax were eligible to be considered for promotion to the post of SAG/CIT. In the light of the provisions of the 1988 Rules as amended in 1995, the eligibility criterion is 8 years regular service as DCIT/Dy. Directors of Income-tax. It is also made clear from paragraph 20 (ii) of the Tribunal's order dated 30.10.1996 that the amendment of 14.6.1995 should be taken into account. As mentioned above, the stand of the respondents that 17 years ACRs is the criteria as ordered by the Tribunal and there has been no discrimination vis-a-vis the applicants as all the eligible persons have been similarly considered is, therefore, not in accordance with the aforesaid judgement of the Tribunal (Lucknow Bench). The issue in this case is not one of discrimination but application of the relevant Rules. In the facts and circumstances of the case and having regard to the aforesaid amendment of the 1988 Rules by Notification dated 14.6.1995 which has come into effect w.e.f. 12.5.1988, that is the date on which the 1988 Rules came into effect, we see force in the submissions made by the learned senior counsel for the applicants. The eligibility for consideration to the grade of CIT would be DCIT/Dy. Director of Income Tax with 8 years regular service in the grade, including service, if any, in NFSG which the applicants fulfil. We also see

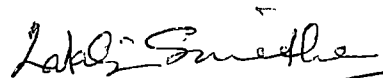
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force in the contention of the applicants that the impugned order dated 2.8.2001 does not clearly spell out the actual manner of implementation of the Tribunal's order dated 30.10.1996 and whether the criterion for considering the eligible officers as laid down in the Recruitment Rules as amended has been taken into account correctly or not. Accordingly, the impugned order dated 2.8.2001 is quashed and set aside.

11. In the result, the application succeeds and is allowed. However, in the facts and circumstances of the case, we consider it appropriate to grant the respondents further three months to fully comply with the directions of the Tribunal (Lucknow Bench) in the order dated 30.10.1996. No order as to costs.



(V.K. Majotra)
Member(A)



(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'