

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A.NO. 948/1998

New Delhi, this the 29th day of September, 2000.
Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

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MEMO OF PARTIES

1. Shri Raghbir Singh

Inspector of Income-tax,
Office of the Commissioner of Income-tax,
Delhi-VII, C.R. Building, New Delhi.
Resident of L-2/98-B, D.D.A. Flats, Kalkaji, New Delhi.

2. Shri Prem Kumar

Inspector of Income-tax,
Office of the Commissioner of Income-tax,
Central Circle, Mayur Bhawan, New Delhi.
Resident of A-2/501, Printer's Apartment, Sector-XIII,
Rohini Delhi.

3. Shri Nand Lal

Inspector of Income-tax
Office of the Director (Inv.), Jhankaran, New Delhi.
Resident of 225-C, Mayur Vihar Phase-II, Delhi.

4. Shri M.R.S. Shital

Inspector of Income-tax
Office of the Commissioner of Income-tax, Delhi-IV, N. Delhi
Resident of H.No. 1111, Sector VIII, R.K. Puram, N. Delhi.

5. Shri Mahboob Singh

Inspector of Income-tax
Office of the Commissioner of Income-tax, Delhi-III, N. Delhi
Resident of 12-A, Farid Kot House, Caparics Marg, N. Delhi

6. Shri Veer Jain

Inspector of Income-tax, Office of the Commissioner of I.Tax,
Delhi-III, New Delhi, Resident of L-13, Harija Basti,

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East Gokulpuri, Delhi 104

Applicants

(3)

(Through: Sh. M.L.Ohri, Advocate)

Vs.

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi 1.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. The Chief Commissioner of Income-tax (Admn.) Central Revenue Building, I.P. Estate, New Delhi.
4. Shri M.L. Wasan, Income-tax Officer (Group 'B') Office of the Commissioner of Income-tax, Delhi-VI, N. Delhi Mayur Bhawan, New Delhi Resident of N-35, Pratap Nagar, New Delhi.
5. Shri Jitender Chandi, Income-tax Officer (Group 'B') Office of the Commissioner of Income-tax, Delhi-VI, N. Delhi Mayur Bhawan, New Delhi.
6. Shri Shiv Dayal, Income-tax Officer (Group 'B') Office of the Commissioner of Income-tax, Delhi-VI, N. Delhi Mayur Bhawan, New Delhi.
7. Shri M.L. Meena, Income-tax Officer (Group 'B') Office of the Commissioner of Income-tax, (Computer) R.K. Puram, New Delhi. Resident of 9/284 Arpit puri, Gahri, East of Kailash, N. Delhi
8. Shri Kailash Chandi Meena, Income-tax Officer (Group 'B') Office of the Commissioner of Income-tax, Delhi-VI, N. Delhi Mayur Bhawan, New Delhi.
9. Shri Hira Singh Negi, Income-tax Officer (Group 'B') Office of the Inspection Division, 6th Floor, Mayur Bhawan, New Delhi. Resident of 138/15, SCI Pusip Vihar, M.B. Road New Delhi.

Respondents

(By Advocates: Sh. V.P.Uppal for Official Respondents.
Sh. P.P.Khurana for pvt. Respondents.)

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ORDER

delivered by Hon'ble Mr. S.A.T.Rizvi, M (A):-

(A)

The applicants in this OA have challenged the roster dated 9.6.97 (Annexure A-1) in respect of the cadre of Income Tax Officers Group 'B' (ITO). Also under challenge are the orders of promotion in respect of six private respondents who have been promoted as ITO Group 'B' through the DPC dated 29.7.97. The prayer is for a direction to the respondents to hold a review DPC to consider the applicants for promotion as ITO Group 'B'. The respondents have denied the averments made by the applicants in the OA and have insisted that they have acted in accordance with the OM dated 2.7.97 (Annexure A-10) issued by the DOPT. However, in respect of the promotion of one Sh. R.M.Rai, a SC candidate, the respondents have admitted that a mistake had apparently been committed while considering him for promotion and have assured that the matter will be looked into. The applicants have filed a rejoinder to stress the legitimacy of their claim and in it have covered more or less the same grounds which have been covered in the OA.

2. We have heard the learned counsel for the applicants as well as counsel appearing on behalf of the official and the private respondents and have perused the material on record.

3. The applicants are presently working as Income Tax Inspectors (ITI) and are eligible for promotion to the post of ITO Group 'B' as per the relevant recruitment rules. Their grievance is that the roster dated 9.6.97

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circulated by the respondents wrongly indicates that the entire quota for SC candidates has already been utilised and there were shortfalls in respect of general as well as ST candidates. The applicant No.1 in the OA represented in the matter on 28.7.97 pointing out the illegality etc. committed in preparing the said roster. Thereafter, he reminded the respondents on 17.2.98. Similarly, the applicant Nos. 2, 3 and 4 have also represented on 17.2.98 but the respondents have not cared to respond in the matter.

4. In the meantime, a DPC was held on 29.7.97 on the basis of the aforesaid roster. Twelve candidates were to be promoted through this DPC. The applicants were included in the zone of consideration but were over-looked and their juniors were promoted on the ground that they were all SC candidates and, following the principle of post based reservation, the respondents had found the number of SC candidates working as ITO (Group 'B') in excess of their prescribed percentage share. The fact that the applicants were included in the zone of consideration and that the juniors to them have been promoted on whatever ground, has not been denied by the respondents.

5. It would seem that shortly after the respondents had prepared and circulated the roster dated 9.6.97, the DOPT issued an OM dated 2.7.97 on the subject of post-based reservation introduced in the wake of the judgement of the Hon'ble Supreme Court in R.K. Sabharwal & Ors. Vs. State of Punjab & Others 1995 SCC (L&S) 548.

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Under this OM, the respondents were supposed to initiate immediate action to prepare post-based rosters and operate such rosters in accordance with the detailed guide-lines contained in the OM. This does not seem to have been done by the respondents and they proceeded with the said DPC without first preparing the post-based reservation in terms of the OM in question. Consequently, the DPC was held on 29.7.97 in the absence of a properly constituted roster. According to the applicants, the respondents have resultingly committed several errors which place the validity of the outcome of the DPC in doubt. Firstly, according to the applicants, the respondents have, while accounting for all the SCs in position in reserved seats, incorrectly included the names of even those SC candidates who were in their own right directly recruited or promoted by way of selection on merit and not in consequence of the policy of reservation. Secondly, the respondents have again incorrectly taken into consideration those SC candidates who were promoted in the unfilled vacancies of STs by way of inter-change, thereby occupying the ST slots as if they were STs. In support of this, the applicants have relied on Exceptional recorded below para 5 "Exchange of Reservations between SCs and STs" on page 38 of Swamy's compilation on Reservations and Concessions, Fifth Edition, 1996. Thirdly and more importantly, the applicants have been ignored even though they fell in the zone of consideration and should, therefore, have been considered by the DPC dated 29.7.97 for promotion in accordance with the relevant instructions in any case.

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And in this way some of them or perhaps all of them, could be inducted as ITO grade 'B' by way of selection.

6. Since a proper roster based on the principles and the guide-lines laid down in the OM dated 2.7.97, has not been prepared by the respondents nor have the applicants presented any such roster prepared by them on their own, it has not been possible for us to come to any definite conclusion as regards the contention of the applicants outlined in para 5 with regard to the calculation of excess of SC candidates over and above their allotted percentage share. The respondents have not clearly and unequivocally rebutted the applicant's contention that they have, as stated in para 5, incorrectly taken into account those SC candidates who were earlier promoted purely on merit and seniority and the others otherwise promoted in ST vacancies by way of inter-change.

7. In regard to the promotion of Meena, we have noted that the competent authority could waive the shortfall of a few days to render him eligible for promotion, and that such a power could not be exercised by the DPC. We would, in the circumstances leave it to the respondents to review the position and if required, annul Meena's promotion under advice to the applicants or the competent authority may give relaxation with retrospective effect if possible in accordance with law.

8. The learned counsel for the applicants has relied on Hon'ble Supreme Court's verdict in R.K.Sabharwal's case (supra) in support of his contentions but we do not consider it necessary to deal with it at any length inasmuch as the OM dated 2.7.97 itself flows directly

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from it and we agree that it needs to be implemented fairly and expeditiously. Regarding R.N.Rai's promotion, a just and equitable decision will no doubt be taken by the respondents as early as possible keeping the applicants informed.

(8)

9. In the circumstances of this case and in the interest of justice, we consider it just to dispose of the present OA by giving the following directions to the respondents for compliance in two months from the date of receipt of a copy of this order.

10. The respondents shall prepare a post-based roster strictly in terms of the detailed guide-lines given in the DOPT's OM dated 2.7.97, and while doing so, take into account the SC candidates promoted in the past through selection on their own and also otherwise in ST vacancies by way of inter-change. The respondents will exclude from the calculations the SC candidates promoted as above, on merit and seniority basis and also by way of inter-change in ST vacancies and arrive at the correct and up-to-date position in regard to the vacancies which remain to be filled up by the SC candidates. The respondents will hold a review DPC to consider the applicants as per their seniority and such of them as are cleared/selected on the basis of the recommendations of the Committee on the strength of their own merit will be promoted from the date(s) from which their juniors might have been promoted with consequential benefits, and also, if required, consider other SC candidates for selection/appointment against possible post-based roster.

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vacancies, determined through exclusion of certain categories of SC promotees referred to above.

(9)

11. We would like the respondents to take note that we would not like to disturb the promotions already made through the DPC dated 29.7.97 unless it becomes absolutely necessary to do so to dispense justice to the applicants in accordance with rules, instructions and judicial pronouncements on the subject.

12. There shall be no order as to costs.

S.A.T.Rizvi

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

/sunil/

Kuldeep Singh

(Kuldeep Singh)
Member (J)