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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-2767/97

New Delhi this the *1st* day of September, 1998.

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Mam Raj,
S/o Sh. Hem Chander,
R/o 407, Chirag Delhi,
New Delhi. Applicant

(through Sh. Sarvesh Bisaria, advocate)

versus

1. Union of India through
Secretary, Ministry of Finance,
(Deptt. of Revenue)
New Delhi.
2. The Chairman,
Central Board of Direct Taxes.
New Delhi.
3. Chief Commissioner (Admn).
Income Tax Office,
I.P. Estate, New Delhi. Respondents

(through Sh. V.P. Uppal, advocate)

ORDER

Hon'ble Shri S.P. Biswas, Member(A)

The applicant in this original application is seeking issuance of an appropriate direction to the respondents to consider his claim for promotion from the post of Income Tax Inspector (ITI for short) to that of the Income Tax Officer (ITO for short) against the reserve quota vacancy. He also seeks to quash the eligibility list dated 9.6.97 issued by the respondents for promotion of ITI to ITO.

2. The applicant joined as Upper Division Clerk under the respondents in February 1980. After qualifying departmental examination he was promoted as Tax Assistant

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in 1989 and ITI on 5.2.92. While working as ITI, the applicant qualified the departmental examination in June 1994 for promotion to the post of ITO and as such he became eligible for the said post.

3. Shri Sarvesh Bisaria, learned counsel for the applicant argued that the promotion from ITI to that of ITO should be based on the Recruitment and Promotional Rules prevalent at the relevant time. In other words, the date of qualifying departmental examination should form the basis for promotion to the post of ITO subject to the condition that the claimants have 3 years' regular service as ITI. The applicant alleges that the respondents have been maintaining two seniority lists of ITI. The first one is based on the date of promotion in the cadre of ITI whereas the second one is being maintained by the respondents consisting of qualified candidates in the cadre of ITI who have crossed the departmental examination for promotion as ITO.

4. It is further contended that respondents have also prepared an eligibility list for promotion to the post of ITO out of two lists aforesaid and make promotion on the basis of the said eligibility list which is not provided in the recruitment/promotion rules. As per applicant, a candidate promoted as ITI in 1990, although qualifies the departmental test for promotion to the post of ITO in the year 1996 becomes senior in the eligibility list vis-a-vis the candidate who qualifies in the departmental test in the year 1994. This is not provided in the Recruitment Rules in any manner whatsoever and, therefore, the preparation of eligibility

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list and declaring a person senior in the said list on the basis of initial appointment/promotion as Inspector and not on the basis of qualifying departmental examination for promotion to ITO is wholly illegal and unconstitutional.

5. It is the case of the applicant that although he has qualified the departmental test for promotion to ITO in June 1994 but he has not been considered for promotion on that basis. Whereas those who have qualified the said test after him i.e. in 1995 and 1996 have not only been considered but promoted as well on the basis of their seniority in the feeder grade as ITI. The applicant thus stand superseded wrongly in violation of Article 14, 16, 21 and 39 (D) of the Constitution, the learned counsel for the applicant argued. In order to support his contention, he also cited examples. Thus, though applicant is at Serial No. 104 and Sh. B.L. Meena is at 105 of the seniority list dated 20.7.95, yet the applicant has been ignored and superseded by Shri Meena. There are other several juniors having qualified the test in 1995, namely, Sh. G.R. Nirman, Sh. Dharam Singh and Shri Hemant Kumar Sharsia but have been promoted though qualified later than the applicant. In support of his contention, the applicant cited the judgement of the Hon'ble Supreme Court in the case of Telecommunication Engineering Service Association (India) and Another Vs. Union of India and Another (1994 Supp. (2) SCC 222). In that case Junior Telecom Engineers were held to be entitled to promotion on the basis of the year of passing the qualifying departmental examination under Para 206 of P&T

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Manual and not on the basis of seniority. He also sought to draw strength from yet another judgement of the Apex Court in Junior Telecom Officers Forum and others Vs. U.O.I. & Ors. (AIR 1993 SC 787). In the case their Lordships held that engineering supervisors who passed the qualifying examination earlier will rank senior en-bloc as a group to those who pass the examination later.

6. Shri V.P. Uppal, learned counsel for the respondents opposed the claim. He would submit that the eligibility list, as at Annexure-1, was prepared and circulated on 9.6.97 among the eligible officers in order to bring out omission^s/commission^s, if any, prior to promotion to the post of ITO. This was only intended to facilitate the process of promotion to the cadre of ITOs in terms of the Recruitment Rules as annexed at R-1. The seniority list at Annexure-1 has been prepared by taking into account the seniority position of individual Inspectors in the feeder cadre who have qualified the examination for promotion to the post of ITO with regard to available and anticipated vacancy as on date. The learned counsel for the respondents also argued that recruitment rules for the post of ITOs lay down that it is a selection post to be filled by 100% promotion from a feeder cadre of ITIs with 3 years regular service in the grade. The promotion is to be made in accordance with seniority of the officials who have otherwise become eligible for promotion by qualifying the departmental examination. Hence, the candidates who were senior to the applicant and have qualified the eligibility conditions by way of qualifying the examination as well

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as three years service are to be considered first for promotion to the available post. The said list has been issued for the limited purpose of indicating the officials eligible for promotion to the post of ITO in a particular year and the same will undergo a change by including the names of those officials who qualify the departmental examination in the preceding year. Under these circumstances, the applicant's case is without any foundation, learned counsel for the respondents argued.

7. In the background of the details aforesaid, the limited issue for consideration is whether the applicant is entitled to promotion from ITI to ITO on the basis of the year of passing the qualifying departmental examination?

8. We find that the Recruitment Rules of 1994 for ITOs (Group-B) provide the following:-


"(i) 3 years service experience in the cadre of Income Tax Inspector.

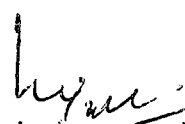
(ii) Qualified the departmental examination for the post of Income Tax Officer."

9. Both sides agree that the cadre of Inspectors constitute the feeder cadre for promotion to the post of ITOs. It is also not in dispute that promotions in this case are governed by the Notification of the Department dated 31.10.94 which stipulates the aforesaid two conditions to be fulfilled before any official could be promoted to the grade of ITO (Group-B).

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The respondents for the sake of convenience have been preparing an eligibility list keeping in view of the seniority of individual candidates. Only such of the officials as have qualified the departmental examination and who were senior to the applicant in the test were considered and promoted. These promotions have been effected in terms of seniority of those who fulfilled the conditions irrespective of the year of passing the departmental examination. In other words, after the qualifying conditions are fulfilled, the promotions have been given in terms of the seniority. The respondents appear to have also given due weightage in offering promotions on the basis of reservation on roster basis. We do not find any infirmity in the Scheme being followed by the respondents. The two cases cited by the applicant does not render any help since there were specific provisions under Para 206 of the P&T Manual enabling the respondents therein to provide promotion on the basis of date of passing the examination. The same situation does not prevail here. Since seniority-cum-merit is criteria, the totality of service has to be considered for effecting promotions. The examination in the present case is a qualifying one and not a competitive in nature. The applicant has not even challenged the 1994 Recruitment Rules on the basis of which respondents have acted. Under these circumstances, there is not merit in the case and deserves to be dismissed. We do so accordingly but without any order as to costs.


(S. P. Biswas)
Member(A)


1.9.98.
(T. N. Bhat)
Member(J)