

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 2978/1997 with Date of Decision: 23 - 7 - 1998

O.A. No. 2979/97
Shri Jai Raj Singh & .. APPLICANT
Ms. Santosh Sharma
(By Advocate Shri V.S.R. Krishna)

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri K.R. Sachdeva)

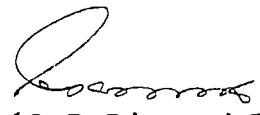
CORAM:

THE HON'BLE SHRI T.N. BHAT, MEMBER (J)

THE HON'BLE SHRI S.P. BISWAS, 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?


(S.P. Biswas)
Member (A)

23.7.1998

Cases referred:

1. Birpal Singh Chahar Vs. State of Haryana 1998 (1) SLJ 61

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2978/1997 and OA No. 2979/97

New Delhi, this 23rd day of July, 1998

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

OA No. 2978/1997

Shri Jai Raj Singh
s/o Shri Virendra Pal Singh
I-35, Ashok Vihar Phase I
Delhi-52.

OA No. 2979/1997

Ms. Santosh Sharma
d/o Brig. Chander Singh (Retd)
B-504, Curzon Road Hostel
Kasturba Gandhi Marg, New Delhi .. Applicants

(By Shri V.S.R. Krishna, Advocate)

versus

Union of India, through

1. Secretary
Department of Revenue
Ministry of Finance
North Block, New Delhi
2. Chairman
Central Board of Direct Taxes
Ministry of Finance
North Block, New Delhi .. Respondents

(By Shri V.P. Uppal, Advocate - Not present)

ORDER

Hon'ble Shri S.P. Biswas

The issues raised, reliefs prayed for and the questions of law involved in these two OAs, filed under Section 19 of the Administrative Tribunals Act, 1985, are identical and hence they are being disposed of by a common order.

2. The brief details of background facts, necessary for disposal of these applications, are as hereunder:

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The applicant herein is a 1974 Batch officer of Indian Revenue Service (IRS for short) cadre. As per the latest Recruitment Rules of 12.5.88 applicable to such officers framed under Proviso II Article 309 of the Constitution, promotion to Commissioner of Income Tax (CIT for short)/Director of Income Tax from Deputy Commissioners (DC for short) to Senior Administrative Grade (SAG for short) in Rs.5900-6700 are to take place as per the details in Schedule II, Rule 7(2) and (3) of the said Rules as at Annexure A-2. The post of CIT in the SAG is a Selection Post and that officers in Junior Administrative Grade (Selection Grade) {JAG(SG) for short} with four years regular service in Group A post of IRS are eligible for promotion. Applicant was promoted to JAG(SG) on 1.12.88, completed 14 years in Grade A and claims to be eligible for promotion to CIT in SAG. Applicant also claims that his CRs are spotless, has received no adverse remarks and nor any disciplinary case is pending that would have stood in the way of his promotion. As per IRS civil list of seniority for the year 1996, he is at S1.No.72 as in A-2 seniority list maintained by the respondents. He alleges to have been superseded by Shri M.C.Joshi and Shri P.Ranganath, who are S1.No.73 and 75 of the list, both being juniors to the applicant. Applicant made representations on 25.9.97 and 25.10.97 but without any result.

OA No. 2979

3. The applicant is a 1973 Batch Officer of IRS cadre. As regards the rules for regular promotion, the position as aforesaid holds good in her case as well. She was promoted to JAG(SG) on 1.12.88, completed more than 14 years service in Group A and is eligible for promotion to the post of CIT in the SAG. As per the aforesaid seniority list, she is at S1.No.46 and has been superseded by juniors like Shri A.K. Jain and Shri D. Shankar at S1. No.47 and 48 respectively of the A-2 seniority list maintained by the respondents. She also claims that her conduct in the office of the respondents had been blemishless, had never been communicated any adverse remarks till date and that no disciplinary proceedings are pending or initiated at any time against her and that she has never been proceeded departmentaly. Under these circumstances, respondents have no reason to have ignored her promotion to SAG on purely ad hoc basis as has been done in the case of her other colleagues. She has made representations on 16.6.97, 17.9.97 and 13.10.97 but the respondents decided to turn Nelson's eye to her representations.

4. Both the applicants are equally aggrieved by the orders of the respondents dated 13.9.97 and 17.10.97 as at A-1 (colly). By order dated 13.9.97 as many as 104 DCs have been promoted purely on ad

hoc basis and as per order dated 17.10.97, 21 DCs have been promoted to the grade of CIT, again on purely ad hoc basis. Both orders contain some of applicants' juniors having been promoted as in paras 2 and 3 aforequoted. Consequently, both of them are seeking reliefs in terms of issuance of directions to the respondents to consider promoting them to the post of CIT(SAG) purely on ad hoc basis with effect from the date their juniors were promoted by the impugned orders alongwith all consequential benefits like arrars of pay and allowances/seniority etc.

5. The contentions of the applicants are that when the respondents proceeded to make ad-hoc promotions to SAG they have wrongly resorted to "Selection" method and comparative merits were considered wrongly. It is in the background of these irregular procedures adopted by the respondents that the cases of the applicants were rejected from the zone of consideration. As such, the applicants are challenging the two aforesaid orders passed by the respondents by which they have been denied promotion on ad hoc basis to SAG, when their juniors have been promoted ignoring their superior claims.

6. Despite several opportunities given to the respondents, the latter have chosen not to file any counter to the claims made by the applicants herein. Respondents' counsel made oral submissions only on 5.2.98. Even after 31.3.98 when these two

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cases were put on PRIORITY list, respondents' counsel appeared only once on 22.4.98 and prayed for an opportunity to file reply, which was allowed. The said reply was to be filed by respondents by 3.6.98. When the matter came on 15.7.98, none of the parties were present. On 17.7.98, when the case came up for hearing for the third time, none appeared for the respondents nor was a reply filed on their behalf. In these circumstances, the Tribunal had to decide the case on the basis of the law laid down by the apex court in the case of Birpal Singh Chauhan V. State of Haryana 1998(1) SLJ 61. It has been held therein that if the Government department did not put up the pleadings, the court can decide on the basis of application only.

7. The impugned orders mention the following:

"The above promotions to the grade of Commissioners of Income Tax have been made on purely ad-hoc basis for a limited period of one year or till availability of incumbents for filling up the vacancies on regular basis for promotions to the grade of Commissioners of Income Tax, whichever is earlier".

It is therefore admitted by the respondents that they have issued the orders by resorting to ad-hoc promotion. The rules that govern ad hoc promotion are available in OM No.28036/8/87-Estt(D) dated 30.3.88. The aforesaid OM stipulates not only the exceptional circumstances where ad — hoc appointments/promotions can be made but also lay down the procedures that have to be followed in such

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cases. The relevant portion of the OM, pertaining to ad hoc promotions to be made, is reproduced below:

(iii) Where ad hoc appointment is by promotion of the officer in the feeder grade, it may be done on the basis of seniority-cum-fitness even where promotion is by selection method as under: (emphasis added)

(a) Ad hoc promotions may be made only after proper screening by the appointing authority of the records of the officer;

(b) Only those officers who fulfil the eligibility conditions prescribed in the recruitment rules should be considered for ad hoc appointments. If, however, there are no eligible officers, necessary relaxation should be obtained from the competent authority in exceptional circumstances.

8. Respondents admit that the two orders in A-1 colly are promotions on ad hoc basis only. It is well settled in service jurisprudence that for regular promotions, Departmental Promotion Committee/Screening Committee has to scrutinise the merits of eligible officers in the zone of consideration but in ad hoc promotions, as already indicated, the only criteria is "Seniority-cum-fitness". Since the respondents admit that appointment to the higher post has been done on ad-hoc basis, the sole question for a decision is whether the respondents were right in applying the criterion of selection on merit to judge the question of "seniority-cum-fitness". The seniority position has already been elaborated in paras 2 and 3 above. The expression "fitness" means that there should not be any adverse entries in the CRs of the concerned person atleast for the

last three years and no disciplinary case should be pending against those in the zone of consideration. In so far as the applicants herein are concerned, undisputedly there were no adverse entries in their cases nor were any disciplinary proceedings pending against them at the relevant point of time. Therefore, these two cases were fit enough to be placed in the SAG since they are seniors to others and there is no doubt that the applicants have been bypassed.

9. We have gone through the records, pleadings and arguments advanced at the bar and we find that the procedure adopted by the respondents for promotion to the post of CIT has been wrong so far as applicants herein are concerned. Even though the Recruitment Rules prescribe "Selection" method to be applicable for regular promotion but while making ad hoc promotion comparative merit could not have been resorted to. On the contrary, instructions available in the aforesaid OM issued by DoPT, which have the force of law, should have been applied to and the seniority should be the criteria subject to rejection of unfit. Respondents have wrongly resorted to comparative merit while making ad hoc promotion. They should not have usurped in the powers of Selection Committee and assessed the candidates on comparative merit which should be done only at the time when selection is made on regular basis. Respondents for the purpose of making ad-hoc promotions should have confined themselves to the

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(8)

criteria, laid down on the abovesaid OM and considered the candidatures of the applicants herein by applying the principle of seniority subject to rejection of unfit.

10. In making ad hoc promotions to the higher grade, in our view, respondents are free to take a decision regarding persons to be so appointed. But if they admit that they have made selection in which relative merits have been assessed, the rejection of applicants' claims becomes questionable. If no adverse remarks have been communicated to the applicants or that any adverse remarks so communicated have been rejected because of others having better merits, the applicant will have a claim for consideration. We find this stand of ours gets support in the decisions of the Tribunal in the cases of M.L. Trivedi & Anr. Vs. UOI & Ors. 1987(4) ATC 69, P. Sita Rama Krishniah V. UOI in OA 1237/97 decided on 24.10.97 as well as the judgement of the Hon'ble Supreme Court in the case of Dharam Vir Singh Tomar V. Administrator, Delhi Admn. & Anr. 1991 (17) 925.

11. In view of the details aforesaid, we allow these two OAs with the following directions:

(i) Respondents shall duly consider the cases of the applicants for ad hoc promotion to the post of CIT(SAG) on the basis of their position in the

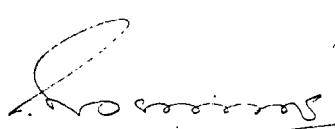
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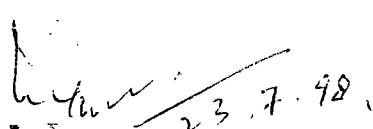
seniority list subject to rejection of unfit. Adjustments shall be made only with reference to their juniors unless there are fresh vacancies to adjust the applicants herein without disturbing others. This should be done within a period of two months.

(ii) Persons who have already been promoted on ad-hoc basis shall continue to remain wherever they are till a review of the selection by the respondents takes place touching upon the position of their relative seniority;

(iii) Applicants shall not be entitled to benefits like arrears of pay and allowances since they had not actually shouldered the higher responsibilities of the post; and

(iv) There shall be no order as to costs.


(S.P. Biswas)
Member(A)


(T.N. Bhat)
Member(J)