

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

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O.A./T.A. No. 2408 of /19 94 Decided on: 12.1.96

J.B. Bansal & Anr. APPLICANT(S)
(By Shri M.L. Ohri Advocate)

VERSUS


U.O.I. & Ors. RESPONDENTS
(By Shri R.R. Bharti Advocate)


CD RAM

THE HON'BLE SHRI S.R. ADIGE, MEMBER (A)

THE HON'BLE ~~XXXXXXX~~ / DR. A. VEDAVALLI, MEMBER (J)

1. To be referred to the Reporter or not? Yes
2. Whether to be circulated to other Benches of the Tribunal? ~~Yes~~ ^{No}


(Dr. A. VEDAVALLI)
Member (J)


(S.R. ADIGE)
Member (A)

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
New Delhi

O.A. No.2408 of 1994

New Delhi, dated the 12th January, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. Shri J.B. Bansal,
R/o KU-148, Pitampura,
Delhi-110034.

2. Shri N.K. Bhatia,
R/o F-290, Vikaspuri,
New Delhi-110018.

..... APPLICANTS

(By Advocate: Shri M.L. Ohri)

VERSUS

1. Union of India through
The Secretary,
Deptt. of Revenue,
Ministry of Finance,
North Block,
New Delhi.

2. The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi.

3. The Principal Collector of
Customs & Central Excise,
(North Zone),
I.P. Estate,
New Delhi.

4. The Collector of Central Excise,
Central Excise Collectorate,
C.R. Building,
I.P. Estate, New Delhi-110002.

5. The Collector of Central Excise,
Central Excise Collectorate,
Sector-XVII, Chandigarh,
Punjab.

6. The Addl. Collector (P&V),
Customs & C. Excise,
Customs & C. Excise Collectorate,
C.R. Building, I.P. Estate,
New Delhi-110002.

7. Shri Anil Kumar Goyal,
Inspector of Customs,
Customs Collectorate,
C/o Inspector (Hqrs.)
New Customs House,
New Delhi-110037.

..... RESPONDENTS

(By Advocate: Shri R.R. Bharti)

Shri R.P. Oberoi for Resp. 7)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

In this application Shri J.B. Bansal and one other have impugned the order dated 17.8.94 (Annexure A-1) in so far as it grants seniority to Respondent No.7 Shri A.K. Goyal above them and have prayed for restoration of their seniority on the Delhi Charge as originally assigned to them. It has also been prayed that DPC's as and when held for promotion to the post of Supdt. should act on the original seniority list (Annexure A-9) in so far as the applicants are concerned.

2. Shortly stated that the applicants were firstly recruited as Inspectors of Income Tax, etc. through selections made by the Subordinate Services Commission, Now Staff Selection Commission (SSC), on the basis of all-India competitive and written Examns, and interviews vide advertisement notices at Annexure A-3. The applicants point out that one of the conditions prescribed in paragraph 25 of the said advt. was that "a candidate will be considered for appointment to vacancies of Inspector of Income Tax/C. Excise only in the Charge/Collectorate opted for by him. The Commission however reserves the right to consider him for appointment to a charge/Collectorate different from the one opted by him". They state that they were allocated to Delhi Charge while Resp. 7 was allocated to the Chandigarh Charge (Annexure A-4). The applicants were appointed as Inspectors in the Delhi Charge



of the Collectorate of Central Excise on

- i) Shri J.B. Bansal 3.4.79
- ii) Shri N.K.Bhatia 10.4.79

while Respondent No.7 was allocated and appointed to the Chandigarh charge of the Central Excise ^{Collectorate}.

3. They further state that promotion to the next higher grade of Supdt. Central Excise is made charge-wise according to the seniority-cum-merit from the respective charges and there is no all-India seniority list (Ann. A-5).

4. It is further contended that in 1979 the charges of Delhi, Chandigarh and Jaipur Collectorates were separate and options were invited only from the existing Inspectors vide letter dated 28.3.79 (Annexure A-6) but no option was given to the nominees of the SSC, as they had already obtained such options at the time of inviting applications for the examination and selection. As per instructions governing inter-charge transfer, the Inspectors seeking transfer ~~were~~ to be placed at the bottom of the list of the charges to which he was seeking transfer (Annexure A-7 and A-8) and Resp. 7 who was transferred from Chandigarh to Delhi on 28.2.91 was assigned seniority at Sl. No. 844 below all those serving in the Delhi Charge, but suddenly by impugned letter dated 17.8.94 the respondents assigned Resp. 7 seniority at Sl. No.34-A, i.e. above the two applicants who are at Sl. No.35 and 36 respectively.

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5. The applicants state that being aggrieved by this decision they submitted representation to the respondents, but not receiving any favourable reply they have been compelled to approach the Tribunal.

6. The official respondents in their reply have contested the O.A. They state that the applicants are direct recruit Inspectors of C. Excise selected on the basis of the Staff Selection Commission Exam. and joined Delhi Excise Collectorate in April-May 1979. Similarly Resp. 7 Shri A.K. Goyal is also a direct recruit Inspector selected through the same exam. who joined the Chandigarh C.E. Collectorate on 12.10.78. Earlier, Delhi, Chandigarh and Jaipur Collectorate had a common cadre of Group B, C & D staff, but in 1978 Govt. decided to separate the Gp.B, C & D staff of the ~~three~~ Collectorates into separate cadres. The jurisdiction of Delhi and Chandigarh Collectorates was also revised by attaching Haryana area to Delhi Collectorate and the staff members were required to furnish their options for the Collectorates they wanted to be allocated to, on the separation of cadres. The decision was communicated to the three concerned collectorates of Central Excise viz. Delhi, Chandigarh and Jaipur vide letter dated 27.12.78 from C.B.E.C. (Annexure R-1).^m C. Excise Collectorate, Chandigarh

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circulated a note dated 8.1.79 calling for options from staff members whether they wanted to serve in Chandigarh Collectorate or Delhi Collectorate, Resp. No.7 exercised his option for Delhi Collectorate within the prescribed time limit. On 28.3.79 a clarification was issued by C.B.E.C. (Annexure A-6 to OA) that staff members who were nominees of SSC would not be allowed option in terms of Board's letter dated 27.12.78 as SSC might have kept in view the preferences exercised by them at the time of filling in the application forms while nominating them to various collectorates. In view of this clarification, option exercised by a number of ^{direct recruit} / Inspectors of C. Excise including R-7 for Delhi CEC, who had earlier joined Chandigarh CEC as per SSC's allocation was not accepted. Aggrieved by this decision, one Inspector, Shri Satyendra Kumar filed O.A. 784/87, which was allowed by judgment dated 30.11.88 (Annexure A-10 to O.A.) and the respondents were directed to give effect to his option for Delhi CEC without adversely affecting his seniority, pay and allowances. Thereupon the respondents examined the case of other Inspectors who represented for acceptance of their options and claimed similar treatment, upon which order dated 12.2.91 (Annexure R-II) were issued, allocating 7 inspectors to Delhi CEC including R-7. Subsequently representations of other

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were also examined, and in all 16 Inspectors were transferred to Delhi CEC with their original seniority. This impugned seniority list issued by the Delhi CEC on 17.7.94, only indicates the position of these Inspectors in the seniority list of Inspectors in Delhi Collectorate. The official respondents have also stated that 7 inspectors including R-7 were transferred to Delhi CEC by order dated 12.2.91 and if the applicants had any grievance with respect to that decision they should have challenged it at that time, but instead of doing so they kept quiet for three years and have challenged the seniority list of 1994 which only incorporated the decision of 1991. Apart from this plea of limitation, the official respondents also state that the applicants did not exhaust the departmental remedies available to them and filed this O.A. on 1.12.94 within ^{less than} six months 6 months of the impugned order dated 17.8.94.

7. Respondent No.7, Shri Goyal has also filed his reply supporting the stand of the official respondents.

8. The applicants have filed their rejoinder to both the replies. In the rejoinder to the official respondents' reply, it is contended that fresh options were not available to the ^{direct recruit} /

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Inspectors, who had been given option at the time of SSC Exam., and CBEC's letter dated 28.3.79 clearly stated that fresh options would not be available to them. It is stated that this circular was not brought to CAT's notice, and persons likely to be affected were also not made a party in Shri Satyendra Kumar's O.A. No.784/87, and hence that decision was a decision in personam and not a decision in rem. It is contended that official respondents' letter dated 12.12.91 was not a general circular, but an internal communication, which was not within the knowledge and they came to know that Respondent No.7 was placed above them for the first time vide seniority list of 17.8.94 against which they filed representations dated 28/29.9.94 and also filed this O.A. In their rejoinder to Respondent No.7's reply also, the applicants have broadly reiterated their contentions. They have however admitted that since filing the O.A. they, as well as R-7 have been promoted as Supdts. after the O.A. was filed. They, however, state that R-7 was far junior to the applicants as per original seniority, but now is placed above them in the seniority list. The applicants have also filed their rejoinder ^{to} the addl. affidavits dated 10.10.95 filed by R-7.

9. We have heard Shri M.L. Ohri for the applicant; Shri R.R. Bharti for the official respondents and Shri R.P. Oberoi for R-7, Shri Goyal. We have also perused the materials on record and given the rival contentions our careful consideration.

10. The applicants in their rejoinder have not denied the facts contended by the official respondents in their reply and summarised in paragraph 4 above, except for stating that as the D.R. Inspectors had been given options at the time of exam. conducted by SSC, fresh option, was not available to them, as contained in CBEC's letter dated 28.3.79, which they allege was not brought to the CAT's notice at the time of judgment dated 30.11.88 in Satyendra Kumar's case (Supra) ^{was} to be delivered, and further that the said judgment is a judgment in personam and not in rem. None of their arguments are tenable. From Paragraph 5 of the judgment dated 30.11.88 in Satyendra Kumar's case (Supra) it is clear that the resp. (UOI) in that case had taken the very same stand as is now being taken by the applicants in the present case, namely that as the D.R. Inspectors had been given an option at the time of SSC exam., fresh option was not available to them, but this ground found no favour with the Tribunal, and there is nothing to indicate that the said judgment dated 30.11.88 has not become final. Furthermore, the applicants' contention that official respondents' letter dated 28.3.79, contents of which tally with their above stand, was not brought to the CAT's notice at the time judgment dated 30.11.88 was delivered, is negatived by para 6.5 of rejoinder of applicant A.K. Goyal (R-7 in the present O.A.) & Ors. to the reply filed by UOI in O.A. No.394/88

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in which the said letter dated 28-3-79 is specifically mentioned. Hence that argument also fails. As regards the third argument namely that the judgment dated 30.11.88 in Satyendra Kumar's case (Supra) O.A. 784/87 was not a judgment in rem, but a judgment in personam, it is clear that the CAT found the case of applicant Shri Satyendra Kumar on all fours with that of S/Shri Tarsem Lal, Jagat Singh and Lajpat Rai. As the options exercised by them had been acted upon, the CAT held that the benefit of the option could not be denied to applicant Shri Satyendra Kumar, for if it were denied, Art. 14 of the Constitution would be violated. In this connection the Bench relied upon two Supreme Court decisions namely State of Kerala Vs. N. Thomas 1976(2)SCC 310 and Paradise Printers Vs. UT of Chandigarh 1988 (1) SCC 440. The Bench therefore directed the respondents to give effect to the option exercised by Shri Satyendra Kumar in the same manner as was done in the case of S/Shri Tarsem Lal, J. Singh and Lajpat Rai, and allocate the applicant Shri S.Kumar to the Delhi Collectorate without adversely affecting his seniority, pay and allowances.

11. The applicants in their rejoinder have not denied the averment made by the official respondents in their reply to the O.A., that the applicants case is similar to that of Shri Satyendra Kumar, and under the circumstances, if in the light of the CAT's judgment dated 30.11.88

in Satyendra Kumar's case (Supra), the ^{respondents} official/ extended the same benefit to R-7 Shri Goyal as the Tribunal had directed in the case of Shri Satyendra Kumar, on the ground that the two cases were on all fours, it cannot be said that the official respondents acted illegally, arbitrarily, or to give undue favour to Resp.7 as alleged by the applicants, because the benefits were eventually extended to as many as 16 Inspectors similarly placed, against none of whom, apart from R-7, the applicants have any grievance.

12. Applicants' counsel Shri Ohri has relied on certain judgments in support of his contention that the effect of the judgment in S. Kumar's case has to be restricted to parties in that case and not to others. One such case cited by him is H.S.Ramamurthy & Anr. Vs. UOI & Ors. 1995(30) ATC 341(FB). Another case is B. Rama Rao Vs. Govt. of A.P. & Ors. 1995 SCC (L&S) 310. Yet another case cited by him is Ishwar Singh Vs. Kuldip Singh 1995 SCC (L&S) 373. Reliance has also placed on Govt. of A.P. vs. M.A. Kareem 1991 (2) SLJ 14, and Gurusharan Singh Vs. UOI 1995 SCC L&S 226. We have perused those judgments and note that they were delivered having regard to the facts and circumstances of those particular cases, and do not have relevance in the particular facts and circumstances of the present case. When admittedly a single cadre was trifurcated; options

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were asked for from persons concerned as to the cadre to which they would like to be allocated; R-7 exercised his option within the prescribed time period; and in as many as 15 other cases (against whom the applicants have no grievance) similarly situated^{as} as R-7, their services have been transferred to Delhi Collectorate with their original seniority. Manifestly thereupon any attempts to withdraw the benefit extended by the official Respondents to R-7 at this stage, of allowing him to carry his original seniority, pay etc. with him, as prayed for by the applicants, would amount to treating him differently from those who are similarly situated as him, which would itself be violative of Art. 14 and 16 of the Constitution, and hence illegal, arbitrary, and discriminatory, ~~etc.~~.

13. Under the circumstances, we are not persuaded to interfere in this matter. The O.A. fails and is dismissed. No costs.

A. Veda Valli
(DR. A. VEDAVALLI)
Member (J)

S. R. Adige
(S.R. ADIGE)
Member (A)

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