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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1580/2000, MA 1177/2001

New Delhi, this 27th day of August, 2001

Hon'ble Shri M.P. Singh, Member(A)
Hon'ble Shri Shanker Raju, Member(J)

1. J.M.Mamtani
43/Sector 2, Sadiq Nagar
New Delhi-49
2. Surinder Pal Sood
KP-230, Pitampura, Delhi-34 .. Applicants
(By Shri D.R.Gupta, Advocate)

versus

Union of India, through

1. Secretary
M/Finance (Dept. of Revenue)
North Block, New Delhi
2. Chairman
Central Board of Direct Taxes, New Delhi
3. Chief Commissioner of Income Tax
CR Building, IP Estate, New Delhi
4. Ram Lal Bagga)
5. Khoobi Singh)
6. Bal Mukand Gupta) To be served through
7. Raghbir Singh) Commissioner of Income
8. Prem Kumar) Tax, Delhi-1, CR Bldg.
9. Tilak Raj Abrol) IP Estate
10. Bhim Sain Kumar) New Delhi
11. Krishan Chand)
12. Ramesh Chander Kohli)
13. Inder Kalra)
14. Raj Kumar Bucchar) .. Respondents

(By Shri R.S.Agarwal, Advocate)

ORDER

Shri M.P. Singh

By filing this OA under Section 19 of AT Act, 1985, applicants have sought relief by praying for direction to quash the order dated 27.7.2000 (Annexure I) and further directions to respondents to finalise the seniority list as proposed by them vide circular dated 27.3.2000 (A-II) for the purpose of holding review DPC. They have also sought direction to respondents to

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consider them for promotion from the post of Income Tax Inspector (ITI, for short) to the post of Income Tax Officer (ITO, for short) from 1995 onwards on the basis of seniority proposed by R-3 with all consequential benefits.

2. Brief facts of the case, as stated by the applicant, are that the applicants are working as ITIs and their next promotion is to the cadre of ITO, which is based on seniority-cum-fitness from amongst the officers who have rendered 3 years service and have also passed departmental examination. Applicants have passed departmental examination and have rendered more than prescribed period of service as ITIs and are thus eligible for promotion to the cadre of ITO. The seniority list of the promotees vis-a-vis direct recruits was not finalised by the respondents till 1995 and they have wrongly promoted direct recruits to the post of ITO pending determination of inter-se seniority. Aggrieved by this, some promotee ITIs filed OA Nos. 1478/95 and 1899/95 inter alia seeking relief praying for direction to the respondents to determine the interse-seniority of direct recruit and promotee ITIs and to hold review DPC on the basis of the seniority so determined. The Tribunal passed interim order to the effect that promotion of direct recruits would be subject to the outcome of these OAs. Respondents did not take any action to convene the review DPC. Therefore some of the promotee ITIs filed OA No. 388/99 and vide its order dated 7.5.99 the Tribunal directed the respondents to hold review DPC.

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Subsequently, the Tribunal also disposed of the OA Nos. 1478/95 and 1899/95 (supra) vide order dated 8.9.99. The private respondents who were aggrieved by the aforesaid order dated 8.9.99 filed OA 2307/99 which was disposed of by the Tribunal on 23.2.2000 with the direction to the respondents to recast the seniority list circulated by them vide letter dated 8.2.99. R-2 vide letter dated 20.7.2000 gave certain directions to R-3 whereby instead of finalising the seniority list in terms of the directions given in the Tribunal's order dated 23.2.2000 and promoting ITIs to the post of ITO on the basis of seniority, promoted private respondents No.4 to 14 in gross violation of standing instructions. Applicants were left with ^{no} other alternative except to approach this Tribunal. Hence they have filed this OA claiming the aforesaid reliefs.

3. Respondents in their reply have contested the case and have stated that pending finalisation of seniority list as per directions of the Tribunal given in its order dated 23.2.2000, R-3 considered making further promotions to the cadre of ITOs on the basis of eligibility list and as such a step was necessary to carry out day-to-day important work. In pursuance of the directions given by the Tribunal in its order dated 23.2.2000, respondents took steps to collect relevant details from the Staff Selection Commission in respect of direct recruit inspectors. The seniority of direct recruits as per order of the Tribunal dated 23.2.2000 was to be reckoned with reference to the date of their selection by the SSC. As far as the case of seniority of the promotee ITIs is concerned, the records were

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checked to collect information relating to their promotion as their seniority was to be regulated with reference to the date of their selection by DPC. This process took some time and under the circumstances respondents could not prepare the final seniority list of the ITIs in spite of their best efforts and therefore they resorted to provisional list on the basis of which ad hoc promotions could be made to carry out day-to-day work. The order passed by the Tribunal on 23.2.2000 is under challenge before the Delhi High Court which is still pending. In view of the submissions made above, the OA is without merit and be dismissed with costs.

4. Applicants have ^{now} filed MA 1177/2001 whereby they have amended the reliefs in para 8.2 and 8.3 of the OA, which are as under:

8.2 To declare the order dated 16.5.2001 (A-1) made by the Chief Commissioner of Income Tax Delhi in so far it provides for fixation of their pay notionally from the dates of their deemed retrospective promotion and they will not be entitled to any actual arrears and monetary benefits till the date of order and consequent assumption of charges, as illegal.

8.3 To direct the respondents to pay all consequential benefits including arrears of pay and allowances and other service benefits as a consequence of their retrospective promotion from the date(s) their juniors had been promoted.

5. Respondents in reply the aforesaid MA have stated that while passing order dated 16.5.2001 promoting the applicants from the due date and fixing their pay notionally from the date of their deemed promotion, respondents have placed reliance on order dated 8.9.99 in OA 1899/95 (J.S.Tanwar Vs. UOI) passed by the Tribunal. The directions given by the Tribunal in this



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order are that "in case applicants are found fit and suitable for promotion by the review DPC, then on the basis of the said seniority list, the applicants shall be granted promotion from the date their juniors got promotion. The applicants should get seniority over the juniors in case they are found suitable for promotion. However, they will not be entitled to any monetary benefits. In such case, applicants' pay may be fixed notionally from the dates of their deemed retrospective promotion. However, they will not be entitled to any actual arrears of monetary benefits till the date of actual order of promotion". The applicants have been given promotion from their due dates on deemed basis and their pay have also been fixed in the pay scale of ITO (Group B) from the same date and the benefit of annual increments due to them have also been considered and granted. Applicants cannot question the seniority as the said point of seniority has already been settled by the Tribunal by its order dated 23.2.2000 in OA 2307/1999. By filing this MA applicants cannot challenge the order dated 16.5.2001 as the said order is valid and legal and there is no infirmity in it.

6. Heard rival contentions of both parties and perused the records.

7. During the course of the arguments, learned counsel for the applicants stated that certain persons junior to them, who have been promoted as ITOs, have been given the monetary benefit of arrears of pay and allowances



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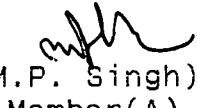
whereas the applicants have been denied the same. He submitted that the said benefit of arrears of pay and allowances can be extended to the applicants also.

8. Learned counsel for the respondents has admitted the fact that a few juniors have been paid arrears of pay on the direction given by the Tribunal on 29.9.2000 in OA 948/98. He drew our attention to the order dated 1.8.2001 and stated that in view of the directions of the CAT, five ITOs, namely Raghbir Singh, Prem Singh, Nand Lal, MRS Shital and Mehboob Singh who are junior to the applicant and belonging to SC category have been given the benefit of arrears of pay.

9. After hearing both the learned counsel for the parties and perusing the records, we are of the considered view that since juniors to the applicants who have been promoted as ITOs from a later date and have been paid arrears of pay and allowances, applicants who are admittedly senior cannot be discriminated. We therefore allow the present OA and direct the respondents to pay arrears to the applicants from the date, their juniors have been paid arrears. This exercise must be completed within a period of three months from the date of receipt of a copy of this order. OA is disposed of accordingly. No costs.



(Shanker Raju)
Member(J)



(M.P. Singh)
Member(A)

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