

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1156/89
T.A. No. & M.Ps No. 1103/90 & 199
1699/90

DATE OF DECISION 29.11.1991

Shri B.Nagarajan

Petitioner Applicant

Shri R.S.Sharma

Advocate for the Petitioner(s) Applicant

Versus

**U.O.I through the Secy.,
 Ministry of Finance(Rev.) & ors.** Respondents

Shri R.S.Agarwal

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. **Justice Amitav Banerji, Chairman**

The Hon'ble Mr. **D.K.Chakravorty, Member(A)**

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Ab/29.11.91
 (AMITAV BANERJI)
 CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA No. 1156/89
with MP Nos. 1103/90 &
1699/90

Date of decision: 29-11-91

Shri B.Nagarajan

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Applicant

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Counsel for the
Applicant.

VERSUS

The Union of India through
The Secretary,
Ministry of Finance (Revenue)
& Ors.

Respondents

Shri R.S.Agarwal

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Counsel for the
Respondents

CORAM:

THE HON'BLE MR.JUSTICE AMITAV BANERJI, CHAIRMAN
THE HON'BLE MR.D.K.CHAKRAVORTY, MEMBER(A)

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MR.
D.K.CHAKRAVORTY, MEMBER)

In this application under Section 19 of the
Administrative Tribunals Act, 1985, the applicant,
who was working as a Commissioner of Income Tax,
New Delhi has assailed the order dated 2.2.1989 passed
by the Ministry of Finance, Department of Revenue
rejecting his representation for restoration of
seniority in Class-I Service of the Income Tax
Department. The applicant has prayed that the
respondents be ordered to allow seniority to him
as Income Tax Officer Group 'A' after taking into
consideration the services put in by him with effect
from 1.1.1966 and to further direct that the consequential
benefits accruing on such promotion like deemed

seniority for selection as Deputy Commissioner of Income Tax and Commissioner of Income Tax, particularly the financial benefits, may kindly be given to him.

2. The brief facts of the case are that the applicant joined the Income Tax Department as Income Tax Officer (Class-II) on 12.9.1955 after having been selected by the Union Public Service Commission. He was promoted to Class-I post on regular basis by the duly constituted Departmental Promotion Committee in consultation with the UPSC with effect from 1.1.1966 by the order dated 10.1.1966 (Annexure-C of the paper-book). The promotion of the applicant was not on ad hoc basis but was on regular basis without any conditions. The seniority of the applicant was fixed with 1968 batch of direct recruits to Class-I, viz., for such direct recruits who had qualified for selection by the UPSC in 1967 Examination for Central Civil Services. This seniority was fixed by applying the ratio of 1:1 between the promotees and direct recruits as laid down in the 1973 Rules with retrospective effect from 1959. In Writ Petition No. 287/73 and several other Civil Appeals the Hon'ble Supreme Court has approved this ratio and the allotment of seniority in the case of promotees and direct recruits in the Income Tax Service Class-I. The fixation of the seniority of the applicant was the result of the Hon'ble Supreme Court's decision.

3. The applicant contends that the impugned order dated 2.2.1989 is illegal and contrary to the principles of law governing seniority. In support of his contention the applicant has given a brief chronological account of the controversy in regard to the fixation of inter se seniority between promotees and direct recruits inducted in the Income Tax Service starting

from 1952 onwards. Due to non observance of the Quota Rule of 1951 for recruitment to the Class-I cadre of the Income Tax Department, the seniority rules could not be given effect to after 15.1.1959. The matter went up to the Supreme Court and in the light of the directions given in Jaisinghani's case (1967) 2 SCR 703, the respondents prepared a roster which was subsequently challenged. The Hon'ble Supreme Court vide its judgement in the case of Bishan Sarup Gupta Vs. Union of India ~~Case No.~~ (1975) SUPP SCR 491, set aside the seniority list of 15.7.68 and directed the Department to prepare a fresh seniority list in the light of the observations made in that judgement. Broadly speaking, the seniority list from 1951 to 1959 was to be prepared in accordance with the Quota Rules of 1951 read with the Seniority Rule 1(iii) while the seniority list from 16.1.1959 was to be prepared in accordance with the Rules to be freshly made by the Government in that behalf. Accordingly, the 1973 Rules were framed by the Government (Annexure 'E' of the paperbook).

4. The applicant has stated that the judgement in the case of Jaisinghani governed the inter se seniority between direct recruits and promotees for a long time but the legal position in this regard has undergone a change arising from subsequent judgements in the cases of A.Janardhana; Narendra Chaddha; Dinesh Chandra Gupta & ors; Ansu Sekhar Guin and ors; and S.K.Iyer and Another.

5. The applicant contends that in the above cited and many other judgements, the Hon'ble Supreme Court has decided that when there are no rules regarding quota, it is the date of actual working that

decides the seniority. The applicant's contention is that the 1973 Rules can apply only prospectively for those promotees who were inducted after the framing of the 1973 Rules and his seniority should be fixed on the basis of the length of his service rendered by him after regular promotion to the Income Tax Service Class-I from 1.1.1966. Accordingly, he prays that he should be treated as senior to the direct recruits of the 1966 batch i.e. those who joined in 1966 by virtue of 1965 Examination and consequently his promotion as Deputy Commissioner and Commissioner of Income Tax should be ante-dated which according to his computation should not be later than 12.4.1977 and 10.2.1987 respectively.

6. The respondents have resisted the application. They have taken a preliminary objection that the applicant had challenged the order dated 2.2.1989 passed by the respondents regarding his seniority in Class-I Service in Income Tax Department which was fixed more than 15 years back. It is, therefore, hopelessly barred by limitation under Section 19(3) of the Administrative Tribunals Act, 1985. The challenge of the order dated 2.2.1989 is only a ploy to raise a matter which has been barred by limitation decades ago. They contend that the question of limitation in similar cases has already been conclusively dealt with by the New Bombay Bench of the Tribunal in the cases of A.M.Sheikh Vs. Union of India in OA No.61/89 on 17.7.1989 and Shri V.T.Muley Vs. Union of India & Others in OA No.25/90 on 18.1.1990. Another objection taken by the respondents is that the seniority given to the applicant was on the basis of the list prepared at the directions of the Hon'ble Supreme Court in the case of B.S.Gupta Vs.Union of India (first Gupta case).

(1b)

The validity of the Seniority Rules and the seniority list was subsequently upheld by the Hon'ble Supreme Court in the case of B.S.Gupta Vs. Union of India, AIR 1974 SC 1618 (called second Gupta case). Once again in the case of K.K.Dutta Vs. U.O.I, AIR 1980 SC 2056, the Hon'ble Supreme Court reaffirmed their decision in respect of the seniority Rules, 1973. The seniority of the applicant in the grade of Income Tax Officer (Class I) was redetermined in accordance with the so framed seniority rules and thereafter his seniority in the grade of Assistant Commissioner of Income Tax also underwent a change. The application is, therefore, misconceived and liable to be dismissed at the admission stage itself.

7. This application filed on 26th May, 1989 was admitted on 16.8.1990 with the direction that the MP Nos. 1103/90 and 1699/90 will be considered with the main application itself. The applicant had already retired from service on superannuation on 28.2.1989. The applicant's Misc.Petition No.2495/90 for expediting the hearing was allowed. We have heard the learned counsel for the applicant and the learned counsel for the respondents and have gone through the records of the case.

8. We may first consider the arguments put forth by the respondents about the case being barred by limitation. It is very clear that the applicant, whose seniority has been fixed long back, is precluded from ventilating the very same issue at this late stage. The applicant has assailed the recent order dated 12.2.1989 rejecting his representation presumably with a view to circumventing limitation. We have no hesitation in unequivocally holding that the present OA is barred by limitation. However, considering the importance of the vexed issue regarding the determination of inter se seniority between the promotees and direct recruits of Class I Income Tax Service which has a long and chequered

history starting from 1944 onwards and ending with several landmark judgements of the Hon'ble Supreme Court on this subject as also two Full Bench judgements of the Central Administrative Tribunal in the case of C.V.K. Naidu & ors. Vs. Union of India & ors. and batch of cases delivered on 16.9.1989 and in the case of C.V.Nair Vs. Union of India & Ors. decided on 29.10.1991, although the present OA is clearly barred by limitation we do not wish to reject the claim of the applicant solely on this technical ground. We think it expedient ^{/also} to consider his grievance on merits/in the light of the catena of judgements on the subject.

9. The applicant's challenge to the order dated 2.2.1989 and the prayer that he be allowed seniority as Income Tax Group 'A' Officer after taking into consideration the service put in by him on the same post with effect from 1.1.1966 and consequential re-fixation of date of his promotion to the post of Deputy Commissioner/ Commissioner of Income Tax are in effect a challenge to the recruitment rules of 1973 which were framed under the directions of the Hon'ble Supreme Court and have been upheld in numerous cases decided by the Hon'ble Supreme Court since then.

10. For sake of brevity we may just mention that initially the Recruitment Rules of 1952 prescribed a promotion quota of $33\frac{1}{3}\%$ and giving of weightage of three years in seniority to the promotees to Class I Income Tax Service. With the break down of the quota system from 1959, the fresh Seniority Rules of 1973 were framed which had retrospective effect from 16.1.1959 in compliance with the landmark

judgement of the Supreme Court in the case of B.S.Gupta (known as 1st Gupta case). The weightage was abolished but by the 1:1 roster for seniority, the quota between direct recruits and promotees to Class I Service came to 50%. The validity of these rules and the seniority lists prepared thereunder were again challenged but was upheld by the Supreme Court in the case of B.S.Gupta (known as 2nd Gupta case) and also the case of Kamal Kanti Dutta & Ors. Vs. Union of India & ors.

11. The Full Bench judgement of the Central Administrative Tribunal in the case of G.V.K.Naidu and Ors. Vs. U.O.I & Ors. and batch, significantly started with the quotation from the judgement of the Hon'ble Chandrachud, C.J. who observed as below in the case of Kamal Kanti Dutta & Ors. Vs. U.O.I. & Ors. (1980 SCC(L&S) 485) :-

* The disputes between promotees and direct recruits in various departments of the Government seem to have no end. No sooner does one round of litigation come to a decision then is another round started by one party or the other, sometimes alleging as in these writ petitions, that important facts and circumstances were not taken into consideration in the earlier proceedings either because they were suppressed or because, though cited, they were overlooked or misunderstood. A virtual review is thus asked for, opening floodgates to fresh litigation.*

The Full Bench held that the dismissal of SLP and the Review Petition by the Supreme Court against the decision in the case of Dinesh Chandra Gupta Vs.U.O.I, 1987(4) ATC 779, which accepted the contention of the promotee officers about counting of the ad hoc service rendered before their regular promotion does not declare the law and the applicants who had an exactly similar case as that of Dinesh Chandra Gupta are not entitled to any relief. The Full Bench upheld the ruling in Naresh Chandra Dutta Vs.Union of India & Ors., 1988(2) ATR 10, which held against the promotees and upheld the case of direct recruits.

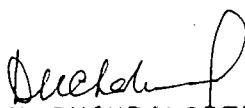
12. When a similar issue was raised before the Constitution Bench of the Supreme Court in Hundraj/Sajnani

Vs. Union of India & Ors., AIR 1990 SC 1106, the Court while rejecting all the contentions raised in the petition, gave a final quietus to the entire controversy as would be evident from the last paragraph of the judgement which is reproduced below:-

" Before parting with these petitions, we cannot help observing that although the issues raised in all these petitions were set at rest by this Court conclusively earlier, the petitioners thought it necessary to tax the precious time of the Court by approaching it once again on g rounds which were least justified. We hope and trust that this decision puts a final lid on the alleged grievances of the petitioners and no new pretexts are found hereafter to rake up the same contentions under other garbs."

13. In the light of the above summary and discussion of the case laws on the subject, we are of the view that the application is devoid of any merit. We dismiss the case accordingly. MP Nos.1103/90 and 1699/90 also stand disposed of.

There will be no order as to costs.


(D.K.CHAKRAVORTY)

MEMBER 29-11-1991


(AMITAV BANERJI)
CHAIRMAN

24-11-91