

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

OA.No. 631 of 1989.

New Delhi dated this the 24th March, 1994.

Shri C.J. ROY, Hon. Member(J)

Shri P.T. THIRUVENGADAM, Hon. Member(A)

Shri M.M.Saxena,
S/o Late Shri C.L. Saxena,
R/o SJ/1, Shastri Nagar, Ghaziabad,
Retired as Asstt. Commissioner of
Income Tax, Income Tax Department.

... Applicant

- By Advocate: Shri B.B. Srivastava

versus

Union of India through

1. The Secretary to the Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Chairman,
Central Board of Direct Taxes,
New Delhi

... Respondents

By Advocate: None.

ORDER

(By Hon. Member(J) Shri C.J. ROY)

This OA is filed under Section 19 of the Administrative Tribunal's Act, 1985 against the orders of the respondents dated 10.11.1988 and 5.6.1987 respectively, whereby, the benefit of proforma seniority in the grade of I.T.O Grade 'A' - junior scale granted to Shri D.C. Gupta vide judgement of the Jabalpur Bench of the Central Administrative Tribunal dated 27.7.1987 was denied to the applicant and other similarly situated officers. He has prayed for the following reliefs:-

- (a) direct the respondent to assign seniority to the applicant in Group 'A' of Income Tax officer wef 13.12.1978, the date from which he started adhoc officiation in the grade;
- (b) direct the respondent to further antedate the applicants promotion to Group 'A' (senior scale) wef. 1.11.1982 or any earlier date from which the applicant is entitled to it;

- (c) direct the respondents to further consider and promote the applicant to the post of Deputy Commissioner of Income Tax (Sr. Administrative Grade) with effect from April, 1987 or any earlier date from which the applicant is entitled for it; and
- (d) grant all consequential benefits arising out of reliefs at (a) to (c) above, including recomputation of pension and all other retirement benefits and grant all arrears by way of salary, allowances and pensionary benefits, together with interest thereon at market rates.

2. The facts of the case are that the applicant joined the Income Tax Department as UDC on 22.1.49 and was promoted as Income Tax Inspector on 29.12.58. He was further promoted as ITO (Group with effect from 25.1.67 and was confirmed in that post with effect from 14.4.1972. He was posted to Group A (Junior Scale) on ad hoc basis on 13.12.78 and was posted to that post on regular basis on 21.9.1982. He claims that for promotion to Group A (Senior Scale), 4 years service in Group A (Junior Scale) is required and for further promotion the Admn. Grade, five years service in Group A (Senior Scale) is required.

3. The respondents have filed their counter in which they have more or less accepted the statement of facts. They claim that the seniority list is fixed based on 1973 Rules and the period of ad hoc officiation will not count for seniority in the grade. Since the applicant

was promoted to the cadre of Income Tax Officer (Grade 'A') w.e.f. 21.9.82 and the seniority list was prepared in accordance with seniority rules, 1973, ~~and~~ his name was fixed at Sl.No.1096 alongwith direct recruit officers of 1981 batch who joined in September-December, 1981. There is no direct recruitment to the post of ITO Grade 'B' and the posts are filled by way of promotion from Group 'C' posts. The posts of Income Tax Officer Group 'A' (Junior-scale) are filled in by way of direct recruitment and for promotion, ~~but~~ ~~there~~ there is a quota of 50% for the recruitment. The law on inter se seniority is clear and it is governed by the rules framed on this subject. Only in the absence of rules, consideration is given to the length of service for fixing up of seniority. Therefore, the applicant is not eligible for seniority for the period of ad-hoc officiation and the OA be dismissed accordingly.

4. We have heard the learned counsel for both parties and perused the documents on record. The short point remains for adjudication is whether the applicant is entitled for counting of adhoc service in Group 'A' promotion cadre of Income Tax Officer for the purpose of seniority.

5. It is a matter of fact that the applicant has represented to the respondents on different dates for regularisation of the adhoc services for the purpose of seniority, but the officiating status could not be given to him.

6. The Hon. Supreme Court in the case of the Direct Recruit Class-II Engineering Officers' Association versus State of Maharashtra (JT 1990

(2) 264) has observed that:-

(A) - Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that, where initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

Therefore, unless a person falls under the Principle B above, his officiating promotion cannot be considered for the purpose of seniority. This point is further explained in the case of Keshav Chandra Joshi & Ors. Vs. UOI & Anr. (AIR 1991 SC 284), the portion of which

is reproduced below:

"The proposition 'A' lays down that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The latter part thereof amplifies postulating that where the initial appointment is only ad hoc and not according to rules and is made as a stop gap arrangement, the period of officiation in such post can not be taken into account for reckoning seniority. The ~~quite~~ essence of the propositions is that the appointment to a post must be according to rules and not by way of ad hoc or stop gap arrangement made due in administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service can not be counted for seniority. In other words, appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date. Propositions 'A' and 'B' must, therefore, be read along with para 13 of the judgement wherein the ratio decided in the case of Narendra Chadda was held to have considerable force. The latter postulated that if the initial appointment to a substantive post or vacancy was made deliberately, in disregard of the rule and allowed the incumbent to continue on the post for well over 15 to 20 years without reversion and till the date of regularisation of the service in accordance with the rules, the period of officiating service has to be counted towards seniority. This Court in Narendra Chadda's case was cognizant of the fact that the rules of appointment empower the Government to relax the rules of appointment. Without reading paragraph 13 and proposition 'B' and Narendra Chadda's ratio together the true import of the proposition would not be appreciated. We would deal with the exercise of power of relaxing the rule later. After giving anxious consideration, we are of the view that the latter half of Proposition 'A' would apply to the facts of the case and the rule laid down in that behalf, is to be followed. If the concerned rules provide the procedure to fix the inter se seniority between direct recruits and promotees, the seniority has to be determined in that manner".

7. In the case of State of West Bengal Vs. Agomath Dey and others (ATC(9)1993-943), it has been observed that for Principle B to be invoked, a person should have worked for 15 to 20 years and his appointment should have been made where there were procedural deficiencies which could be cured later.

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8. In the conspectus of the above facts and ~~circumstances~~ of the case and based on the grounds raised by the applicant, we feel that the applicant does not get covered by Principle B and the ad hoc service put in by the applicant in Group A cadre of Income-Tax Officer is only on administrative exigencies and not in accordance with the rules and, therefore, the ad hoc service in this case, can not be reckoned for the purpose of seniority. We note that the respondents have rightly fixed the seniority of the applicant. Since the applicant fails to meet the requirements of the above guidelines, we do not see any reason to interfere in this OA. In the result, the OA is dismissed as devoid of merits. No costs.

P. J. Thiruvengadam

(P.T.Thiruvengadam)
Member (A)

24/3/94

(C.J. Roy)
Member (J)

/tvq/