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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No.1904 /88.

New Delhi Dated: 23rd May, 1995.

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

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri N.K.Choudhary,
s/o Sh. C.L.Choudhary,
Inspector, Income Tax
Investigation,
Mayur Bhawan,
New Delhi

....Applicant.

By Advocate Shri Jagjit Singh.

Versus

Union of India through

1. Secretary,
Ministry of Finance,
South Block,
New Delhi.

2. Chief Commissioner &
Commissioner of Income Tax Delhi
& 10 others as per Memo of partiesRespondents.

By Advocate Shri P.H.Ramchandani.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A)

In this application, Shri N.K.Choudhary, Income Tax Inspector has impugned the seniority list dated 22.9.88 (Annexure-P 16) where he has been placed at serial No.407 and has prayed for refixation of seniority at serial No.361 in the said list in accordance with the respondents' order dated 22.1.85 and the seniority list dated 4.2.88 (Annexure-P 7), with consequential promotion and other benefits.

2. Admittedly, the applicant was recruited directly as an Income Tax Inspector on 15.10.73 in Bombay Charge. The seniority of Inspector is maintained chargewise. He applied for transfer to Delhi Charge on compassionate ground and was

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so transferred vide Commissioner, Income Tax Delhi's order dated 19.2.77 (Annexure-P 18) which stated that the transfer was against the direct recruitment quota and subject to the condition that his seniority would be reckoned from the date he joined duty at Delhi and his name would be placed below all the Inspectors (whether permanent or temporary) in Delhi Charge on his date of joining. Further more, it was stated that his services in Bombay Charge would not count towards minimum service, if any, prescribed for promotion or appointment to any higher post/grade. As the transfer was being effected at the applicant's own request, no TA/joining time was made admissible and it was clearly stated that if the applicant agreed to the above conditions he may be relieved from his duties and directed to report to Delhi charge, whereupon after joining, his posting orders would issue. The applicant reported for duty at Delhi on 10.3.77 (Annexure-P 19). Meanwhile the direct recruitment examination for Income Tax Inspectors of Delhi Charge for 1976 had already been conducted; and selection had also been made out of those who had appeared in that exam., before the applicant joined there on 10.3.77. Similarly promotions had also taken place to the posts of Income Tax Inspector before he joined. The applicant was placed below these promotees or direct recruit Income Tax Inspectors in the Delhi Charge who were working there prior to his date of joining, or who had been selected for appointment before he joined there, even if their appointment orders after the date of his joining on account of medical exam./ character verification. It is this action which the applicant challenges.

3. The first ground taken is that the respondents' action violates their own Circular

dated 12.12.69 (Annexure-P 1) and even against the terms of the order dated 1.2.77 transferring the applicant from Bombay to Delhi which, according to the applicant, provide that his seniority in Delhi charge will be reckoned from the date of his joining there. The respondents in their reply however contend that they have acted in accordance with item 7 (iii) of DOPT's O.M. dated 22.12.59 which reads as follows:

"where a person is appointed by transfer in accordance with a provision in the R.Rs providing for such transfer in the event of non-availability, such transfers shall be grouped with direct recruits or promotees as the case may be for the purposes of para 6 above. He shall be ranked below all direct recruits or promotees as the case may be, selected on the same occasion."

Thus, according to the respondents, the applicant when he joined on 10.3.77 in Delhi has to be placed below all the promotee Inspectors working on that date as per the terms and conditions of the order dated 19.2.77 to which the applicant had agreed, and also below all the direct recruit Inspectors who had been selected on the date of his joining. Since the selection panel based on the 1976 Exam. had already been prepared by the time the applicant joined on 10.3.77, the respondents state that the applicant was placed below all the direct recruit Inspectors of 1976 batch. The applicant in his rejoinder has reiterated the contents of the O.A. and denies that DOPT's O.M. dated 22.12.59 supercedes the contents of CBDT's Circular dated 12.12.69.

4. A close reading of CBDT's Circular dated 12.12.69 shows that it does not conflict with DOPT's O.M. dated 22.12.59. The relevant para (g) of the CBDT's Circular dated 12.12.69 merely states that in the case of interchange transfers of non-gazetted staff seniority will be reckoned from the date of joining of the new charge on transfer. This circular is silent on the relative seniority of such transferees vis-a-vis those directly recruited/promoted on the same occasion, guidelines in respect of whom are available in DOPT's O.M. dated 12.12.59, which is a Master Circular and is applicable to all GOI, Ministries/Departments. Hence the contents of CBDT's Circular dated 12.12.69 do not avail the applicant, and nor for that matter do the contents of Commissioner Income Tax Delhi's letter dated 19.2.77, to the extent that it conflicts with DOPT's O.M. dated 22.12.59.

5. The next ground taken is that the applicant has been arbitrarily discriminated against in as much as 4 other Inspectors on interchange transfer have been given seniority from the date of joining,, while the applicant has not been given seniority from 10.3.77, but has been placed junior to those who joined after him. The respondents in their reply point out that the cases cited by the applicant are not comparable. Three of the 4 Inspectors named by the applicant joined Delhi before the conduct of the 1976 exams, while the fourth was a promotee Inspector who joined Delhi charge on transfer, but against whose transfer one direct vacancy was adjusted. This averment has not been denied specifically by the applicant in his rejoinder, and under the circumstance, these instances cited

by him do not help his case.

6. The next ground taken is that by their orders dated 7.10.82 (Annexure-P 6) and 22.1.85 (Annexure-P 13) respondents had admitted that the applicant was not put in the correct position in the seniority list, and the error was eventually rectified by them and he was put in the correct position vide order dated 22.1.85, but in the impugned seniority list the respondents have gone against their own orders dated 22.1.85. In their reply the respondents have pointed out that the order dated 22.1.85 fixing the seniority of the applicant was not passed with the concurrence of the HOD. Upon representations filed by other affected Inspectors who were selected in the 1976 Exam., the matter was looked into and the revised impugned seniority list was issued which was in consonance with the DOPT's O.M. dated 22.12.59. This has also not been specifically denied by the applicant in his rejoinder. Till such time as the seniority list was approved by the HOD and it cannot be described as final and no advantage to the applicant can accrue from it. It is subject to correction in case it has not been prepared in conformity with Govt. instructions. Hence this argument fails.

7. The next ground taken is that the sister department of Income Tax i.e. Central Board of Excise and Custom, Circulars dated May 20, 1980 and 23.11.81 (Annexure-P 10) also lay down that seniority is to be reckoned from date of joining, and a person whose name figures in the recruitment panel which is in operation at the material time, but who is not in position when an officer joins on transfer, will be placed below the transferred officer in the seniority list. The respondents in their reply have pointed out that CBEC's Circular dated 23.11.81 is not in consonance with DOPT's Master Circular

dated 22.12.59, and this is not denied by the applicant in his rejoinder. As stated above, the Department of Personnel is the nodal department governing service conditions of Central Govt. employees, and any instructions issued by individual Govt. departments or offices, which are repugnant to the instructions issued by DOP, are void to that extent.

8. The next ground taken is that in the draft seniority list, one place at serial 650 has been kept reserved for a direct recruit and if any person comes on inter charge transfer to Delhi against a vacancy, the respondents are bound to place him in that slot, as has been done in "other cases," and the respondents cannot do otherwise. However, no such "other cases" have been cited, and in the face of DOP's O.M. dated 22.12.59, this argument lacks force.

9. The next ground taken is that the principles of natural justice have been violated as the objections by the applicant to the draft seniority list dated 29.7.87 (Annexure-P 14) have not been considered, while finalising the same on 22.9.88 (Annexure-P 16). On the other hand, the respondents in their reply have stated that the applicant has not exhausted the departmental remedies available to him as no representation had been received from him against the final seniority list. This argument of the respondents is not tenable as no representations were invited against the final seniority list, as was done at the draft stage, but that does vitiate the action taken by the respondents, who prepared the draft seniority list, ^{and} invited objections to the same.

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response to
in/ which the applicant filed his objection, after
which the respondents issued the final seniority
list. Thus, the applicant was given an opportunity
of being heard before the seniority list was
finalised, and it cannot be said that the principle
of natural justice have been violated.

10. The next ground taken is that on the
basis of the earlier seniority list issued on
4.2.88 (Annexure-P 17), the applicant had been
rightly placed at serial 7 and on the basis of
that list, a DPC was held where the applicant's case
for promotion was considered, and now if the impugned
seniority list is operated upon, the applicant's
position will be depressed to 25, as a result of which
the recommendations of the earlier DPC would be
cancelled/reviewed, which is illegal, arbitrary,
malafide and against rules. To this, the respondents
have correctly pointed out that merely because
the respondents have issued the list of Inspectors in
Delhi charge who qualified in the ITO Group B Exam.
upto 1987, does not give the applicant any right
to claim seniority. If the seniority is revised
in accordance with the prescribed instructions, the list
of eligible candidates for promotions will undergo
a change corresponding to the revised seniority.
Hence, this argument of the applicant also lacks force.

11. Next it has been argued that two departments
of the same Ministry cannot follow different rules,
and the respondents are estopped from changing the
conditions of interchange transfer on the basis of
which the applicant opted for interchange transfer.
To this the respondents state that they have
followed the instructions laid down by DOPR in
fixing the applicant's seniority, which applies to

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all departments of Govt. Further more, there can be no estoppel in a situation where a Govt. functionary issues an instruction (as happened in this case through the issue of letter dated 19.2.77) which does not accurately reflect the Govt. instructions on the subject.

12. In the result, we see no legal infirmity in the action taken by the respondents, nor any cause to interfere in this matter. The application fails and is dismissed. No costs.

Lakshmi Swaminathan

(LAKSHMI SWAMINATHAN)
MEMBER (J)

S.R. Adige

(S.R. ADIGE)
MEMBER (A)

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