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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI.

O.A. NO. 336 OF 1988

DATE OF DECISION: 13-9-1991.

Income Tax Employees Association. .. Applicant.

Vs.

Union of India. .. Respondent.

Shri R.K.Kamal, Counsel for the applicant.

Shri R.S.Agarwal, Counsel for the respondent.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman.

Hon'ble Mr.S.Gurusankaran, .. Member(A)

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JUDGMENT

Hon'ble Mr. S.Gurusankaran, Member(A):

The applicant is the Zonal Secretary of the Income Tax Employees Association ('ITEA' for short), Agra, which is affiliated to the Income Tax Employees Federation, New Delhi (a recognised Union). He has filed this application on behalf of all the Tax Assistants and Upper Division Clerks ('UDCs') of Agra Unit, who are members of the ITEA, Agra, as the cause of action and the reliefs prayed for are the same for all the concerned staff. Vide letter dated 23-11-1987 (Annexure-A1), the Chairman of the Central Board of Direct Taxes ('CBDT' for short) had advised the Chief Commissioner of Income Tax, Lucknow that out of the 800 additional posts of Inspectors being sanctioned for all the units for strengthening the tax enforcement machinery, the Lucknow and Kanpur units were being sanctioned 26 and 15 additional posts respectively. In the letter Chairman, CBDT had pointed out that "since the cadre strength of Inspectors has increased substantially an exercise was carried out to re-organise the distribution of Inspectors in such a manner so as to ensure that the number of Inspectors bears some

relationship with the workload in various units". It was also mentioned in the letter that "even the existing sanction was more than the proportionate requirements in 4 units, viz., Andhra Pradesh, Kerala, Tamil Nadu and West Bengal.. It was considered not possible to curtail the existing sanction and this meant curtailment of the proportionate requirements of some units. Another adjustment was made to try to make the waiting period in the grade of stenographers and ministerial staff, after passing the departmental examination for Inspectors." An annexure attached to the letter showed the position of staff strength required as per work load, shortage/excess strength as per existing strength and the number of additional posts of Inspectors being allotted to various units. The applicant has challenged this distribution of additional posts of Inspectors made in Annexure-A1 on the grounds that it is arbitrary, irrational and violative of Articles 14 and 16 of the Constitution and has prayed for setting aside the above letter dated 23-11-1987 and directing the respondents to make fresh allocation of the new posts of Inspectors for all the units ensuring even and equitable distribution of workload and promotional prospects of the feeder categories and to consider the promotion of the applicants to the posts of Inspectors from the time their juniors in other units are promoted with all consequential benefits.

2. In the application, the applicant has pointed out that before the sanctioning of the additional posts of Inspectors, the waiting period for promotion to the grade of Inspectors was ranging from 1972 to 1982. He has submitted that while in Kanpur/Lucknow units staff, who passed the examinations in 1973, were waiting for promotion and there was shortage of staff to the tune of 21 posts in Kanpur unit, only 15 additional posts have been allotted, in Karnataka, where staff were waiting only from 1980 and the shortage of staff was

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to the tune of 62 posts have been allotted 62 posts. The applicant has, therefore, contended that the ^{two} avowed objectives of distributing the strength of Inspectors on the basis of work load and trying to make the waiting period as even as possible, have not been achieved at all and the arbitrary and illogical distribution would further increase the disparity in work-load and waiting period. He has specifically pointed out the cases of Andhra Pradesh, West Bengal, Kerala and Tamilnadu, where the staff strength allocated is in excess of the requirements.

3. The respondent in ^{its} reply has taken a preliminary objection that such administrative orders do not impinge upon the statutory or constitutional rights of the employees of the organisation and as ^{such} these decisions by their very nature cannot become a subject matter of a judicial review. It is also pointed out that there is no charge of mala fide action or vires of the powers have been questioned. Since the promotions upto the Group-'B' gazetted level are controlled by unit seniority, there can be no strict comparison of promotional chances of different units. It has been maintained that the distribution has been made in a fair manner to achieve the twin objectives to the extent possible. The respondent has submitted that it is its prerogative to allocate the posts according to needs as the work load and promotional chances cannot be the only basis. It is stated that while it was not possible to curtail the existing strength, where there was surplus, out of the 4 units pointed out by the applicant, only Andhra Pradesh was allocated some posts for improving promotional chances. It is also pointed out that even after the sanctioning of additional 28 posts to Bihar, it will still have a shortfall of 14 posts.

4. During the arguments, the counsel for the applicant

fairly conceded that the Tribunal can only issue a suitable direction to the respondent to set right the injustice done by the arbitrary distribution. Further, he did not press the relief for considering the promotion of the applicants to the posts of Inspectors from the time their juniors in other units were promoted.

5. We have heard both parties and studied carefully the distribution of additional posts of Inspectors made by the Chairman, CBDT vide Annexure-A1. From a perusal of the annexure to the letter at Annexure-A1, it is seen that as per their own yardstick there is a shortage of about 932 posts in various units, while there is surplus of about 332 posts in only 4 units namely Andhra Pradesh, West Bengal, Kerala and Tamilnadu. As already pointed out by the respondent, out of the four units having already surplus staff only Andhra Pradesh has been allotted additional 20 posts, while the other three units have not been allotted any additional posts. It is also seen from the information given by the applicant himself in para 6.3 that the waiting period in Andhra Pradesh is 1972, while the waiting period of Kanpur is 1973. Similarly when we compare the shortage of staff in respect of Bihar, it will still have 8 per cent shortage while Kanpur will have only 2.4 per cent shortage. From this it is clear that the allocation of the additional posts of the various units has not been done in a completely arbitrary manner. The respondent in his letter has admitted that ~~he~~ is trying to achieve the twin objectives to the extent possible only. We, therefore do not find any valid ground to show arbitrariness or discrimination in the allocation of the additional posts. We also do not agree with the contention that the distribution as made now does in any way violate the fundamental right of the applicant under Articles 14 and 16 of the Constitution since the promotional chances are not a matter of right. In passing, we

would like to observe that while the applicant is only representing the concerned staff in the Agra office of Kanpur unit there are a number of such offices under the other 17 units. The applicant has stated that his association is affiliated to the ITEF, New Delhi which is a recognised union. Hence, as already admitted by the counsel for the applicant, we cannot give any specific orders in this case to the respondent except for a general direction, if at all it is found necessary. Since the various ITEAs are affiliated to the ITEF and the problem is an All India one, it would be better to sort out such problems in the machinery specially provided for this purpose like the Joint Consultative Machinery (Departmental Council) of the concerned department. Assuming that there is some basis for the grievance of the applicant ^{and} that could be sorted out with slight adjustment in the order already made by the respondent.

6. In the light of the above discussion, do not find any merit in this application and accordingly the application is dismissed.

Hamid Ali
13/9/1991
MEMBER (A)

Dr. S. V. Rao
17-9-1991
VICE-CHAIRMAN.