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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(21)

O.A. NO. 43/88

DECIDED ON : 19.10.1993

M. K. Meerani & 24 Others

... Petitioners

Vs.

Union of India through its
Secretary, Ministry of Finance
& Others

... Respondents

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Shri S. C. Gupta, Sr. Counsel with Shri M. K.
Gupta, Counsel for the Petitioners

Shri B. K. Garg for Shri B. N. Singhvi,
Counsel for Intervenors, Shri R. K. Rai &
Shri Devesh Dutt Pandey

Shri R. S. Aggarwal, Counsel for Respondents

O R D E R (ORAL)
(Hon'ble Mr. Justice V. S. Malimath)

This is an representative application brought by Shri M. K. Meerani and 24 others in which they have challenged the selection and appointment made to the cadre of Assistant Commissioners in pursuance of the Departmental Promotion Committee (DPC) proceedings held in January, 1986 and December, 1986. In response to the notice issued, two persons have sought intervention, namely S/Shri R. K. Rai and D. D. Pandey. The relevant facts necessary for examining the contentions urged in this case may briefly be explained as follows.

Promotion to the cadre of Assistant Commissioners of Income Tax during the relevant period with which we are concerned, i.e., 1986-87, was governed by executive orders the statutory rules having come into force much later in the year 1988. According to the executive

orders governing promotion to the cadre of Asstt. Commissioners of Income Tax, the feeder category consisted of the Income Tax Officers Group 'A'. The eligibility criteria fixed is eight years of service in the cadre of Income Tax Officers Group 'A'. Whereas the petitioners assert that the post of Asstt. Commissioner is to be filled up by the process of selection, the two intervenors have taken the stand that the principle for promotion is seniority subject to rejection of the unfit or unsuitable. The petitioners have further averred that the calendar year is the unit for ascertaining the vacancies and for the purpose of effecting promotion to the cadre of Asstt. Commissioners. They further aver that only the persons eligible during the particular calendar year would be entitled to be considered for promotion subject to their being eligible during that year. We are concerned in this case with the calendar year 1985. The vacancies identified for the said calendar year were 114. It is not disputed that if promotion is to be done by the process of selection, the zone of consideration consists of three times the number of vacancies. As there were 114 vacancies for the calendar year 1985, the zone of consideration for promotion by selection was 342. A DPC was held for the purpose of making selection for promotion to the cadre of Asstt. Commissioners for filling up the 114 vacancies of the year 1985 in January, 1986. The DPC considered the candidature of 154 seniormost Income Tax Officers on the ground that they were the only persons who were eligible for consideration. The DPC on consideration of all the relevant records, made a selection of 114 persons as fit and suitable for promotion by selection to the cadre

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of Asstt. Commissioners. Accepting the recommendations of the DPC, 114 persons were duly promoted and appointed as Asstt. Commissioners. The next DPC was held in December, 1986. It is not disputed and we are also satisfied on a perusal of the records placed for our perusal that the consideration of eligible candidates was not restricted to the calendar year 1986. The DPC considered all the candidates who were eligible between 1.1.1986 and 31.3.1987 and the vacancies were also identified for the said period. The total vacancies identified for the aforesaid period of 15 months was 182 vacancies. On that basis, 546 candidates could have been considered if they were eligible for promotion by selection to the cadre of Asstt. Commissioners. But only the candidature of 208 seniormost persons was considered by the DPC on the ground that they were the only persons who were found eligible for promotion by selection. After examining the relevant records, the DPC made a list of candidates selected for 182 vacancies and accepting the said recommendation, appointments were duly made. So far as the petitioner before us and the intervenors are concerned, it is their case that they were all eligible for consideration for promotion by selection to the cadre of Asstt. Commissioners for filling up the 114 vacancies of the calendar year 1985. They allege that their candidature was not considered by the DPC without any justification and that, therefore, they have been deprived of their fundamental right to equality of opportunity in the matter of promotion to the cadre of Asstt. Commissioners, a right guaranteed to them under Articles 14 and 16 of the Constitution. They also allege that they have been picked and chosen for

arbitrary treatment and that, therefore, the decision of the respondents is liable to be quashed. It is also necessary to point that candidature of all these persons was duly considered by the DPC which was held in December, 1986 and all of them had been duly selected and promoted to the cadre of Asstt. Commissioners. The principal grievance of the petitioners and the intervenors, therefore, is that their right to consideration has been denied to them in respect of the vacancies of the calendar year 1985 without any justification whatsoever. The respondents have denied the claim of the petitioners and asserted that they have acted in accordance with the relevant orders and instructions governing filling up of the posts of Asstt. Commissioners. The stand taken by the respondents is that the posts of Asstt. Commissioners during the relevant period were required to be filled up by the process of selection and not by applying the principle of seniority subject to rejection of the unfit or unsuitable ones. They have also taken the stand that though the calendar year was the unit for the purpose of ascertaining the vacancies and considering the cases of eligible persons, which principle was followed for the calendar year 1985, they decided to deviate from that principle and to adopt the financial year as the unit taking into consideration the fact that the confidential reports are written for a financial year. As a conscious decision was taken in this behalf which was followed by the DPC held in December, 1986, it is contended that their action in this behalf cannot be regarded as illegal or arbitrary. As regards

denial of opportunity to the petitioners of being considered for promotion by selection by the DPC held in January, 1986, the respondents do admit that all the petitioners and the intervenors being direct recruits of the year 1977, they had satisfied the eligibility criteria of eight years of service necessary for being considered for promotion by selection to fill up the vacancies of the calendar year 1985. They have justified non-consideration of the cases of the petitioners on the ground that their seniors in the combined seniority list who were promotees were not eligible for consideration as they did not have to their credit the required eight years of service. The stand taken by the respondents is that as long as the petitioners' seniors cannot be considered they not having the required eligibility qualifications, it was not legal and proper to consider the cases of the petitioners who are juniors to them merely on the ground that they had to their credit the prescribed eligibility service of eight years. So far as the DPC held in December, 1986 is concerned, the counsel for the respondents, on instructions, submitted that though a similar situation prevailed, steps were taken to ensure fairness to direct recruits who had become eligible for consideration by moving the authorities and securing relaxation of the service qualification in favour of their senior promotees who had less than eight years of service to their credit. It, therefore, follows that fairness was ensured to the direct recruits who had to their credit the prescribed eight years of eligibility service

in that they were not denied consideration. It is in this background that the respondents asserted that the action taken by them is just, legal and proper and does not call interference.

2. As the petitioners have taken one stand and the intervenors have taken the other in regard to the method of promotion to the cadre of Asstt. Commissioners, we shall address ourselves to that question in the first instance. As already stated, promotion to the cadre of Asstt. Commissioners ~~was done~~ by selection and not by promotion subject to the rejection of unfit and unsuitable. The respondents have also taken the same stand in the proceedings of the DPC held in January and December, 1986 and the records accompanying them make it abundantly clear that the procedure followed is of selection as asserted by the petitioners. The counsel for the intervenors, however, relied upon paragraph 2.7 under the title 'Part B: Gazetted Cadre-Recruitment & Promotion' at page 140 of the 'Manual of Office Procedure Administrative' issued by the Directorate of Inspection in 1984. It reads :-

"2.7. ITO to Asstt. Commissioner.-- Minimum service of eight years as ITO, Group 'A' - Seniority-cum-merit."

The expression 'seniority-cum-merit', it was urged, indicates that the promotion to the cadre of Asstt. Commissioners is not by selection. Shri Gupta, learned counsel appearing for the petitioners, invited our attention to para 2.8 of the same Manual which relates to A.C.s selection grade for which the method of

promotion is prescribed as 'seniority subject to fitness.' In the context, it was urged by the learned counsel for the petitioners that the expression 'seniority-cum-merit' conveys that the process prescribed is of selection and not of promotion on the basis of seniority subject to rejection of the unfit or the unsuitable. What has been incorporated in the is Manual is the gist of what/obviously contained in the relevant orders. It is not an extract of the orders as such: This question need not detain us for the reason that the Supreme Court has expressed itself in very categorical terms that promotion to the cadre of Asstt. Commissioners is by the process of selection vide AIR 1977 SC 757. The Supreme Court has upheld the procedure followed in filling up the posts of Asstt. Commissioners of Income Tax by the process of selection; those classified as 'outstanding' being preferred to those classified as 'very good' and those classified as 'very good' being preferred to those classified as 'good' on the basis of merit. Among those classified in the same category, their names were required to be arranged on the basis of their respective seniority. In view of the clear pronouncement of the Supreme Court upholding the promotion by selection to the cadre of Assistant Commissioners, we have no hesitation in agreeing with the contention of the learned counsel for the petitioners that the procedure required to be followed in this case was one of selection. It is not, therefore possible to accede to the contention of Shri Singhvi who appeared for the intervenors that the posts of Asstt

Commissioners were required to be filled up following the principle of seniority subject to the rejection of the unfit or unsuitable.

3. The next question which merits examination is the unit that is required to be taken for the purpose of ascertaining the vacancies and identifying the eligible persons for promotion by selection. The petitioners' case is that calendar year is the unit. The respondents have also taken the stand that that was the position until the procedure was changed for the DPC held in December, 1986. From the proceedings of the DPC of December, 1986 which we have perused, it is clear that the identification of the vacancies was in respect of the calendar year 1985 and the candidates were also identified for eligibility with reference to the calendar year 1985. So far as the DPC held in December, 1986 is concerned, the respondents have admitted that calendar year was not taken as the basis. They have taken the stand that the basis was changed in accordance with the decision of the DPC, as asserted in the reply filed in this case. As we were not satisfied with the statement made in the reply in this behalf, we thought it necessary to ascertain as to how and by what process the change has been brought about. We, therefore, examined the records which were placed before us. On a perusal of the same, we notice that the department took the view that the financial year being the unit for the purpose of writing confidential reports, it would be more convenient if the financial year is also taken as the basis for identifying the vacancies and filling up the same from

among those who were eligible during that financial year. We find from the records that a proposal was made to the Government in this behalf which having been acceded to, the concurrence of the Union Public Service Commission (UPSC) was sought. The UPSC also having agreed to the change of the procedure, a decision was taken to deviate from the principle followed of taking calendar year as the unit. As the change was brought about for the first time during the year 1986, the DPC that was held in December, 1986 decided to take into accord the unit of financial year. It decided to identify the vacancies for the period from 1.1.1986 to 31.3.1987. The eligibility of candidates was also ascertained with reference to the said period. We are satisfied from the materials which we have been able to peruse in the course of hearing that the decision to deviate from the procedure of taking calendar year as the unit was after due consideration of the views of the department and the UPSC. Hence, the decision taken in this behalf cannot be regarded as arbitrary justifying interference. We must, therefore, proceed on the basis that for the calendar year 1985 the DPC correctly accepted the calendar year as the unit and for the DPC held in December, 1986 it correctly accepted the period from 1.1.1986 to 31.3.1987 as the relevant period for identifying vacancies and the eligible persons for the purpose of promotion by selection.

4. We shall next taken up for consideration the contention that the exclusion of the petitioners from consideration when the DPC was held in January, 1986

even though they had the required eight years of service to their credit and within the zone of consideration the total number being 342 for that purpose. We have already noticed that the vacancies for that calendar year being 114, the zone of consideration for selection was 342. But only 154 seniormost candidates were regarded as having fallen in the category of eligible persons whose cases alone were considered by the DPC. It is not the case of the respondents that the petitioners did not have the eligibility service to their credit. It is also not their case that having regard to the ranking in the seniority their cases did not come within the required number of 342. The justification for not considering the cases of the petitioners though eligible for consideration for promotion is that the petitioners' seniors who belong to the promotee category did not have to their credit the required service of eight years. The situation of a senior having a lesser length of service and not qualifying for promotion and the junior having the required length of service and having eligibility for promotion has arisen on account of the fact that a quota is fixed for promotion and for direct recruitment in the ratio of 1:1 to the cadre of Income Tax Officers Group 'A'. Hence, their names are required to be arranged in the seniority list by alternating the direct recruits and the promotees. The vacancies that arose in the quota for promotees and direct recruits obviously were not filled up as and when the vacancies occurred. That is the reason why the names of the promotees with lesser

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length of service were placed above the direct recruits with a greater length of service. This resulted in the position of the junior direct recruits becoming eligible on a particular date when their own seniors, the promotees, had not the required length of eligibility service for the purpose of promotion. The argument of the learned counsel for the petitioners is that when eight years of service in the cadre of Income Tax Officers Group 'A' has been prescribed as eligibility qualification, there was no justification not to consider their cases for promotion when according to their seniority they come within the zone of consideration. It was urged that it is not their fault that their seniors, the promotees, had lesser length of service and did not have the eligibility for promotion to the cadre of Asstt. Commissioners. It would lead to an incongruous situation if only the direct recruits who have the eligibility and come within the zone of consideration are considered for promotion ignoring their seniors on the ground that they did not have the required eligibility service to their credit. It is in this background that the respondents themselves have found a just and reasonable way out to sort out the problem arising out of such a factual situation. For the DPC held in December, 1986 the respondents considered the names of all the Income Tax Officers in Group 'A' who had to their credit eight years of service. As some of the promotees who were senior to those who had the requisite service to their credit did not have the eligibility service of eight years to their credit, the department took steps to secure orders for relaxation of the requirement of

eight years of service needed to render the senior Income Tax Officers Group 'A' eligible. Such steps for relaxation were taken only in respect of those Income Tax Officers Group 'A' who were seniors to those direct recruits who had the requisite eligibility service to their credit. This was a just and fair way to respect the rights of all the Income Tax Officers Group 'A' who had to their credit the required length of eight years of service to earn eligibility. The rights of their seniors were duly protected and respected by securing relaxation of the requirement of eight years to render them eligible. That is the reason why there is no complaint made by the petitioners in regard to the procedure followed in this behalf when the DPC was held in December, 1986. But so far as ¹⁹⁸⁵ the calendar year /is concerned in respect of which DPC was held in January, 1986, the same principle which was adopted in December, 1986 DPC was not followed. This resulted in the petitioners who had earned eligibility for promotion and were within the zone of consideration being deprived of their right to consideration at the hands of the DPC. The respondents have not been able to assign any good reason for not meeting out the same treatment to the petitioners as was meted out to other similarly situate when the DPC was held in December, 1986. In our opinion, it was manifestly unjust and unfair to deprive the petitioners who were eligible for promotion to the cadre of Asstt. Commissioners to deny them their right to consideration merely on the ground that their own seniors who were from the promotee category had not become eligible for consideration. The

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respondents should have resorted to the same procedure which was adopted in respect of the December, 1986 DPC and relaxed the requirement in favour of the senior promotees and considered the cases of the petitioners as also the cases of their own seniors who came from the promotees category. A differential treatment which was meted out in respect of the January, 1986 DPC was manifestly unjust and unfair. It is also discriminatory for the reason, namely, that in identical situations the respondents have not followed the same procedure in respect of the DPC held in January, 1986 and December, 1986. Hence, we have no hesitation in holding that the respondents acted arbitrarily in not considering the claims of the petitioners who were eligible for consideration for promotion to the vacancies that occurred during the calendar year 1985. The same procedure which was followed for the December, 1986 DPC ought to have been followed in respect of the DPC held in January, 1986 as well. As that was not done, this O.A. is entitled to succeed.

5. For the reasons stated above, this application is allowed in terms of the following directions :-

- (1) The respondents are directed to convene a review DPC to fill up the vacancies for the calendar year 1985 in respect of the 114 vacancies.
- (2) A list of all eligible Income Tax Officers Group 'A' who had to their credit eight years of service should be prepared consisting of not more than 342 names.

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(3) If any of the seniors to those who are found eligible are ineligible on the ground that they have lesser length of service, the requirement of eight years' service should be relaxed in the same manner it was done in respect of the DPC held in December, 1986.

(4) The review DPC shall consider afresh the candidature of all the eligible candidates determined in accordance with the aforesaid directions.

(5) The required number of 114 candidates should be selected by following the procedure for selection due with regard to the reservation in favour of the members of the SC and ST.

(6) If any of the candidates selected and appointed in pursuance of the DPC held in December, 1986 get selected and appointed in pursuance of the review DPC, they shall be accorded appropriate seniority in the cadre of Assistant Commissioners to which they become entitled to.

(7) The respondents shall grant all consequential benefits in regard to seniority and monetary benefits flowing from the implementation of the aforesaid directions.

6. The aforesaid directions shall be complied with with utmost expedition and preferably within a period of four months from the date of receipt of a copy of this order. No costs.

Adige
(S. R. Adige)
Member (A)

Malimath
(V. S. Malimath)
Chairman