

(15)

Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos. 1. OA-661/86 ✓

Date: 24.11.89.

2. OA-329/87

3. OA-402/87

1. Shri R.K. Arora & Ors. Applicants

Versus

Union of India & Ors. Respondents

For the Applicants Shri R. Kapoor, Advocate

For the Respondents Smt. Raj Kumari Chopra,
Advocate.

2. Shri G.V.R. Vara Prasad Applicants
& 5 Others

Versus

Govt. of India & Ors. Respondents

For the Applicants Shri Duba Mohan Rao,
Advocate

For the Respondents Smt. Raj Kumari Chopra,
Advocate

For the Intervenor Shri S.K. Bisaria, Advocate

3. Shri M. Sivarama Krishna Applicants
and Others

Versus

Govt. of India & Ors. Respondents

For the Applicants Shri Duba Mohan Rao,
Advocate

For the Respondents Smt. Raj Kumari Chopra,
Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed to
see the judgement. *Yes*

2. To be referred to the Reporter or not? *Yes*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicants in these applications are working
in the Income Tax Department. The applicants in OA-661/86
belong to the Stenographers Cadre and are working at Delhi.

an

....2...

19

The applicants in the other two applications belong to the ministerial cadre and are working in Andhra Pradesh. Their next promotion is to the post of Inspector of Income Tax for which Recruitment Rules were made in 1969 but the same were amended retrospectively w.e.f. 1st October, 1985. They state that pending the amendment of the Rules, the respondents, vide their letter dated 1st October, 1985, decided to make the promotions on the basis of the amended Rules. All the applicants are claiming their promotion in accordance with the provisions of the unamended Rules. As common questions of law have been raised in these applications, it is proposed to deal with the same in a common judgement.

2. Before we consider the facts of these cases, we may consider the salient provisions of the Rules.

3. Under the unamended Rules, Upper Division Clerks and higher ministerial grades, Stenographers (OG) and Stenographers (Selection Grade), with three years' service in the respective grade, who have qualified in the departmental examination for Income Tax Inspectors, are eligible for promotion as Inspectors of Income Tax. One-third of the total number of vacancies are to be filled by direct recruitment and two-thirds by promotion from the categories mentioned above. As regards promotion, the names of all such qualified candidates are to be arranged in two separate lists. In the first list, the names of all qualified persons are to be arranged in order of seniority in the Department. In the second list, the names of all the qualified persons will be arranged according to the date/year of passing the departmental examination, provided that the persons who pass the

a

examination on the same date, will be arranged according to their seniority in the Department. After the approval of the persons in the two select lists by the DPCs, the names of all selected candidates will be embodied in two separate select lists. Vacancies in the promotion quota will be filled alternately from the two lists.

4. By the letter dated 1st October, 1985, it was decided to introduce a quota system in seniority for the purpose of promotion to the post of Inspector of Income Tax. This was in accordance with the proposed amendment to the Rules. It was decided to fix up a quota for the ministerial cadres (Supervisors Grades I and II, Head Clerks, Tax Assistants, and Upper Division Clerks) and Stenographer Group in the ratio of 3:1, i.e., three vacancies for ministerial group and one for stenographer group for filling up the entire promotion quota in the cadre of Inspector of Income Tax. This quota was applicable for filling up one-third vacancies of promotion on the basis of seniority-cum-merit and also for filling up the other one-third vacancies on the basis of the date/year of passing. These instructions were to be applicable w.e.f. 1.10.1985. It was added in the letter that the Rules of 1969 were being amended.

5. The Rules were amended by notification dated 8th September, 1986 which was published in the Gazette of India on 20th September, 1986. The amendment was given retrospective effect from 1.10.1985, i.e., the date of the letter mentioned above. According to the amendment, Supervisors, Grade I and Grade II, Head-Clerks, Tax Assistants, and UDCs (Ministerial Cadre) and Stenographers Grade I, Grade II and Grade III (Stenographers Cadre), with



three years' service in the respective grade, who have qualified in the departmental examination for Income-Tax Inspectors are eligible for promotion. The names of all such qualified candidates shall be arranged cadre-wise, in two separate lists for each cadre. In the first list, names of all the qualified candidates falling in a cadre, shall be arranged in order of seniority in the department. In the second list, the names of all the qualified persons falling in a cadre, shall be arranged according to the date or, as the case may be, the year of passing the departmental competitive examination, provided that the persons who pass the examination on the same date shall be arranged according to their seniority in the department. On the approval of persons in the said lists, relating to each cadre by the Department Promotion Committee, the names of all the selected candidates shall be arranged in two Select Lists in the ratio of 3 : 1, one containing the names of the persons from both the cadres on the basis of seniority, and the other containing the names of persons from both the cadres on the basis of the date or, as the case may be, the year of passing the departmental examination. Vacancies in the promotion quota shall be filled from the said two Select Lists in such a manner that the ratio of 3:1 is maintained between the Ministerial Cadre and the Stenographers Cadre.

6. In the Explanatory Memorandum accompanying the notification whereby the Rules were amended, it was mentioned that the amendment was made following representations from the Staff side. It was also added that "since these instructions are already being followed

92

and the amendments of the Rules is to regularise the said position formally, no one will be adversely affected as a result of the retrospective effect being given to this notification."

7. The applicants in these applications have contended that they are entitled to promotion to the post of Inspector of Income Tax in accordance with the provisions of the unamended Rules. Applicants in DA Nos. 329/87 and 402/87 have also prayed for quashing the notification dated 2.9.1986 whereby the Rules were amended by the respondents.

8. The admitted factual position is that the respondents, vide their sanction letter dated 29.7.1986, created 500 temporary posts of Inspectors of Income Tax along with other posts for implementing the provisions of Section 133-B of the Income Tax Act. The question arising for consideration is whether the posts are to be filled in accordance with the unamended Rules or the amended Rules.

9. In D.A.661/86, the Tribunal had passed an order on 1.9.1986 to the effect that it is not advisable to stay the D.P.C. proceedings and that it may be held to consider all eligible candidates "in accordance with the Rules". This was clarified in the subsequent order dated 12.9.1986 as follows:-

"In making the order dated 1.9.1986, what the Tribunal intended was that the D.P.C. may be held to consider all eligible candidates in accordance with the Rules as they stood on that day. If the respondents intend to follow any other Rule, they shall not do so unless they obtain orders of this Tribunal."

10. Thereafter, the Rules were amended and the respondents filed MP-936/86 seeking vacation of the order dated 12.9.1986, as D.P.C. was to be held in accordance with the amended rules subject to the ultimate

2

outcome of the application. The respondents also undertook to keep five posts reserved for the applicants subject to the results of the application. The said M.P. was considered by the Tribunal on 22.1.1987, when the Tribunal observed that the proper course would be to amend the application. Accordingly, the applicants in OA-661/86 amended the application challenging the retrospective amendment of the Rules. On 23.1.1987, the Tribunal further directed that any promotion made will be subject to the result of the application.

11. From the foregoing discussions, it will be seen that though sanction for the creation of 500 posts of Inspectors of Income Tax had been given on 29th July, 1986, these posts remained unfilled till the amended Rules were brought into force by the notification dated 8.9.1986 retrospectively from 1.10.1985.

12. We have carefully gone through the records of the cases and have heard the learned counsel for all the parties. It is clear that it was after the respondents decided to amend the Rules vide their letter dated 1.10.1985 that 500 posts of Inspectors of Income Tax were sanctioned vide their letter dated 29.7.1986. There is nothing to indicate on record that the respondents took any action to fill up the posts soon after they were created. The applicants in L have, however, drawn our attention to a note dated 8.8.1986 whereby the list of eligible candidates for the promotion of Inspectors from Ministerial Cadre and Stenographers Cadre, and a separate list of the reserved category candidates were sought to be circulated among the eligible candidates with the advice that they should check the

✓
/OA-661/86

correctness of the names in these lists and discrepancy, if any, might be brought to the notice of the respondents within one week of the date of circulation of the lists.

This was in connection with the proposed D.P.C. for promotion to the cadre of Inspectors.

13. ^{a-Kapoor, the} Shri / learned counsel for the applicants stated that the note dated 8.8.1986 mentioned above, indicates that action for filling up the posts had been initiated by the respondents on that date. This was denied by the learned counsel for the respondents, Smt. Raj Kumari Chopra, who drew our attention to the order passed by the Tribunal on 23.1.1987 directing that any promotion made will be subject to the result of the application. The said order was passed pursuant to the Miscellaneous Petition No. 936/86 filed by the respondents for vacating the stay order dated 12.9.1986 and MP-76/87 filed by the applicants for amending the O.A. for challenging the retrospective operation of the amended rules.

14. The learned counsel for both the parties have relied upon a catena of authorities in respect of their respective contentions.*

15. In our opinion, the decisions relied upon by the learned counsel for both the parties are distinguishable as none of them is directly relevant to the issue arising for consideration in these applications. The basic issue is whether the applicants have a vested right to promotion to the posts sanctioned vide order dated 29.7.1986, and whether these posts are to be filled up under the unamended or the amended Rules. In case the applicants have a vested

*Cases relied upon by the learned counsel of Applicants:

Y.B. Rangaiah Vs. J. Srinivasa Rao, 1983 (3) SCC 284; Ex-Major N.C. Singhal Vs. D.G., Armed Forces, Medical Services, 1972 SC 628; and Ex-Capt. K.C. Arora and Another Vs. State of Haryana & Ors., 1984(3) SCC 281.

Cases relied upon by the learned Counsel of the Respondents:

A.I.R. 1969 SC 118, 124; A.I.R. 1968 S.C. 575; and A.I.R. 1961 S.C. 1534.

right to promotion under the unamended Rules, the same cannot be taken away by a retrospective amendment of the Rules. If they have no such vested right, the posts could be filled up in accordance with the amended Rules. This is the strict legal position.

16. The concept of 'vested right' has been considered by the Supreme Court in the context of retrospective amendment of statutory rules. According to the said concept, promotions that have already been earned under the previous rules cannot be taken away by retrospective amendment of the rules (vide Wing Commander J. Kumar Vs. Union of India & Others, 1982 (2) SCC 116). Likewise, the benefits acquired under the previous rules cannot be taken away by a retrospective amendment (vide K.C. Arora & Another Vs. State of Haryana, 1984 (3) SCC 281 and T.R. Kapur Vs. State of Haryana, 1986 (4) SLR 155). The right accrued to officers under the previous rules in the matter of determination of their seniority, cannot be taken away by retrospective amendment (vide P.D. Aggarwal Vs. State of U.P., 1987 (3) SCC 622). In P.D. Aggarwal's case, the Supreme Court relied upon the following observations in T.R. Kapur's case:-

"It is well settled that the power to frame rules to regulate the conditions of service under the proviso to Article 309 of the Constitution carries with it the power to amend or alter the rules with a retrospective effect: B.S. Vadhera Vs. Union of India, Raj Kumar Vs. Union of India, K. Nagaraj Vs. State of A.P. and State of J & K Vs. Triloki Nath Khosa. It is equally well settled that any rule which affects the right of a person to be considered for promotion is a condition of service although mere chances of promotion may not be. It may further be stated that any authority competent to lay down qualifications for promotion, is also competent to change the qualifications. The rules defining qualifications and suitability for promotion are conditions of service and they can be changed retrospectively. This rule is, however, subject

a

96

to a well recognised principle that the benefits acquired under the existing rules cannot be taken away by an amendment with retrospective effect, that is to say, there is no power to make such a rule under the proviso to Article 309 which affects or impairs vested rights. Therefore, unless it is specifically provided in the rules, the employees who are already promoted before the amendment of the rules, cannot be reverted and their promotion cannot be recalled. In other words, such rules laying down qualifications for promotion made with retrospective effect must necessarily satisfy the tests of Articles 14 and 16(1) of the Constitution."

17. It is, therefore, clear that though a rule which affects the right of a person to be considered for promotion is a condition of service, mere chances of promotion may not be so.

18. To our mind, the amendment of the Rules may affect the chances of promotion of the applicants before us. Mere chances of promotion are not, however, a condition of service. There is no statutory rule stipulating that the vacancies are required to be filled up immediately after they arise. A reasonable time may be involved in processing the filling up of vacancies. In view of this, it is for the Government to consider as to when a post may be filled up and in what manner. In the instant case, before the creation of 500 temporary posts of Inspectors of Income Tax, the Government had taken a conscious policy decision vide their letter dated 1.10.1985 to amend the Rules. The D.P.C. was not convened before the Rules were actually amended by notification dated 8.9.1986. In view of this, we are of the opinion that the filling up of the posts in accordance with the provisions of the amended Rules cannot be called in question.

19. In the facts and circumstances of the case, we hold that the respondents have not committed any

o

20

illegality or unconstitutionality in filling up the newly created posts of Inspectors of Income Tax vide sanction letter dated 29.7.1986, in accordance with the provisions of the amended Rules. The retrospective amendment of the Rules cannot also be said to have taken away any vested right of the applicants to promotion. It may be that the retrospective amendment of the Rules has diluted the chances of promotion of the applicants. The retrospective amendment of the Rules cannot be quashed on that ground.

20. In the result, we see no merit in OA-661/86, OA-329/87 and OA-402/87 and dismiss them. The parties will bear their own costs. **Let a copy of this order be placed in each of the case files.**

I. K. Rasgotra
(I. K. Rasgotra)
Administrative Member

P. K. Kartha
24/11/87
(P. K. Kartha)
Vice-Chairman(Judl.)