

(12)

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No.846/86

Date of decision: 27.11.1992.

Shri K.C. Sharma & Ors.

...Petitioners

Versus

Chief Commissioner (Admn.) and ... Respondents
Commissioner of Income Tax, Delhi & Others

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman
The Hon'ble Mr. I.K. Rasgotra, Member (A)

For the petitioners Shri M.M. Sudan, Counsel.

For the respondents Mrs. Raj Kumari Chopra,
Counsel.

Judgement(Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioners have come to this Tribunal
with the following prayers:-

i) To declare the Income Tax Department (Inspector)
Recruitment Rules, 1969 as amended upto
date as illegal, null and void and violative
of Articles 14 and 16 of the Constitution.

ii) To restrain Respondent No.1 from making
any further promotions on the basis of the
impugned rules and for other consequential
reliefs.

2. Though the challenge is to the entire set
of rules, pertaining to recruitment to the cadre
of Income Tax Department (Inspector), Shri Sudan,
learned counsel for the petitioners submitted that
the challenge is basically to the entry in column

No.11 of the rules, which was substituted by the Income Tax Department (Inspector) Recruitment (Amendment) Rules, 1986, which were given retrospective effect w.e.f. 1.10.1985, copy of which has been produced as Annexure-P/2. Hence, we shall examine the case of the petitioner in regard to the validity of the entry in column No.11.

3. It is in exercise of the powers conferred on the President by the proviso to Article 309 of the Constitution that the Income Tax Department (Inspector) Recruitment Rules, 1969 have been promulgated. We are concerned with the posts of Inspector of Income Tax Department. The rules have been extracted in Annexure P/1 to the petition. It is clear from the same that these posts are regarded as selection posts. For direct recruitment the maximum age prescribed is 35 years provided they have put in a minimum of two years service in the department and 25 years and below for others. A degree from the recognised university or equivalent is the educational qualification for direct recruitment. The period of probation is prescribed as two years. Column No.10 to the rules provides that $33\frac{1}{3}\%$ of the vacancies shall be filled up by direct recruitment by competitive examination in accordance with the rules made in this regard by the Directorate of the Income Tax

and the remaining by promotion. We are concerned in this case with the provisions, pertaining to promotion by selection to the cadre of Inspectors of Income Tax. Column No.11 is under the heading "In case of recruitment by promotion/deputation/transfer grades from which promotion/deputation/transfer to be made". A detailed procedure has been prescribed under this column. The original procedure prescribed in this behalf under column No.11 was substituted as already stated w.e.f. 1.10.1985 by the Income Tax Department (Inspector) Recruitment (Amendment) Rules, 1986 dated 8.9.1986, produced as Annexure-P/2. For the sake of convenience, we extract hereunder the entire entry under column No.11, which is impugned in this case:-

"Supervisors Grade-I and Grade-II, Head Clerks, Tax Assistants and Upper Division Clerks (hereafter referred to as Ministerial Cadre), and Stenographers Grade-I, Grade-II and Grade-III (hereafter referred to as Stenographers' Cadre), with 3 years' service in the respective grade, who have qualified in the Departmental Examination for Income Tax Inspectors. The Names of all such qualified candidates shall be arranged Cadre-wise, in two separate lists for each Cadre. In the First list, the 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 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 Departmental Promotion Committee, the name 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 the persons from both 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."

4. It is the validity of this rule that we are now required to examine in this case.

5. What becomes clear on reading of the entry in column No.11 is that the feeder category consists of the Ministerial cadre and Stenographers' cadre. The Ministerial cadre comprises Supervisors Grade-I and Grade-II, Head Clerks, Tax Assistants and Upper Division Clerks. The Stenographers' cadre comprises Steno-graphers Grade-I, Grade-II and Grade-III. For both the cadres the eligibility qualifications are that the candidate should have put in three years' of service in the respective grades and should have qualified in the departmental examination for Income Tax Inspectors. So far as the prescription of the feeder cadres and the eligibility qualifications for consideration are concerned, there is no controversy. The controversy is confined to the procedure that has been detailed for making the selection from the two cadres. Firstly, it is provided that the names of all the qualified candidates should be arranged cadre-wise in two separate lists for each cadre. The first list has to consist of names of all qualified candidates falling in that cadre arranged in the order of seniority in the department. The second list also pertains to the very

and same cadre/has to consist of names of all the qualified persons falling in the cadre arranged according to the date or, as the case may be, the year of passing the departmental examination. There is a further stipulation that persons who pass the examination on the same date shall maintain their inter-se-seniority in the department. Two lists like this have to be prepared separately for the Ministerial cadre and the Stenographers' cadre. Thus, we would be having, by the operation of the prescription, four lists in all of the eligible candidates. Though, not expressly stated, the implication in the further clause is that all these lists are to be placed before the Departmental Promotion Committee (DPC for short) to enable them to make the selection. The names of all the candidates selected by the DPC are required to be arranged in two select lists in the ratio of 3:1. One list has to contain the names of persons from both the cadres on the basis of the seniority and the other list has to contain the names of the persons from both the cadres on the basis of the date or, as the case may be, the year of passing the departmental examination. It is further prescribed that vacancies in the promotion quota shall be filled up from the said two lists in such a manner that a ratio of 3:1 between

the Ministerial cadre and the Stenographers' cadre is maintained. What was highlighted by Shri Sudan, learned counsel for the petitioners is the prescription in the rules for preparation of two lists for each cadre, one consists of eligible persons arranged in the order of their seniority and the other list arranged in accordance with the dates of passing the examination, ignoring their inter-se-seniority except in cases where the two candidates have passed the examination on the same date. It is these lists which form the basis for consideration for selection by the DPC. Further procedure is for inclusion of the names in the select list of persons selected by the DPC for the purpose of filling up the vacancies in the prescribed ratio between the Ministerial cadre and the Stenographers' cadre.

5A. The procedure prescribed in column No.11, is very difficult to understand, cumbersome and complicated. It is difficult to understand why such an awkward procedure has been evolved.

6. Shri Sudan, learned counsel for the petitioners contended that preparation of two lists for consideration by the DPC, one arranged in the order of seniority and the other arranged in the order of the dates of passing the examination is violative of Articles 14 and 16 of the Constitution. It was maintained that the classification between the two groups is not made on rational basis. The two lists contemplated by the rules have to consist of persons who have the prescribed eligibility viz. the three years of service in grade and passing in the

departmental examination for Income Tax Inspectors.

The candidates who possess these eligibility qualifications therefore, form a class by themselves. This class has been further divided for consideration for selection in two separate lists, one based on the seniority and the other based on the dates of passing the departmental examination. We fail to see the rational on which this classification is made. As already stated, both the lists have to consist of persons who have the requisite eligibility. It is obvious that the very same eligible persons would find their names arranged in a particular order in the first list which is made in accordance with the seniority and the very same persons would find their names in the second list, wherein their names are arranged not on the basis of the seniority but on the basis of the dates of passing of the departmental examination for Income Tax Inspectors. This is, therefore, not a case of classifying eligible candidates on the basis of intelligible differentia. The same class of eligible persons are placed in two different lists arranging the names by application of different criteria. Preparation of such lists for consideration for selection not is/made on any rational basis.

7. Assuming the classification is rational, we shall examine if it has any just nexus with the object sought to be achieved. There is no difficulty in ascertaining the object of the rules. As the posts are required to be filled up by promotion, by selection, the object of the rule is to select the most competent among those who are eligible for consideration for promotion so that the department is assured of the best talent for rendering service as Income Tax Inspectors. Does this classification serve the object of securing the best talent for the department? The selection committee assesses relative merit taking into consideration all relevant aspects. If a candidate who is senior but has passed the departmental examination much later than his juniors is found by this selection committee to be of better merit, he has to be ranked above his junior who has passed the examination earlier in the select list prepared from the list of candidates arranged in the order of seniority. While making the final list prepared from the list of candidates arranged in the order of a person passing the examination / may secure a place above his senior who is assessed to have better merit. Thus the object of securing the most competent person gets defeated. Hence the procedure prescribed by column No.11 violates Articles 14 and 16 of the Constitution. As it is / maintained not by the respondents that the principle of severability

can be invoked in this case, we have no other alternative but to declare the entire column No 11 of the rules as void as it offends Articles 14 and 16 of the Constitution.

8. Having regard to the fact that these rules have been in force for quite sometime, though there is an interim order to the effect that the promotions made during the pendency of these proceedings shall be subject to the final decision, with a view to avoid undue upsetting of the promotions at this stage, we consider it just and proper to declare the impugned rule as void prospectively from the date of the decision. Consequently, it follows that no further promotion can be made hereafter on the basis of the impugned rule and it would be open to the rule-making authority to replace the rule which has been struck down by us, by a valid rule.

9. For the reasons stated above, this petition is allowed and Column No 11 of Annexure P-2 of the Income Tax Department (Inspector) Recruitment Rules, 1969, as amended by the Income Tax Department Recruitment (Amendment) Rules, 1986 is hereby declared

as void as offending Article 14 and 16 of the Constitution. The respondents are restrained from giving effect to the same from this date. It is open to the rule-making authority to make appropriate rules in accordance with law. No costs.

I.K. Rasgotra
(I.K. RASGOTRA)

MEMBER (A)

V.S. Malimath

(V.S. MALIMATH)
CHAIRMAN

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