

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 1894/1987  
T.A. No.

199

DATE OF DECISION 23.08.1991.

<u>Shri C.R. Bose</u>	Petitioner
<u>Shri M.R. Bhardwaj</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India &amp; Others</u>	Respondent
<u>Shri P.H. Ramchandani</u>	Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. SHRI P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. SHRI D.K. CHAKRAVORTY, 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*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *No*

### JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant who has worked/as Upper Division Clerk (hereinafter referred to as 'UDC') in the office of the Income Tax Officer, New Delhi, is aggrieved by his non-appointment as Inspector of Income Tax with effect from the date the officials in Delhi charge who had passed the Inspector Grade Examination held in 1981, has been appointed. *He has also prayed for grant of consequential* benefits with regard to arrears of pay and allowances and seniority.

2. The application was filed on 23.12.1987. During the pendency of the application, the applicant filed MP 379/88

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wherein he stated that his name had been removed from the eligibility list without giving any notice. With the leave of the Tribunal, the application was amended. The Tribunal also passed an interim order to the effect that one of the reserved vacancies for which the DPC had met should be kept unfilled subject to the outcome of the application.

3. The applicant joined the Income Tax Department in 1965 as LDC in the office of the Commissioner of Income Tax at Calcutta. He was promoted as UDC in 1972 and as Tax Assistant in 1982. While working in the West Bengal charge, he qualified the departmental examination for Inspector in 1981. He applied for the deputation post of Assistant (Technical) in the Ministry of Finance, Department of Revenue <sup>and worked as such</sup> from 19.12.1983 to 18.6.1987. While on deputation he applied for interchange transfer from West Bengal charge to Delhi charge which was approved by the Central Board of Direct Taxes, vide letter dated 10.1.1985, with the condition that he should first be reverted as UDC by the Commissioner of Income Tax, Calcutta and then transferred to Delhi charge. He physically joined Delhi charge on 19.6.1987.

4. While working as Tax Assistant in the Calcutta charge, the applicant had qualified in the departmental examination for Income Tax Inspectors held in 1981 on all India basis by the CBDT. He has submitted that certain officials working in the Delhi Charge who had passed the Inspectors' Grade Examination held after 1981, i.e., in 1982, 1983 and 1984, have <sup>Q</sup> already been promoted as

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Inspector of Income Tax, ignoring the claim of the applicant for such promotion on the basis of his having passed the examination held in 1981.

5. According to the respondents, all the officials who have qualified the departmental examination for Inspector in Delhi charge till the applicant's transfer will be placed above him irrespective of the fact whether he had qualified earlier or not. He cannot claim seniority over those officials who had passed the said examination in Delhi charge upto the date of his joining in the new charge, i.e., 19.6.1987.

6. We have carefully gone through the records of the case and have considered the rival contentions. The case of the applicant appears to be one of hardship. While he was working in the post of Tax Assistant in the office of the Commissioner of Income Tax, Calcutta, he applied for the post of Technical Asstt. in the CBDT, Delhi and was selected for the said post. He joined the CBDT on 19.12.1983. In 1984, he applied for transfer from the Calcutta charge to the Delhi charge on compassionate grounds. On 3.7.1985, the Inspecting Assistant Commissioner of Income Tax (Admn., New Delhi) passed an order stating that the applicant is "hereby redeployed" in the post of UDC in Delhi Charge of the Income Tax department in the pay scale of Rs.330-10-380-EB-500-15-560 alongwith usual allowances and such other allowances as may be sanctioned from time to time by the Govt. of India, in the temporary capacity w.e.f. 10.1.1985(FN), the date on which the CBDT approved his transfer.

On his appointment as such, he will continue to work

as UDC in the Central Board of Direct Taxes on deputation basis." On 6.6.1985, the Chief Commissioner(Admn.) and CIT, West Bengal, Calcutta passed an order with reference to the aforesaid order dated 10.1.1985 stating that the applicant "is, with effect from 6.6.1985, reverted to the post of UDC from which he was promoted to that of Tax Assistant," that "after such reversion, his services as UDC are placed at the disposal of the Chief Commissioner(Admn.) & CIT, Delhi with immediate effect," that his seniority in Delhi Charge will be reckoned from the date he joins duty in that charge and his name will be placed below all UDCs (whether permanent or temporary) in that charge on the date of his joining, and that he will not be entitled to promotion/confirmation in the West Bengal Charge after his transfer.

7. At that point of time, the applicant was already working as Assistant(Technical) in the Delhi Charge on deputation basis. His hardship arose due to his non-transfer to the Delhi Charge immediately. Instead, the respondents passed an order on 29.12.1986 deciding to extend his deputation period for a further period of six months with effect from 19.12.1986 or till a suitable substitute was available. This was purportedly done "in the public interest".

8. According to the instructions issued by the CBDT in their circular letter dated 12.12.1969 which applies to the instant case, Seniority of a person transferred on compassionate grounds shall be reckoned from the date of his/

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her joining the new charge on transfer. Further, it has been stipulated that "An UDC or other member of the staff who has passed the Inspectors' Grade Examination (Departmental) would be placed in the "Examination-wise List" for purpose of promotion as Inspector below all the persons who have passed the said examination in the new charge upto the date of his/t-ransfer."

9. Had the applicant been transferred to the Delhi Charge pursuant to the letter of the Chief-Commissioner (Admn.) and CIT, West Bengal dated 6.6.1985, instead of extending his period of deputation upto 18.6.1987, the applicant would have been considered for promotion as Inspector below all the persons who had passed the Inspectors' Grade Examination in 1981 in the Delhi Charge along with those figuring in the Examination List from 1983 to 1985 and he would have been considered for promotion, also keeping in view the reservation for Scheduled Castes to which category he belonged. That was not done. The extension of his period of deputation upto 18.6.1987 has thus caused serious prejudice to his career.

10. The respondents have not mentioned any administra-tive difficulties in transferring the applicant to Delhi Charge with effect from 6.6.1985. In the circumstances, we are of the opinion that it would be unfair and unjust to deprive the applicant of his right

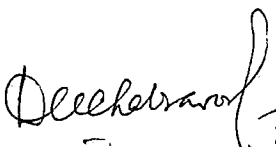
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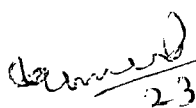
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to be considered for promotion as Inspector on the basis of his <sup>having</sup> passed the Departmental Examination in 1981 in the Delhi Charge, treating 6.6.1985 as his deemed date of joining the Delhi Charge consequent upon his transfer from the Calcutta Charge and to be promoted as Inspector of Income Tax with effect from the date, the officials in Delhi Charge who had passed the said examination in 1981 had been so appointed. While doing so, the respondents shall also keep in view the position regarding reservation of vacancies in favour of the Scheduled Caste candidates. The respondents shall take necessary action as indicated above within a period of 3 months from the date of communication of this order.

11. The application is partly allowed as directed above. In view of the aforesaid directions, we do not consider it necessary to examine the rival contentions of both parties on several other issues raised before us.

There will be no order as to costs.

  
(D.K. CHAKRAVORTY) 23/8/91  
MEMBER (A)

  
23/8/91  
(P.K. KARTHA)  
VICE CHAIRMAN (J)