

4

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

6

OA NO. 1810/2004

This the 21<sup>st</sup> day of September, 2004

HON'BLE MR. JUSTICE M.A.KHAN, VICE CHAIRMAN (J)  
HON'BLE MR. S.A.SINGH, MEMBER (A)

Shri Trilochan Kumar Sawhney,  
Income Tax Officer,  
2633, Hudson Lines,  
Kingsway Camp,  
Delhi-110009.

(By Advocate: Sh. M.L.Ohri)

Versus

1. Union of India through  
The Secretary,  
Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi.
2. The Chairman,  
Central Board of Direct Taxes,  
Department of Revenue,  
Ministry of Finance,  
North Block, New Delhi.

(By Advocate: Sh. V.P.Uppal)

ORDER (ORAL)

By Hon'ble Mr. Justice M.A.Khan, Vice Chairman (J)

On the request of the learned counsel for the parties, we have heard the arguments for final disposal.

2. Applicant joined Income Tax Department in the year 1963 and promoted to the post of Income Tax Officer (Group 'B') on 28.6.1993. He is due for promotion to the post of Assistant Commissioner of Income Tax. This post is governed by the Indian



Revenue Service Rules, 1988 which provide that the recruitment to the post of Assistant Commissioners of Income Tax shall be made through promotion and direct recruitment. 50% of the posts will be filled up by direct recruitment and 50% of the posts will be filled up by promotion of Income Tax Officers with not less than 3 years regular service in that Grade.

3. Applicant has completed 11 years of regular service in the grade of Income Tax Officer and is, therefore, eligible for consideration by DPC for promotion to the post of Assistant Commissioner of Income Tax for the vacancies which occurred in the year 2003-2004. The applicant claims that respondents have not cared to convene the DPC for the years 2003-2004 and 2004-2005 for promotion of Income Tax Officers to the grade of Assistant Commissioner of Income Tax, although the 50% post in that grade have already been filled up by direct recruit for the year 2003-2004.

4. It is alleged that as per the Model Calender for DPC prescribed by the DOPT vide their OM dated 8.9.1998 read with OM dated 13.10.1998, the DPC for the year 2003-2004 the select list ought to have been made before 31.3.2003 and select list for the year 2004-2005 ought to have been made before 31.3.2004. Respondents have not held the DPCs for the years 2003-2004 and 2004-2005 thereby depriving the Income Tax Officers of their promotion to the next higher grade of Assistant Commissioner of Income Tax. Income Tax Gazetted Services Federation submitted representations on 3.2.2003 and 2.4.2003 to respondent No.2, Chairman, Central Board of Direct Taxes in this regard but in vain. There are 139 vacancies for the year 2003-2004 and 125 vacancies for the year 2004-2005 which are required to be filled up by promotion of Income Tax Officers. Applicant is due to superannuate on 31.10.2004 and he suffered loss due to non-holding of DPC within the stipulated period as laid down in the

instructions issued by DOPT.

5. Applicant prayed that direction be given to the respondents to hold the DPC for promotion of Income Tax Officers to the grade of Assistant Commissioners of Income Tax as per rules as expeditiously as possible or to consider their cases for ad hoc promotion pending regular promotions by 15.10.2004 at the latest.

6. Respondents contested the claim of the applicant and controverted the allegations made in the application. Their cases is that the cadre of Income Tax Officers is decentralized and scattered over 17 different Cadre Controlling Authorities all over the country. Some of the Cadre Controlling Authorities, in the recent past, have frequently revised the seniority list of the Income Tax Officers on the representation of the official and direction of this Tribunal or the Hon'ble High Court with the result that there has been considerable delay in finalising the seniority/eligibility list of Income Tax Officers for consideration of DPC for promotion to the post of Assistant Commissioner of Income Tax. Three OAs filed by the Income Tax Officers of the UP Region challenging their seniority as Income Tax Inspectors/Income Tax Officers have been decided recently in August, 2004 by the Principal Bench of this Tribunal. Applicant cannot file an OA in this Tribunal as previously Association had represented for holding the DPC and being a member of Association. Income Tax Gazetted Services Federation is not recognized association by the Government of India. Hence the association has no legal entity to represent the officers of Income Tax on common matters.

7. Respondents further submitted that they have already sent a proposal to the Union Public Service Commission in January, 2004 for holding the DPC to promote the Income Tax Officers to the grade of Assistant Commissioner of Income Tax. It is for the UPSC to convene the DPC on the dates suitable to them subject to convenience of the

Commission which is an independent agency. Efforts are always made to conduct timely the DPCs for promoting the officers as per DOPT guidelines. The proposal for DPC for the year 2004-2005 will be sent to UPSC as soon as UPSC convenes the DPC for the year 2004-2005 and based on the recommendations of the DPC, orders for promotion of Income Tax Officers to the grade of Assistant Commissioners of Income Tax are issued after the recommendation of the DPC are accepted by the competent authority. It is further submitted that the efforts are being made to hold the DPC expeditiously taking into account the problems that are being faced in finalizing the seniority list of the Income Tax Officers for consideration by the DPC for promotion to the post of Assistant Commissioner of Income Tax. .

8. In the rejoinder applicant has rebutted the case pleaded by the respondents that they were taking steps for convening a meeting of the DPC and repudiated the reasons given for the delay in holding the DPC. It is contended that the respondents ought to have finalised the select list for promotions of Income Tax Officers to the cadre of Assistant Commissioner of Income Tax for the year 2003-2004 latest upto 31.3.2003. It is also asserted that the respondents had always entertained the representations from Income Tax Gazetted Service Federation and they have always been associated with the decisions taken by the respondents as will be seen from the copy of the minutes of the meeting held on 18.1.2003 which was circulated vide letter dated 27.2.2003. It was also contended that holding of annual DPC is mandatory and the department need not wait for the representations from individuals.

9. Counsel for applicant drew our attention to the instructions of the DOPT OM No. 22011/9/98-Estt.(D) dated 14.12.2000 and the suggested Model Calendar for DPCs which is at page 18 of the OA. He has also placed reliance on the judgment of the

Hon'ble Supreme court in Union of India and others vs. N.R.Banerjee and others reported in 1997 Supreme Court Cases (L&S) 1194 in particular, para 6,10 & 11 are referred. The Hon'ble Supreme Court in para 6 of the judgment referred to the OM of DOPT and emphasised that convening of meeting of the DPC can be dispensed with only after a certificate has been issued by the departmental authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question and that the holding of the DPC was redundant. The Hon'ble Supreme Court in para 10 had directed the DPC to consider the cases of all the eligible candidates within the zone of consideration so that there will not be any heart-burning among the eligible persons whose claims have been withheld for consideration for promotion to the higher post. In paragraph 11 the Hon'ble Supreme Court observed that the claim of the candidates eligible have to be considered for promotion objectively and dispassionately, with a sense of achieving manifold purpose – (1) affording an opportunity to the incumbent to improve excellence, honesty, integrity, devotion to public duty; (2) inculcating discipline in service; (3) afford opportunity to every eligible officer within the zone of consideration for promotion to a higher post or office; and (4) ensuring that the Committee regularly meets and considers their claim objectively, impartially with a high sense of responsibility in accordance with the procedure and finalisation of the list in advance so as to fill up vacancies arising in the year from the approved panel without any undue delay. It was observed, they are salutary principles and form the purpose and the policy behind the above rules and the Government should follow them.

10. Counsel for applicant has argued that although there are large number of vacancies in the grade of Assistant Commissioner of Income Tax which are to be filled in by promotion from the cadre officers but the respondents have not taken any timely

action for convening the DPC for the year 2003-2004 and the subsequent year. As a consequence the case of the applicant, who is due for retirement on attaining the age of superannuation on 31.9.2004 has prejudicially affected. He has submitted that the respondents should be directed to convene the DPC expeditiously and has requested that an order in terms of this Tribunal's order dated 20.8.2002 made in OA No.2185 of 2002 may be passed in this case also. In the referred case a direction was given to the respondents to consider the representation filed by the applicant and to hold a DPC meeting for considering the claim of the applicant and those similarly placed persons in the respondents organisation as expeditiously as possible subject to the instructions on the subject, in any case within a period of three months. He further stated that in case the respondents are not in a position to hold the DPC expeditiously, respondents may be directed to consider the promotion of the applicant and other officers eligible for promotion on ad hoc basis.

11. Counsel for respondents has controverted the arguments of the counsel for applicant that respondents are responsible for the delay in convening the meeting of the DPC for consideration of promotion of the Income Tax Officers. He has further submitted that the disputes about inter-se-seniority of Income Tax Officers is main reason for the delay in holding DPC. The seniority list of ITOs of 17 zones of the Income Tax have been revised by the authorities on the representation from the officers or under the directions of this Tribunal or the Hon'ble High Court. It is submitted that since the cadre of the Income Tax Officer to which this applicant belonged was decentralized and scattered over 17 different cadre controlling authorities all over the country, it was difficult to collect the necessary material for holding the DPC yet the respondents have already made a request to the UPSC, as back as in January 2004 for

fixing a date for holding the DPC. However, the learned counsel for respondents was not able to say that the respondents have taken up the matter with the UPSC for expeditious holding of the DPC. He was fair enough to suggest that a direction may be given by this Tribunal to the respondents for holding the DPC meeting expeditiously. On his part he assured that the respondents will spare no efforts to convene the DPC by approaching the UPSC for fixation of an early date. However, he ruled out the possibility of ad hoc promotion of the applicant in the circumstances of the case.

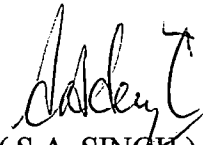
12. We have given due consideration with the submissions made by the learned counsel for the parties.

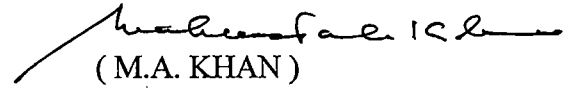
13. There is no dispute that the DPC has not been held for the vacancy which have occurred in the year 2003-2004 and that the select list was to be prepared for consideration of the DPC for that year by 31.3.2003. It is also not in dispute that DPC for subsequent year has not been convened since the DPC for the earlier year could not held. It is also pertinent to note that the meeting of the DPC is to be fixed by the UPSC which is an independent body is not a party to this proceedings. But it is the responsibility of the respondents to vigorously pursue the matter and ensure that the meeting of the DPC is held as early as possible so that the case of the applicant and the persons who are similarly placed for instance, who are on the verge of the retirement, is considered on time and they are not deprived of the fruits of the promotion for only because of non-holding of the DPC.

14. We agree with the submissions made on behalf of both the parties that direction may be given to the respondents on this matter for holding the DPC for promotion of the Income Tax Officers to the post of Assistant Commissioners of Income Tax expeditiously.

13

15. For the reasons stated above, we direct that the respondents shall hold the DPC for consideration of promotion of the Income Tax Officers to the post of Assistant Commissioner of Income Tax against 50% quota which is to be filled up by promotion, within a period of 45 days from today. Counsel for respondents indeed submitted that the date of the meeting is to be decided by the UPSC which is not a party to the matter but we do expect that the respondents shall take up the matter with the UPSC and prevail upon it to hold the meeting as directed above. In the circumstances, we leave the parties to bear their own cost. OA stands disposed off in terms of the above order. Copy of the order be given dasti to the counsel for the respondents for its delivering to the appropriate authority of the respondents.

  
(S.A. SINGH)  
Member (A)

  
(M.A. KHAN)  
Vice Chairman (J)

'sd'