

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1992/2004

New Delhi, this the 25th day of February, 2005

**Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. S.K.Naik, Member (A)**

Shri Ghevar Chand Jain
S/o Shri Nathu Lal Jain
(retired as Deputy Commissioner of Income Tax)
r/o SL-6, Income Tax Colony
Tonk Road, Jaipur - 302018
At present at New Delhi
C/o B-127, Malviya Nagar
New Delhi - 17. .. Applicant

(By Advocate: Sh. K.K.Patel)

Versus

Union of India through

1. The Secretary
Department of Revenue
North Block
New Delhi.
2. The Chairman
Department of Revenue
Central Board of Direct Taxes
North Block
New Delhi. ...

Respondents

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

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ORDER(Oral)

By Mr. Justice V.S. Aggarwal:

Applicant, by virtue of the present applicant, seeks a direction to the respondents to promote him as Joint Commissioner of Income Tax (notionally) from the date the vacancy fell in the said post and to grant him consequential benefits such as pay, arrears, increments, etc.

2. Some of the relevant facts are that the applicant became an Income-Tax Officer on 1.11.1978. He was promoted as Assistant Commissioner of Income Tax in November 1991 and further promoted as Deputy Commissioner of Income-Tax in October 1998. He superannuated on 31.7.2002.

3. The applicant contends that he became eligible for promotion as Joint Commissioner of Income-Tax in December 2000. The eligibility criteria as per Recruitment Rules for promotion to the post of Joint Commissioner of Income Tax is senior scale, i.e., Deputy Commissioner of Income Tax having not less than five years service as on 1.1.2000. According to the applicant, on 24.10.2000, it was communicated that the Government has approved the restructuring of Income Tax Department and accordingly, the revised number of posts in the

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Income Tax Department was indicated. For the purpose of present application, the existing strength of Joint Commissioner of Income Tax was revised to 647 posts.

4. It has been the further claim of the applicant that a Departmental Promotion Committee meeting was held in February 2001. Therein persons becoming eligible as on 1.1.2000 were considered. Out of the total vacancies of 675 posts, the DPC recommended the names of 675 officers, out of which 562 officers were eligible. The respondents promoted 562 officers and 113 vacancies were remained unfulfilled. As per Rule, the DPC had to be convened latest by February 2002. There was a seniority dispute between the direct recruits and promotee Assistant Commissioner of Income Tax. The main dispute therein was that direct recruits of 1991 had approached the Central Administrative Tribunal with the grievance that though Indian Revenue Service Rules, 1988 provided for maintaining the ratio of 1:1 for fixation of seniority of direct recruits vis-a-vis promotees, the respondents had not maintained the said ratio and had given en bloc promotion to 176 promotees in the year 1991. In terms of the directions of the Central Administrative Tribunal, the seniority of 127 direct

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recruits had to be rotated. In accordance with the decision of the Central Administrative Tribunal, Ahmedabad Bench, the applicant's position was at Serial No.26. The DPC had not been convened. Meanwhile, the applicant superannuated. There was a delay in implementation of the directions of the Tribunal. It is, in this backdrop, that the applicant contends that the action of the respondents in not promoting him, before he superannuated, is illegal and consequently the reliefs referred to above have been prayed.

5. The respondents plead that the applicant had filed earlier Original Application No.2335/2002. This Tribunal had directed to pass an appropriate order in accordance with law within six months. Accordingly, a DPC was held on 6th, 7th and 8th January, 2003 for promotion to the grade of Joint Commissioner of Income Tax. The said DPC recommended the name of the applicant for promotion. However, before issuing the promotion order, the applicant had already superannuated. No person junior to the applicant had been given the promotion. It is claimed that the applicant, in this backdrop, has no right.

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6. The sequence of events and the facts have been mentioned above. This clearly indicates that the DPC did meet. It was late but meanwhile the applicant had superannuated. During the course of submissions, it was not disputed that no person junior to the applicant has been given promotion before the applicant's superannuation.

7. The learned counsel for the respondents had drawn our attention to Office Memorandum No.22011/4/98-Estt.(D) dated 12.10.1998, issued by the Department of Personnel & Training.

The same reads:

"2. Doubts have been expressed in this regard as to the consideration of employees who have since retired but would also have been considered for promotion, if the DPC(s) for the relevant year(s) had been held in time.

3. The matter has been examined in consultation with the Ministry of Law (Department of Legal Affairs). It may be pointed out in this regard that there is no specific bar in the aforesaid Office Memorandum, dated April 10, 1989 or any other related instructions of the Department of Personnel and Training for consideration of retired employees, while preparing yearwise panel(s), who were within the zone of consideration in the relevant year(s). According to legal opinion also, it would not be in order, if eligible employees, who were within the zone of consideration for the relevant year(s) but are not actually in service when the DPC is

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being held, are not considered while preparing yearwise zone of consideration/panel and, consequently, their juniors are considered (in their places) who would not have been in the zone of consideration, if the DPC(s) had been held in time. This is considered imperative to identify the correct zone of consideration for relevant year(s). Names of the retired officials may also be included in the panel(s). Such retired officials would, however, have no right for actual promotion. The DPC(s), may, if need be, prepare extended panel(s) following the principles prescribed in the Department of Personnel and training, O.M. No.22011/8/87-Estt.(D), dated 9-4-1996. (Copy enclosed)."

8. On the strength of the same, it was argued that the applicant, who had superannuated, does not have a right to be promoted.

9. In this regard, two propositions hereinafter referred to in law cannot be ignored. A person only has a fundamental right to be considered for promotion. He does not have a fundamental right to be promoted. Such rights mature into legal action and legal rights would accrue only if a person junior to the applicant is promoted from the date when the concerned person even had not superannuated.

10. We refer with advantage the two decisions of the Supreme Court in this regard. The Supreme Court in the case of

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UNION OF INDIA AND OTHERS v. N.R.BANERJEE AND

OTHERS, 1997 SCC (L&S) 1194 held that inclusion of the name in the panel does not create a right to be promoted. The Government is free not to fill up the vacancies. The Supreme Court held:

"12..... The State is under no legal duty to fill up all or any of the vacancies even though the State acts in an arbitrary manner. In *Babita Prasad v. State of Bihar* [1993 Supp (3) SCC 268] it was held that mere inclusion of one's name in the panel does not confer on him/her any indefeasible right to appointment. It was further held that the purpose of making a panel was to finalise the list of eligible candidates for appointment. The preparation of the panel should be to the extent of the notified or anticipated vacancies. Unduly wrong panel should not be operated. In *Union Territory of Chandigarh v. Dilbagh Singh* [(1993) 1 SCC 154] it was held that the mere fact that a candidate's name finds a place in the select list as a selected candidate for appointment to a post, does not confer on him/her an indefeasible right to be appointed in such post in the absence of any specific rule entitling him to such appointment. In *State of Bihar v. Secretariate Asstt. Successful Examinees Union 1986* [(1994) 1 SCC 126] it was held that a person who is selected and empanelled does not on account of empanelment alone acquire any indefeasible right to appointment. Empanelment is, at the best, a condition of eligibility for the purposes of appointment and that by itself does not amount to selection or creation of a vested right to appointment unless relevant rules state to the contrary. However, in the light of the above principles and in the light of the clear rules

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extracted hereinbefore, it is seen that the exercise of preparation of the panel is undertaken well in advance to fill up the clear vacancies or anticipated vacancies. The preparation and finalisation of the yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel could not be prepared for any justifiable reason, yearwise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith. In *Nagar Mahapalika v. Vinod Kumar Srivastava* [(1987) 1 SCC 602] this Court had pointed out with respect to the prescription of the limitation of one year of the waiting list thus:

“The reason underlying the limitation of the period of a list for one year is obviously to ensure that other qualified persons are not deprived of their chances of applying for the posts in the succeeding years and being selected for appointment.”

11. Similarly, in the case of **BAIJ NATH SHARMA** v. **HON'BLE RAJASTHAN HIGH COURT AT JODHPUR AND ANOTEHR**, (1998) 7 SCC 44, the Supreme Court held that delay in filling up of the vacancies should be avoided but if no person junior to the concerned man has been promoted before he

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superannuated, he cannot complain when promotions were made prospectively after his retirement.

12. From the aforesaid and the sequence of events to which we have referred to above, it is clearly established that before the applicant superannuated, no person junior to him had been promoted and, in that backdrop, when the applicant does not have a fundamental right to be promoted, his claim must fail.

13. Resultantly, the Original Application No.1992/2004 being without merit fails and is dismissed.


(S.K.Naik)
Member (A)


(V.S.Aggarwal)
Chairman

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