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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.**

O.A. /XXX No. 713/1992

Decided on: 27.9.92

R.C. Bakshi **Applicant(s)**

(By Shri M.L. Ohri _____ **Advocate**)

Versus

U.O.I. & Others **Respondent(s)**

(By Shri R.S. Aggarwal, Counsel for **Advocate**)

respondent Nos. 1 to 3

etc.

CORAM:

THE HON'BLE SHRI MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter *yes*
or not?

2. Whether to be circulated to the other *X*
Benches of the Tribunal?

[Signature]
(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 713 OF 1992

NEW DELHI THIS THE 2 DAY OF JULY, 1997

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HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

R.C. Bakshi
R/o H.No.L-2/29A DDA Flats,
Kalkaji,
New Delhi.

...Applicant

By Advocate Shri M.L. Ohri

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
New Delhi.
3. The Chief Commissioner of
Income Tax (Admn.) Delhi,
Income-tax Department,
New Delhi.
4. Smt. Savitri Singh,
Income Tax Inspector,
C/o Director General(INV),
Mayur Bhawan,
New Delhi.
5. Shri K. Unikrishnan,
I. Tax Inspector,
C/o Chief Commissioner of Income Tax
(Admn.),
C.R. Building,
New Delhi.
6. Shri S.P. Wadhwa
Income Tax Inspecor,
C/o Chief Commissioner of Income Tax
(Admn.),
C.R. Building,
New Delhi.
7. Shri R.K. Kakkar
Income Tax Inspector,
C/o Chief Commissioner of Income Tax
(Admn.),
C.R. Building,
New Delhi.

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8. Shri Sat Pal Singh
Income Tax Inspector,
C/o Chief Commissioner of Income Tax
(Admn.),
C.R. Building,
New Delhi.

9. Shri Sanjeev Ghai
Income Tax Inspector,
C/o Chief Commissioner of Income Tax
(Central),
C.R. Building,
New Delhi.

10. Shri J.R. Lamba
Income Tax Inspector,
C/o Chief Commissioner of Income Tax
(Inv.),
C.R. Building,
New Delhi. ..Respondents

Shri R.S. Aggarwal, Counsel for respondent Nos. 1 to 3.

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Applicant is an Income-Tax Inspector. The respondents drew a list of eligible Income-Tax Inspectors for promotion to the post of Income Tax Officer for the years 1991-92 as per the list circulated with their letter dated 20.11.1991 at Annexure A-2. In this list, they have stated that this is a list of Inspectors who have qualified in the ITO's examination upto 1990. As per this list, the applicant figures at S.No.20 indicating that he had passed the departmental examination in the year 1981. The DPC for promotion was held in 26-27/12/1991 for existing vacancies as well as anticipated vacancies during the year 1991-92. A panel of 19 officers was prepared for the vacancies which were expected upto 30.3.92 and the persons included in the panel were promoted and the panel was exhausted in the first week of February, 1992. Subsequently due to the death of one Shri K.G. Sharma on

30.2.92 and compulsory retirement of another official Shri Kanti Lal on 14.1.92, these two unanticipated vacancies arose and the respondents granted permission to hold a supplementary DPC. It is the contention of the applicant that had this second DPC been held with reference to these two vacancies, he would have been promoted as he was at S.No.20 in the original eligibility list vide respondents' letter dated 20.11.91(Supra).

2. The applicant is aggrieved that instead of considering the eligible persons including himself who had been left behind as per the 1991 eligibility list, the respondents circulated another list by the impugned letter dated 6.3.1992 by which his position in the eligibility list was brought down. This was because the respondents had taken into account the eligibility of these respondents 4 to 10, who were senior to the applicant in the cadre of Income Tax Inspectors but had qualified in the departmental examination in 1991 only, the results of which were declared on 30.1.1992. However, in the meanwhile, one of the respondents here (respondent No.6) Shri S.P. Wadhwa had filed an O.A. 2804 of 1991 praying that the DPC for 1991 should be postponed and should be held only after the declaration of the results of the departmental examination held in 1991. This O.A. was disposed of with the following directions on 18.2.92:-

" In the facts and circumstances of this case, we hold that the relief sought by the applicant has no merit. However, we direct that the DPC should meet preferably in April, 1992 and the vacancies falling within 1992-93 should be taken into reckoning while drawing up the panel which should be valid at least for a period of

one year. The promotions already made on the basis of the recommendations of the DPC held in November/December, 1991 are not to be affected".

(3)

3. The applicant asserts that the respondents have misread the judgment in the aforesaid case. As was made clear in the direction in the aforesaid case, the Inspectors of Income Tax, who qualified in the examination held in 1991 are to be considered only for the vacancies arising in 1992-93 and, therefore, respondents were not right in holding the second DPC for the vacancies not upto 31.3.92 in accordance with the departmental instructions in this behalf. According to the applicant, the instructions of the Department of Personnel & Training provide that "where a DPC has already been held in a year further vacancies arising during the same year due to death, resignation, voluntary retirement etc. or because the vacancies were not intimated to the DPC due to error or omission on the part of the Department concerned, another meeting of the DPC should be held for drawing up a panel for these vacancies as these vacancies could not be anticipated at the time of holding the earlier DPC. If for any reason, that DPC cannot meet for second time, the procedure of drawing up of yearwise panels may be followed when it meets next for preparing panel in respect of the vacancies that arises in the subsequent year(s)". The applicant asserts that in terms of these directions, it was incumbent on the part of the respondents to consider the original eligibility list for the two unanticipated vacancies which arose due to the death/voluntary retirement on the basis of which he would have been considered and promoted as the promotion was on the basis of seniority-cum-fitness.

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4. The respondents on behalf of the department, while conceding that the department was permitted to hold the second DPC for the vacancies arising upto 31.3.92, have submitted that in the light of the judgment in S.P. Wadhwa's case (Supra). the aforesaid DPC had to be held in April, 1992 and the vacancies falling within 1992-93 had to be taken into account while drawing up the panel. Accordingly on the basis of the circular issued by the respondent No.2, i.e., The Central Board of Direct Taxes, all those Inspectors who were eligible for promotion to the grade of Income Tax Officer as on the date of supplementary DPC in respect of additional vacancies for the year 1991-92 which was not anticipated at the time of earlier DPC were to be considered by the proposed DPC irrespective of the fact whether they are junior or senior but in view of the observations of the Tribunal, the respondents did not hold the proposed supplementary DPC in the year 1991-92 i.e., before 31st March, 1992. They further submit that in O.A. No. 2804 of 1991, the contention of S.P. Wadhwa was that DPC for the year 1991-92 should be held after the declaration of the results of the departmental examination held in 1991. It is stated that the officials who qualified in the examination held in 1991-92 were not given a chance by the DPC. Further, the DPC scheduled to be held in April, 1992 was for the year 1991-92 for the first time and as per the Hon'ble Tribunal's directions respondents were to consider officials who qualified in the examination held in 1991 for the DPC of 1992-93 and, therefore, at that time, a second

DPC for 1991-92 was not at all expected to be convened following the judgment of the Tribunal in the aforesaid case.

(V)

5. The learned counsel for the applicant stressed that as per the directions of DOP&T, it was incumbent on the part of the respondents to hold the supplementary DPC for the unanticipated vacancies of 1991-92 on the basis of the eligibility list considered by the DPC which was held in December, 1991. He contended that there was no direction of the Tribunal not to hold the supplementary DPC for the year 1991-92. In view of this, respondents could not have revised the eligibility list without holding a supplementary DPC on the basis of the earlier eligibility list and particularly when a few eligible persons were available in that list for prior consideraton.

6. The official respondents assert that the contention of the applicant that even for the second DPC to be held for the year 1991-92 vacancies, the respondents should only go by the earlier eligibility list as was considered in the first DPC of November-December, 1991, was not based on any statutory rule or provision. Further, when a second DPC was necessitated, the respondents could not overlook the fact that some official senior to the applicant had in the meanwhile qualified in the departmental examination and, therefore, had to be legitimately considered at the time of filling up the vacancies which could not be anticipated when earlier DPC was held in November-December, 1991. The applicant has not

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shown how inclusion of eligible senior persons in the eligibility list of DPC is violative of any statutory rule or law.

7. The respondents 4 to 8 have also submitted a separate reply in which they have contended that they are senior to the applicant in the cadre of Income Tax Inspectors and the impugned eligibility list of 6.3.92 at Annexure A-1 was validly prepared taking into consideration their seniority in the grade of Inspectors and consequent to their qualifying in the departmental examination and were rightly taken into account for purposes of DPC in April, 1992 as per the directions of the Tribunal in Wadhwa's case (Supra). They contend that the applicant had suppressed the material fact that the respondents are senior to the applicant in the grade of Income Tax Inspector and by virtue of their qualifying in the examination held in 1991 subsequent to the holding of DPC, they would be eligible to be considered for any future DPC which was held in accordance with the directions in Wadhwa's case (Supra). They have pointed out that the applicant has not impleaded one Sh.D.M. Tandon, who was also included in the impugned list by virtue of the Corrigendum issued by the respondents dated 9.3.92, Annexure R-1 and the application, therefore, is bad in law because of non-joinder of parties also.

8. We have heard the learned counsel for the parties and also have perused the records carefully.

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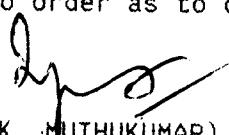
9. We find that the applicant has no grievance on the eligibility list of Inspectors notified by the respondents' vide their letter dated 20.11.1991 as per which the applicant is shown at S.No.20. It is seen that the applicant had qualified in the examination in the year 1981 although some of the persons from S.No. 1 to 19 senior to the applicant had qualified in the said examination later than the applicant. In the case of S.P. Wadhwa (Supra), the applicant therein had sought for the postponement of the DPC for 1991-92 and prayed that it should be held after the declaration of the results of the departmental examination held in July, 1991. The Tribunal by their interim order allowed the respondents to hold the DPC originally shcheduled for 28.11.91 for selection of ITO Group 'B' for the 1991 DPC. It was, however, provided that the appointments made on the basis of the above DPC would be subject to the outcome of the O.A. While finally disposing of the application the Tribunal did not grant the relief sought by the applicant, ^{it was} However, directed that the DPC should meet preferably in April, 1992 and the vacancies falling within 1992-93 should be taken into account while drawing up the panel which should be valid for a period of at least one year and it was provided that the promotions already made on the basis of the recommendations of the DPC held in November-December, 1991 were not to be affected. This order was passed on 18.2.1992. There was, however, no specific direction as to the holding of the supplementary DPC for the unanticipated vacancies of 1991-92. In the wake of this direction, the respondents could not have possibly held a supplementary DPC prior to April, 1992 when ^{and} they have to hold the DPC in 1992-93 as per the directions of the Tribunal, they had to take into account the

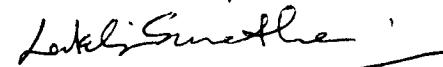
vacancies of 1992-93 also for drawing up the panel. This would imply that by holding such a DPC, it was necessary to take into account not only the vacancies which arose subsequent to the last DPC but also the vacancies falling within 1992-93. The question whether unanticipated vacancies which remained unfilled should also be covered by the same eligibility list as was necessary for consideration of 1992-93 vacancies was not specifically considered in the aforesaid judgment as this was not the issue raised in the application. In any case, when the second DPC for the year 1991-92 for the unanticipated vacancies could not be held due to the intervening judgment in Wadhwa's case (Supra), there was no bar for the respondents to follow the provisions of the departmental instructions outlying the procedure for filling up the vacancies. It is provided in the aforesaid instructions that where for any reason a DPC could not meet for the second time for filling up the vacancies which could not be anticipated for the holding of the DPC for the earlier year, the procedure of drawing up of yearwise panels may be followed when it meets next for preparing panels in respect of the vacancies that arise in subsequent year(s). So, as per the directions in the aforesaid case, respondents were directed to hold the DPC in April, 1992 and they were directed that the vacancies falling within 1992-93 should be taken into reckoning while drawing up the panel. This direction was, however, not contrary to the instructions of the Government inasmuch as the DPC meeting in April, 1992 could as well prepare a separate panel for remaining vacancies of 1991-92 and also for the vacancies falling between 1992-93. So in drawing up this eligible list for consideration of this DPC in April, 1992, we have to take

into account the position obtaining as on 31.3.92 for the panel of 1991-92 separately and later on, subsequent vacancies arising during 1992-93 for drawing up the panel of 1992-93. It is stated that the respondents 4 to 8 have qualified in the departmental examination, the results of which were declared on 13.1.92, i.e., prior to the date of judgment in the above case and, therefore, ^{panel} for the BPS for the remaining posts in 1991-92 had to be drawn up. These respondents have also to figure in the eligibility list according to their seniority in the grade of Inspectors. If yearwise panel for 1991-92 and 1992-93 is to be prepared in the DPC held in April, 1992 for the remaining vacancies, the eligibility list has necessarily to include the names of such of those respondents who are senior to the applicant and who have qualified in the departmental examination by that time and, therefore, the inclusion of the respondents 4 to 8 in the impugned list at Annexure A-1, cannot be said to be irregular. No doubt in accordance with the directions of the Tribunal, the respondents have also to consider the vacancies arising in 1992-93 for preparation of panel for 1992-93. Thus, we do not see any irregularity in the Notification of the respondents publishing the list as per their letter dated 6.3.92 impugned in this application and, therefore, the prayer in the application for quashing this letter cannot be accepted.

9. In the conspectus of the above discussion, we do not find any merit in this application. The application is accordingly dismissed. There shall be no order as to costs.

/Rakesh/


(K. MUTHUKUMAR)
MEMBER (A)


(SMT. LAKSHMI SWAMINATHAN)
MEMBER (J)