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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

1. O.A. NO. 2751 of 1992
2. O.A. NO. 4 of 1992
3. O.A. NO. 2969 of 1992
4. O.A. NO. 825 of 1993

New Delhi this the 20th day of January, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

1. O.A. NO. 2751/92

R. R. Gautam son of late
Shri A. L. Gautam,
Resident of D-50,
Government Quarters,
Dev Nagar,
New Delhi - 110005.

2. O.A. NO. 4/92

Sukhdev Chand,
Deputy Commissioner of
Income Tax (Appeals),
Central Range-I,
Calcutta.

3. O.A. NO. 2969/92

J. R. Tamta S/O Late Shri
Tula Ram, Commissioner of
Income Tax, Ayakar Bhawan,
Ahmedabad.

4. O.A. NO. 825/93

Dr. V. ... Gupta son of Late
Shri B. K. Gupta,
Resident of C-II/2,
Bapa Nagar,
New Delhi.

.... Applicants

(All the Applicants represented by Advocate
Shri P. P. Khurana)

Versus

1. Union of India through the
Secretary to the Govt. of India,
Ministry of Finance,
North Block, New Delhi.

2. Central Board of Direct Taxes
through its Chairman, Department
of Revenue, Ministry of Finance,
North Block, New Delhi.

Respondents

(By Sr. Advocate Shri Vinod Kanth with Shri
V. P. Uppal, Advocate)

O R D E R

(11) Hon'ble Mr. Justice V. S. Malimath —

The petitioners in these four cases have prayed for issue of a writ in the nature of mandamus directing the respondents to accord them promotion to the cadre of Commissioners of Income Tax in pursuance of the deliberations of the Departmental Promotion Committee (for short DPC) held in October, 1986, September, 1987 and April, 1988 on the basis of the principle of seniority-cum-merit. All the petitioners were in the feeder cadre of Deputy Commissioners. They allege that several juniors have been promoted even though the petitioners were found fit and suitable by the DPC applying the principle of selection-on-merit. The only contention urged by the learned counsel for the petitioners in all these four cases is that they have been denied promotion to the cadre of Commissioners the respondents having applied the wrong basis for effecting promotions.

2. It is the agreed case of the parties that the DPC assessed the petitioners as 'good' meaning thereby they were fit and suitable for promotion. The respondents have taken the stand that promotion to the cadre of Commissioners is governed by the principle of selection-on-merit and not on the principle of seniority subject to rejection of the unfit and unsuitable. They have taken the stand that the candidates in the feeder cadre who fell within the zone of consideration were assessed by the DPC as 'outstanding', 'very good' and 'good' among those who were found fit and suitable for promotion. It is

their case that persons who were junior to the petitioners came to be promoted in preference to them as they had secured higher grades on a proper assessment by the DPC. So, the only question that falls for consideration in these cases is as to whether promotion to the cadre of Commissioners of Income Tax is governed by the principle of selection on merit or on the basis of the principle of seniority subject to rejection of unfit and unsuitable.

3. The learned counsel for the petitioners submits that the petitioners' contention is supported by the judgment of the Ahmedabad Bench of the Central Administrative Tribunal rendered in O.A. No. 248-89 between P. L. Khandelwal vs. Union of India on 15.9.1990. It was also pointed out that the said judgment was challenged by the respondents in the Supreme Court and the Supreme Court has dismissed the Special Leave Petition. It was also pointed out that the judgment of the Ahmedabad Bench in Khandelwal's case was followed by the Principal Bench of the Tribunal in O.A. No. 512/87 between R. A. S. Gautam & Ors. vs. Union of India & Anr. on 2.8.1991. The review application filed against the said judgment was rejected on 19.2.1992 and SLP No. 9549/93 was rejected on 12.8.1993 by the Supreme Court. On the strength of these decisions, it was maintained by the learned counsel for the petitioners that there are binding decisions fully supporting the claim of the petitioners. The petitioners are right in maintaining

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It is the Ahmedabad Bench of the Tribunal has held in Khandelwal's case that promotion to the cadre of Commissioners of Income Tax is governed by the principle of seniority-cum-merit meaning thereby that the senior person is entitled to be promoted unless he is found unfit or unsuitable, even if his junior is found to be of outstanding merit. The counsel for the respondents, however, submits that the decision of the Tribunal in Khandelwal's case does not lay down the law correctly. They maintain that the said decision has been rendered ignoring the decision of the Supreme Court reported in AIR 1977 SC 757 - Union of India & Ors. vs. Majji Jangammayya & Ors. They also maintain that the positive decision in Khandelwal's case cannot be regarded as having been affirmed by the Supreme Court on merits. It was further submitted by them that the Ahmedabad Bench came to a wrong conclusion by placing reliance on paragraph 2.9 of the Manual of Office Procedure, Administrative (hereinafter referred to as the 'Manual'), issued by the Directorate of Inspection, Income Tax Department, on the ground that the said paragraph does not represent the accurate summary of the relevant executive orders of the Government regulating promotion to the cadre of Commissioners.

4. Before embarking on consideration of the decisions cited before us, we would like to ascertain the relevant provisions that regulated promotion to the cadre of Commissioners. It is not disputed that promotion to the cadre of Commissioners was governed by executive orders, the statutory rules in this behalf

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having been promulgated for the first time on 12.5.1988. We are required to examine in this case the position that entailed before 12.5.1988. It may, however, be mentioned here that the statutory rules that came into force on 12.5.1988 in express terms prescribe that promotion to the cadre of Commissioners shall be by selection on merit. The petitioners, as already stated, relied upon paragraph 2.9 of Part B: Gazetted Cadre — Recruitment & Promotion of the Manual, which reads as follows :—

"2.9 Asstt. Commissioner to Commissioner
Level-II.—8 years service as A.C.
Basis: Seniority-cum-merit."

For the sake of convenience, we shall also extract the previous paragraph 2.7 which provides for promotion from the cadre of Income Tax Officers to the cadre of Assistant Commissioners, as follows :—

"2.7 ITO to Asstt. Commissioner.—
Minimum service of eight years' as
ITO Group 'A' — Seniority-cum-merit."

It is thus seen that promotion to the cadre of Assistant Commissioners as also to the cadre of Commissioners Level-II is governed by the same principle, seniority-cum-merit. It is not disputed that the expression 'Assistant Commissioner' should be read as 'Deputy Commissioner', and the expression 'Commissioner Level-II' as 'Commissioner', having regard to the change in designations that was brought about. The petitioners' counsel relied upon paragraph 2.9 of the Manual in support of their contention that promotion to the cadre of Commissioners has to be

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made on the basis of seniority-cum-merit and not by selection on merit. The Ahmedabad Bench of the Tribunal in Khandelwal's case has rendered the decision construing the expression 'seniority-cum-merit' in paragraph 2.9 of the Manual. The stand taken by the respondents is that paragraph 2.9 of the Manual does not represent the precise summary of the executive orders regulating promotion to the cadre of Commissioners.

In their case that it is a rough compilation and not meant to be a collection of the relevant orders of the Government but contains a summary of the relevant orders for ready reference and administrative convenience. A Division Bench of the Tribunal in O.A. No. 43/38 between M. K. Meerani & Ors. vs. Union of India & Ors. decided on 19.10.1993 said on examination of the Manual as follows :-

"...What has been incorporated in the Manual is the gist of what is obviously contained in the relevant orders. It is not an extract of the orders as such."

As there is serious controversy as to whether the statement in paragraph 2.9 of the Manual is accurate representation of the relevant executive orders governing promotion to the cadre of Commissioners, it has become necessary for us to examine the basic order governing promotion to the cadre of Commissioners.

5. The respondents have placed along with their reply at Annexure R-III in O.A. 2751/92 the Reorganisation Rules, 1944 issued by the Government of India, Finance

Department (Central Revenues) on 29th September, 1944.

The preamble of the said Rules reads as follows :-

"I am directed to say that, with a view to improving the incometax administration, the Government of India have, in consultation with the Federal Public Service Commission, decided to reconstitute and classify the existing Incometax Services, Class I and II. The Services as reconstituted will consist of :..."

Central Services Class-I as per the said Rules consist of Commissioner of Income Tax, Assistant Commissioner of Income Tax, Income Tax Officers Grade I and Income Tax Officers Grade II. The relevant portion of paragraph 2 of the said Rules pertaining to recruitment may be extracted as follows :-

2. Recruitment.

(a) Commissioners of Incometax (Class I Service).

Recruitment of the grade of Commissioners of Income-tax will be made by selection from among the Asstt. Commissioners of Income-tax and by the appointment of officers borne on the Finance and Commerce Departments Cadre (Pool).

(b) Assistant Commissioners of Incometax (Class I Service).

Recruitment to this grade will be made by selection of Incometax Officers, Grade I (Class I Service) and by the appointment of suitable officers from the Fin. and Com. Departments Cadre (Pool).

(c) Incometax Officers, Grade I (Class I Service).

These officers will be appointed by selection from Grade II which will come into being under the new scheme, and till the reorganisation is complete from the existing grade I of Incometax Officers in Class II Service, and the procedure will be as follows: -"

This is followed by the detailed procedure for preparing a select list for promotion on the basis of merit.

The respondents have stated on oath that these Rules remained in force until they were replaced by the statutory rules promulgated by the President under Proviso to Article 309 of the Constitution on 12.5.1988. The petitioners have not placed any order or statutory provision to show that these Rules in so far as they prescribe the method of promotion, were amended or superseded until the statutory rules came into force on 12.5.1988. There is an illuminating judgment of the Madras High Court rendered in writ petition Nos. 2092 and 2093 of 1984 by Justice S. Ratnavel Pandian, as he then was, between K. Subramanian & Ors. vs. Secretary, Department of Personnel and Administrative Reforms, Central Secretariat, New Delhi & Ors. on 26.10.1984. His Lordship has after exhaustive examination held that the post of Commissioner of Income Tax came into since 1944 when the Income Tax Services Class I and II were reorganised by the Reorganisation Rules on 29.9.1944. On examination of the Reorganisation Rules, His Lordship held that the post of Commissioner of Income Tax Level-II is only a selection post and that the criteria laid down for the selection post is merit-cum-seniority. In paragraph 43 of the judgment, the following finding has been recorded :-

"43. For all the reasons stated above, the first contention raised by Mr. G. Ramaswamy cannot be accepted and I hold that the promotions for the post of C.I.T. Level II from among the posts of Asst. Commissioners of Income-tax are by selection method based on merit-cum-seniority and not non-selection method based on merit-cum-fitness."

The writ petitions were dismissed as follows:-

"79. In view of the above discussions, I hold that the reliefs sought in these writ petitions, viz., for writs of mandamus directing respondents 1 to 3 to follow the procedure of seniority-cum-fitness, and to forbear from following the selection methods, for making promotions to the post of C.I.T., Level II, cannot be granted."

6. Thus, it is clear that promotion to the cadre of Commissioners was not governed by the Reorganisation Rules, 1944 which prescribes that promotion should be by selection on merit and not on the basis of seniority-cum-merit. Paragraph 2.9 of the Manual does not correctly represent the relevant provision of the Reorganisation Rules. Paragraph 2.9 of the Manual cannot, therefore, form the foundation for the rights claimed by the petitioners.

7. The judgment of the Ahmedabad Bench of the Tribunal in Khandelwal's case is based on paragraph 2.9 of the Manual and not on the provisions of the Reorganisation Rules, 1944. It is unfortunate that paragraph 2.9 of the Manual does not accurately summarise the contents of the Reorganisation Rules in so far as they prescribe the method of promotion to the cadre of Commissioners. It is also unfortunate that the respondents did not place the Reorganisation Rules before the Ahmedabad Bench which decided Khandelwal's case or before the Principal Bench which decided the case of Gautam. We fail to see why the respondents did not place the aforesaid judgment of the Madras High Court in Subramaniam's case when Khandelwal's and Gautam's cases were decided by the Ahmedabad and Principal Bench respectively. It was, however, maintained by the learned counsel for the petitioners

that we are bound by the decision in Khandelwal's case. It was argued ~~argued~~ that the decision of the Ahmedabad Bench in Khandelwal's case has been affirmed by the Supreme Court. The order dismissing the SLP against the decision of the Ahmedabad Bench is produced as Annexure A-7 with O.A.2751/92, which reads as follows :-

"This case has been referred to a three Judge Bench as the decision in Y.V. Rangaiah's case requires re-consideration. It is brought to our notice that Y. V. Rangaiah's case has been considered by a larger Bench of three Judges in P. Mahandran v. State of Karnataka (1989 (Suppl) 2 SCR 385). Order granting leave is therefore, recalled and Special leave petition is dismissed."

It is clear from this order that the order granting special leave was recalled and the SLP was dismissed. Therefore, The Supreme Court cannot be regarded as having dismissed the SLP with a speaking order. It is not, therefore, possible to construe the order of the Supreme Court as having the effect of affirming on merits the decision of the Ahmedabad Bench of the Tribunal in Khandelwal's case. Hence, the principle / Khandelwal's case cannot be pressed into service as a binding precedent under Article 141 of the Constitution. The decision in Khandelwal's case has to be regarded ~~as~~ only as a decision of the Tribunal and not as a decision of the Supreme Court. Same is the position in regard to the decision of the Principal Bench in Gautam's case rendered in O.A. No. 512/87. As already stated, the decision of the Ahmedabad Bench in Khandelwal's case was followed by the Principal Bench. The said decision was challenged in SLP No. 945/93.

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The order dismissing the said SLP dated 12.8.1993 was placed for our perusal during the course of the arguments. We find that the SLP was dismissed without a speaking order. Hence, it is not possible to hold that the decision of the Principal Bench in Gautam's case must be regarded as having been affirmed on merits by the Supreme Court. The decision of the Principal Bench in Gautam's case also cannot be regarded as binding precedent of the Supreme Court under Article 141 of the Constitution. It can only be pressed into service as a decision of the Principal Bench of the Tribunal.

8. It was next urged by the learned counsel for the petitioners that the decisions of the Ahmedabad Bench in Khandelwal's case of the Principal Bench in Gautam's case should be followed by us as binding precedents. The counsel for the respondents, however, urged that the said decisions do not lay down the law correctly, they having been rendered without considering the Reorganisation Rules, 1944 and the relevant decision of the Supreme Court. It was urged that they cannot be regarded as binding precedents.

9. We have already held that promotion to the cadre of Commissioners was governed by the Reorganisation Rules and not by paragraph 2.9 of the Manual. In Khandelwal's case, the Ahmedabad Bench rendered its decision on the basis of paragraph 2.9 of the Manual without considering the relevant order which governs promotion, namely, Reorganisation Rules, 1944. There was already an earlier decision of the Madras High Court which was binding on the respondents wherein it has been held that promotion to the cadre of

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Commissioners has to be made by selection on merit and not on the basis of the principle of seniority-cum-merit.

10. It was further urged that the decision of the Tribunal in Khandelwal's case and Gautam's case cannot be followed as binding precedents the said decisions having been rendered without taking into consideration the law laid down by the Supreme Court in Jangamayya's case. In that case what fell for consideration before the Supreme Court is the principle governing promotion to the cadre of Assistant Commissioners. After an exhaustive examination, the Supreme Court has held that the promotion to the cadre of Assistant Commissioners was by selection on merit and not on the basis of seniority-cum-merit. We have already extracted the relevant paragraphs of the Reorganisation Rules, 1944 governing promotion to the cadre of Assistant Commissioners and Commissioners. For the post of Commissioner of Income Tax, the method prescribed reads "Recruitment of the grade of Commissioners of Income-tax will be made by selection from among the Ass't. Commissioners . . .", and so far as the promotion to Assistant Commissioner of Income Tax is concerned, it provides "Recruitment to this grade will be made by selection of Income tax Officers, Grade I . . ." The principle governing both the posts is the same, namely selection on merit and not seniority-cum-merit.

11. As the provisions of the Reorganisation Rules regarding promotion to the cadre of Assistant Commissioners are identical with the provisions regulating

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promotion to the cadre of Commissioners, it follows that the law laid down by the Supreme Court in Jangamayya's case governs equally promotion to the cadre of Commissioners. This binding decision of the Supreme Court in Jangamayya's case was not noticed by the Tribunal when it decided Khandelwal's case and Gautam's case. The Supreme Court having held that promotion to the cadre of Assistant Commissioners by selection on merit and not by applying the principle of seniority-cum-merit, we have no hesitation in holding that the same principle governs promotion to the cadre of Commissioners as well. We are bound to follow the principle laid down by the Supreme Court in Jangamayya's case and not the decisions of the Tribunal in Khandelwal and Gautam's cases where a contrary view has been taken without noticing the binding decision of the Supreme Court. The said two decisions must, therefore, be regarded as having been rendered ~~per incuriam~~. With great respect, we cannot follow them as binding precedents. The judgment of the Madras High Court rendered by Justice Pandian in K. Subramaniam's case is directly on the point wherein it has been laid down that promotion to the cadre of Commissioners is governed by the principle of selection on merit and not on the principle of seniority-cum-merit. The same principle has been laid down by the Supreme Court in Jangamayya's case. We have, therefore, no hesitation in following these decisions and holding that promotion to the cadre of Commissioners was required to be made in accordance with the Reorganisation Rules, 1944 by the selection on merit and not on the basis of seniority-cum-merit. As admittedly, the respondents

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have effected promotions by selection on merit,
the promotions cannot be faulted.

12. The respondents also contended that these
applications are barred by limitation. As on
merits, we have held that the petitioners have not
made out a case for interference, we have not
considered it necessary to go into the question.

13. For the reasons stated above, all these
applications fail and are dismissed. No costs.

(S. R. Adige)
Member (A)

(V. S. Malimath)
Chairman

/as/

Attested
S. Suresh Kumar
24/11/94

Court Offices
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House,
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