

Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.999 of 1986.

(Civil Misc. Writ Petition No.6411 of 1983)

Dr. ON Tripathi and another Petitioners

Vs.

Central Board of Direct Taxes and 19 others Respondents.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This writ petition under Article 226 of the Constitution of India relating to dispute, regarding seniority has been received by transfer from the High Court of Judicature at Allahabad under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The petitioners were selected as Income Tax Officers (hereinafter referred to as ITOs), Class I (Grade II) on the basis of the Indian Administrative Service Examination held by the Union Public Service Commission in 1957 and had joined the service on 8.9.1958 and 13.1.1959 respectively. In a dispute regarding seniority between the directly recruited ITOs Class I (Grade II) and promotee ITOs, the matter went upto the Hon'ble Supreme Court in the case of S.G.Jaisinghani Vs. Union of India (A.I.R.1967 SC-1427) and according to the directions of the Hon'ble Supreme Court in that case, a seniority list of ITOs

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Class I was prepared by the Central Board of Direct Taxes and the Government of India, respondent nos. 1 and 2, on 15.7.1968. The correctness of the said seniority list being challenged before the Hon'ble Supreme Court in another case B.S.Gupta Vs. Union of India (A.I.R.1972 SC-2627), the Hon'ble Court struck down the same and directed the respondent nos. 1 and 2 to prepare another seniority list after framing new set of rules. In paragraph 27 of the judgment, certain other directions were given, which may require a discussion in the later part of this judgment. The respondent no.2 promulgated Income Tax Officers (Class I) Service (Regulation of Seniority) Rules, 1973, which came into effect w.e.f.16.1.1959. The new seniority list prepared by the Government in accordance with the said rules and the rules framed as above were produced in the case of B.S.Gupta, which was kept pending by the Hon'ble Supreme Court. The said case was finally decided on 16.4.1974 as reported in A.I.R.1974 SC-1618 and the correctness of the seniority list and the validity of the seniority rules were upheld by the Hon'ble Supreme Court in that case.

3. According to the seniority list of ITOs Class I as approved by the Hon'ble Supreme Court in the case of B.S.Gupta, the name of the petitioner no.1 was shown at sl.no.473 and that of petitioner no.2 at sl.no.479. The respondent nos. 3 to 20, who

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are also the members of the service of the petitioners, were all shown below the petitioner no.1 while the respondent nos. 3 to 5 were shown between the petitioners and respondent nos. 6 to 20 were shown below the petitioner no.2 in the seniority list as is clear from its extract, annexure 1, to the petition. The petitioners no.1 and 2 were provisionally appointed as Assistant Commissioners of Income Tax w.e.f.10.6.1970 and 1.9.1970 respectively in accordance with the report of the Departmental Promotion Committee (in short DPC) held in April/May, 1970. The respondent nos. 3 to 9 and 11 to 20 were also provisionally promoted in the aforesaid DPC. Respondent no.10, who was a promotee ITO, was promoted provisionally earlier. These promotions of the petitioners and respondent nos. 3 to 20 and some more promotions of Assistant Commissioners of Income Tax were made by respondent no.1 and 2 on provisional basis on the basis of the then existing seniority list of the ITOs.

4. After the approval of the seniority list of the ITOs by the Hon'ble Supreme Court in the case of B.S.Gupta Vs. Union of India (A.I.R.1974 SC-1618), the first DPC was held on July 23/24, 1974 and 112 existing vacancies and 10 anticipated

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vacancies to the post of Assistant Commissioners of Income Tax arising after the last provisional promotions were considered by the Committee. The provisional promotions made in the earlier years were not regularised by this DPC. The selections made by the DPC held in 1974 were again challenged by some affected persons and the matter again went before the Hon'ble Supreme Court in the case of Union of India Vs. Majji Janga Mmayya (A.I.R.1977 SC-757). Certain observations made by the Hon'ble Supreme Court in its first judgment in the case of B.S.Gupta were considered and it was directed that the fact whether an officer is eligible for promotion or not should be decided with reference to the date of the Committee meeting and the promotions to the post of Assistant Commissioners on the basis of the selection list prepared by the Committee are to be made prospectively and not retrospectively.

5. The contention of the petitioners in this case is that according to the directions of the Hon'ble Supreme Court in the case of M.Janga Mmayya (Supra), the petitioners and respondent nos. 3 to 20 and others promoted provisionally earlier should have been considered for promotion in the DPC

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held on July 23-25, 1974 after treating all provisional promotions of earlier years as existing vacancies. The respondent nos. 1 and 2 issued a seniority list of the Assistant Commissioners of Income Tax with their letter dated 15.4.1978, copy annexure 2. The observations of the Hon'ble Supreme Court made in paragraph 27 of its judgement in the case of B.S. Gupta (Supra) were quoted in that letter and it was mentioned that the cases of the officers who were eligible for consideration in accordance with those observations were considered for promotion as Asstt. Commissioners of Income Tax from the year 1962 onwards and the DPC has completed redrawing of select panel of promotions from 1962 to 1970. The respondent nos. 3 to 20 were deemed to have been selected in September 1968 to February 1969 and April/May, 1970 in the process known as deemed DPC in the Income Tax Department. The grievance of the petitioners is that in preparing this seniority list of the Asstt. Commissioners of Income Tax, the respondent nos. 1 and 2 did not take into account the observations of the Hon'ble Supreme Court in the case of M. Janga Mmayya and as a consequence of which, the seniority position of the petitioners was adversely affected. The petitioner no.1 was shown at sl.no.335 below respondent nos. 15 to 20 and respondent no.2 was shown at sl.no.372 below respondent nos. 9 to 20. After considering the objections filed by the petitioners and some other affected persons against the said seniority list dated 15.4.1978, the respondent no.2 prepared another seniority list dated 15.4.1980, copy annexure 3, showing all the

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respondent nos. 3 to 20 above them. Acting on that seniority list, the respondent no.2 circulated the seniority list of Assistant Commissioners of Income Tax as on 1.1.1981 showing all the respondent nos. 3 to 20 as senior to the petitioners vide copy annexure 5. Thereafter, one other revised seniority list dated 1.7.1981, copy annexure 6, making changes in respect of 4 other officers was issued by the Government and the objections filed by the petitioners against the said seniority list were not heeded.

6. Both the petitioners and the respondent nos. 3 to 20 were confirmed as Assistant Commissioners of Income Tax vide notification dated 22.4.1981 and all of them except respondent no.14 have now been promoted as Commissioners of Income Tax but none of them has been confirmed on that post so far. A copy of the seniority list of Commissioners of Income Tax prepared by the respondent no.2 on 1.12.1982 is annexure 10 to the petition. It is alleged that both the petitioners have a distinguished academic career and service record and instead of giving due recognition to their merit, they were down graded by the respondent nos. 1 and 2 in the various seniority lists mentioned above.

7. The petitioners have prayed that the seniority list of Commissioners of Income Tax, annexure 10, and the seniority lists of Assistant

Commissioners of Income Tax dated 15.4.1980, 1.1.1981 and 1.7.1981 (annexures 3, 5 and 6) be quashed and the seniority of the petitioners and respondent nos. 3 to 20 be fixed in accordance with the judgment of the Hon'ble Supreme Court in the case of M. Janga Mmayya and respondent nos. 1 and 2 be directed to refix the seniority of the petitioners and respondents no. 3 to 20 in the cadre of Commissioners of Income Tax accordingly on the grounds that in preparing the seniority list, the respondent nos. 1 and 2 did not take into consideration the principles of seniority and promotion laid down by the Hon'ble Supreme Court in the case of M. Janga Mmayya and wrongly placing reliance on the observations made in the case of B.S. Gupta, retrospective promotions ^{were made of} ~~was made to~~ certain persons and the seniority list of the Commissioners of Income Tax was prepared without giving any opportunity of hearing to the petitioners and the seniority lists so prepared are arbitrary and in violation of Articles 14 and 16 of the Constitution of India.

8. The petition has been contested only on behalf of ~~the~~ respondent nos. 1 and 2. The respondent nos. 3 to 20 neither filed any counter affidavit nor appeared before us to contest the case. In the counter affidavit filed on behalf of the respondent nos. 1 and 2, it has been stated that the newly constituted DPC for review of the findings of the original DPCs had adopted the same criteria for selection as ~~were~~ adopted by the original DPCs as detailed in paragraph 13 of the Counter Affidavit.

The same criteria were adopted by the DPC held in July 1974 and it had before its consideration zone of ITOs (class I) arranged in revised order of seniority excluding the officers who had already been promoted as Assistant Commissioners. The criteria adopted by the 1974 DPC were challenged in various High Courts and ultimately, the Hon'ble Supreme Court found the same correct and lawful in its decision in the case of M. Janga Mmayya (Supra). The respondent nos. 1 and 2 maintained that the Government was not required to consider the officers who had been provisionally promoted prior to 1974 after treating such promotions as existing vacancies.

9. It was further stated that revised seniority of Assistant Commissioners of Income Tax differed from the previous placement of officers in the grade of Assistant Commissioners in two ways, (1) the revision of the inter se seniority between the promotees and the direct recruits in the lower grade of ITOs had necessarily altered the position of the officers in the revised seniority list of the Assistant Commissioners and (2) the position of some of the officers even in their own category had undergone change because the date on which they became eligible for consideration for selection happened to be different from the respective dates on which they had been selected by the original DPCs for promotion. The review

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DPC meeting in 1978 had considered the petitioner no.1 with respect to the DPC of Sept.1968, Feb.1969 and Sept.1969 but he was not selected on the basis of comparative merit in the first two DPCs and was selected only in the meeting held in Sept.1969 and was given deemed promotion with reference to that DPC. Similarly the petitioner no.2 was also not selected on comparative merit in the first 2 DPCs and was selected with reference to Sept.1969 DPC and it was deemed as his date of promotion.

10. The review DPC was again held to review all the cases and on its recommendation, the seniority list dated 16.4.1980 was issued and the representation made by the petitioners against the same was rejected and they were informed vide letter dated 13.5.1981. Their subsequent representations and the representations made by some other officers are under consideration before the Government. The principles and procedures for promotion from the grade of ITO (Group A) to the grade of Assistant Commissioners of Income Tax as upheld by the Hon'ble Supreme Court in the case of M.Janga Mmayya (Supra) were strictly followed by the review DPC and the contentions of the petitioners to the contrary are not correct.

11. The respondent nos. 1 and 2 have further pleaded that the petitioners lost their seniority on account of their having been superseded on the basis of merit and they have no right to claim

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promotion to the higher grades except in accordance with their seniority. In the case of promotion, the posts are filled on the basis of seniority-cum-merit of the officers in the zone of consideration and the officers with better record of service can supersede the officers with not that good record of service. The petitioners were superseded after giving due consideration to their service record by the DPC and their allegations to the contrary are not correct. As the petitioners have been superseded by the respondent nos. 3 to 20 on the basis of merit, no prejudice has been caused to the petitioners and they have no right to challenge the impugned seniority lists. It was also alleged that the petition filed by the petitioners is very much belated as the first revised seniority list was issued on 15.4.1978.

12. In the rejoinder filed on behalf of the petitioners, they reiterated the ground that the seniority list should have been prepared not in accordance with the directions given in paragraph 27 of its first judgment ~~by~~ the Hon'ble Supreme Court in the case of B.S.Gupta but should have been prepared in accordance with ^{the} clarification made by the said Court in the case of M.Janga Mmayya (Supra). According to them, promotion to the post of Assistant Commissioners of Income Tax cannot be made retrospectively nor could the seniority be decided on the basis of retrospective promotions. The petitioners are senior to the respondent nos. 3 to 20 but by applying the wrong deemed procedure, they have

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been given seniority over their head. The petitioners have been superseded in the matter of fixation of seniority arbitrarily because the DPCs have not followed the law laid down by the Hon'ble Supreme Court in the case of M.Janga Mmayya (Supra) and the respondent nos. 1 and 2 have not cared to consider the detailed representations made against the impugned seniority list, and, the letter dated 29.11.1985 informing that their representations of 1981 have been rejected, has been received by the petitioners now.

13. A number of undisputed material facts emerge from a perusal of the pleadings of the parties and we will like to place them here for the sake of convenience. The petitioners and respondent nos. 3 to 20, all originally belonged to the service of Income Tax Officers Class I and their inter-se seniority as determined by the Government was approved by the Hon. Supreme Court in its second decision on 16.4.1974 in the case of B.S.Gupta. There is now no dispute regarding their seniority in the cadre of ITOs Class I. As all the petitioners and respondent nos. 3 to 20 had been promoted as Assistant Commissioners by 16.4.1974, the dispute has now arisen regarding their inter-se seniority in the ^{cadre} ~~grade~~ of Assistant Commissioners of Income Tax. Under the directions of Hon'ble Supreme Court in its first judgment in the case of B.S.Gupta (Supra), the Government of India had framed new set of

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rules known as Income Tax Officers (Class I) Service (Regulation of Seniority) Rules, 1973 and after examining the same, they were found just and fair and in this way, their validity was upheld. The petitioners have not come before us with any allegation regarding the breach of the said rules in determining their seniority and the dispute between the parties appears to be merely regarding the application of certain principles of seniority and promotion laid down by the Hon'ble Supreme Court in its two decisions. It is also not disputed in this case that the petitioners and respondent nos. 3 to 20 all have been confirmed as Assistant Commissioners of Income Tax and all of them, with the exception of respondent no. 14, have now been promoted as Commissioners of Income Tax. In the seniority list of the Asstt. Commissioners of Income Tax prepared by the Government of India, the original seniority of the petitioners in the cadre of ITOs class I has not been maintained and in the seniority list of Asstt. Commissioners prepared on 15.4.1980, copy annexure 3, all the respondent nos. 3 to 20 have been shown senior to the petitioners.

14. We will now proceed to ascertain the principles of seniority and promotion laid down by the Hon'ble Supreme Court, which are to be applied to the case before us. The seniority

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list of 15.7.1968 prepared by the Government of India in accordance with the directions of the Hon. Supreme Court in the case of S.G.Jaisinghani (Supra) was set aside by the Hon'ble Supreme Court in its first decision in the case of B.S.Gupta (Supra) on 16.8.1972 with the observation that the old seniority rules had ceased to operate by reason of the infringement of the quota rule and the seniority list from 16.1.1959 was directed to be prepared in accordance with the rules to be freshly made by the Government of India in that behalf. Further directions made by the Supreme Court in this connection in para 27 of its judgment are relevant and as such, are re-produced below :-

" 27. After the fresh seniority list is made in accordance with the above directions it will be open to any direct recruit or promotee to point out to the department that in the selections made to the post of Assistant Commissioner from 1962 onwards, he being otherwise eligible was entitled on account of the new seniority given to him to be considered for promotion to the post of Assistant Commissioner. The department may have to consider his case for promotion on his record as on the date when he ought to have been considered for selection but not so considered. If he is selected, his position will be adjusted in the cadre of the Assistant Commissioners without affecting the promotee Assistant Commissioners who had been confirmed prior to 22.2.1967- the date on which the Jaisinghani's case was disposed of by this Court."

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15. The Supreme Court had further observed in that case that as the demand for the implementation of the mandamus is still unfulfilled and it can be achieved only after the Government files a proper list of seniority, the proceedings have to be kept pending till such seniority list is prepared and filed in the Court. The respondent nos. 1 and 2 were accordingly ordered to file such list in Court within 6 months.

16. The real dispute between the parties is regarding ^{the} implementation of the directions contained in this paragraph. It appears from Annexure 2, the letter dated 15.4.1978 of the respondent no.2 under which the seniority of the Assistant Commissioners of Income Tax was revised by it that some officers had made representations for refixation of their seniority in the grade of Assistant Commissioners in pursuance of the directions of the Hon'ble Supreme Court contained in paragraph 27 above and the matter was placed before a duly constituted DPC. The DPC had considered the cases of officers, who were otherwise eligible, became entitled to the new seniority given to them for promotion as Assistant Commissioners of Income Tax, on each of the occasions when the concerned DPC had met from the year 1962 onwards. The DPC had completed the redrawing ~~the~~ of

select panels of promotions made between 1962 and 1970. On the basis of the selection so made, the positions of the officers concerned were re-adjusted and the officers were deemed to have been selected retrospectively on the basis of deemed DPC from 1962 to 1970. Even in the case before us, the contesting respondents have adhered to this line of action and their contention is that the directions of the Hon'ble Supreme Court contained in paragraph 27 above are binding on all the parties and the comparative positions of the officers were rightly adjusted in the cadre of Assistant Commissioners in accordance with the said directions.

17. On the other hand, the stand of the petitioners is that after the case of B.S.Gupta (supra) the matter of seniority was reconsidered by the Hon. Supreme Court in the case of M.Janga Mmayya (Supra) and in that case, the Hon'ble Supreme Court had clarified its earlier directions given in paragraph 27 of the first judgment in the case of B.S.Gupta quoted above and in view of the said clarification, the respondents no.1 and 2 committed an error in giving retro-spective promotion to the officers from April 1962 onwards and this wrong approach made in contravention of the decision of the Hon'ble Supreme Court in the latest case on the point has placed them in a disadvantageous position regarding their seniority in their cadre despite their best service record.

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18. In a bunch of appeals filed by the Union of India and others in the case of M. Janga Mmayya (Supra), the selection list for promotion of Income Tax Officers Class I Service to the post of Assistant Commissioners of Income Tax was under challenge. One of the objections raised in those appeals on behalf of the respondents was based on the aforesaid observations of paragraph 27 made by it in the first decision in the case of B.S. Gupta and it was contended that after the finalization of the seniority list the department should consider the case of all eligible officers for promotion on the basis of their records as on the date when they ought to have been considered for selection but who were not so considered. This contention was dealt with in paragraphs 54 to 58 of its judgment by the Supreme Court. The findings of the Hon'ble Supreme Court in this connection are contained in paragraph 58 of the judgment, which is reproduced below :-

" The observations of this Court in Bishan Sarup Gupta's case (AIR 1972 SC 2627) (supra) are that if as a result of the fresh seniority list it is found that any officer was eligible for promotion to the post of Assistant Commissioner on account of his place in the new seniority list, the department might have to consider his case for promotion on his record as on the date when he ought to have been considered and if he would be selected his position will be adjusted in the seniority list of Assistant

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Commissioners. The object is to see that the position of such a person is not affected in the seniority list of Assistant Commissioners because he is actually promoted later pursuant to the new seniority list, although according to the new seniority list itself he should have been promoted earlier. The observations do not mean that although the Committee can meet for the selection of officers for promotion to the post of Assistant Commissioner only after the seniority list is approved by this Court, the selection would be deemed to be made at the time when a vacancy in the post of Assistant Commissioner occurred and the eligibility of officers for selection will be determined by such deemed date of selection. No employee has any right to have a vacancy in the higher post filled as soon as the vacancy occurs. Government has the right to keep the vacancy unfilled as long as it chooses. In the present case, such a position does not arise because of the controversy between two groups of officers for these years. The seniority list which is the basis for the field of Choice for promotion to the post of Assistant Commissioner was approved by this Court on 16 April, 1974. Promotions to the post of Assistant Commissioners are on the basis of the selection list prepared by the Committee and are to be made prospectively and not retrospectively."

19. In our opinion, the contention made on behalf of the petitioners has force and the approach made by the respondent nos. 1 and 2 to the point in issue is not correct. The seniority list of the Income Tax Officers Class I was finally approved by the Hon'ble Supreme Court in its second judgment in the case of B.S. Gupta and to our mind, the exercise made by the respondent nos. 1 and 2 after the said approval of the seniority list in accordance with the directions contained in paragraph 27 of the first judgment in the case of B.S. Gupta was

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without taking into consideration the clarification made by the Hon'ble Court in the subsequent case of M.Janga Mmayya is not correct and this has really created the anomalous position regarding the inter-se seniority of the petitioners and respondent nos. 3 to 20.

20. The directions of the Hon'ble Supreme Court in paragraph 58 of its judgment in the case of M.Janga Mmayya quoted above and underlined by us for the sake of emphasis clearly lay down that the seniority list of ITOs approved on 16.4.1974 should be the basis for the field of choice for promotion to the post of Assistant Commissioners and the promotion on the basis of the selection list prepared by the DPC was to be made prospectively and not retrospectively. The respondent nos. 1 and 2 have failed to follow these directions of the Hon'ble Supreme Court in revising and refixing the seniority of the petitioners and respondent nos. 3 to 20 in the cadre of Assistant Commissioners of Income Tax.

21. The contesting respondents have stated in paragraph 16 of their counter affidavit that the revision of the inter-se seniority between the promotees and the direct recruits in the lower grade

of Income Tax Officers (Class I) had necessarily altered the position of the officers in the revised seniority list of the Assistant Commissioners and the position of some of the officers even in their own category had undergone change because the date on which they had become eligible for consideration for selection happened to be different from the respective dates on which they had been selected by the original DPC for promotion. In our opinion, these factors might have carried ~~some~~^{little} weight in respect of the seniority of the petitioners, vis-a-vis, other officers of their cadre other than respondent nos. 3 to 20 but so far as the respondent nos. 3 to 20 are concerned, all of them were below the petitioner no.1 and except respondent nos. 3 to 5, others were below even ~~to~~ the petitioner no.2 in the seniority list of Income Tax Officers Class I, copy annexure 1, and after the approval of the seniority list by the Hon'ble Supreme Court, this seniority of the petitioners vis-a-vis respondent nos. 3 to 20 could ~~not~~^{hardly & so} be disturbed by the respondent nos. 1 and 2. The complete record on the basis of which the inter-se seniority position of the petitioners was changed is not before us. The reports of the DPCs on the basis of which the position of the petitioners was lowered down are also not before us. Neither any party applied to summon the same nor were they summoned by us suo-moto. In the absence of the

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necessary material, we are unable to appreciate the change in the seniority position of the petitioners vis-a-vis respondent nos. 3 to 20 when all were promoted as Assistant Commissioners by the same DPC in 1970. Apparently, this appears to be due to the misinterpretation of the principles of seniority and promotion laid down by the Hon'ble Supreme Court in the aforesaid case. Without going further in detail, we feel convinced that there is force in the contention of the petitioners and their inter-se seniority has not been determined by the respondent nos. 1 and 2 in accordance with law.

22. The writ petition is accordingly allowed and the impugned seniority lists of Assistant Commissioners and Commissioners of Income Tax are hereby quashed and the respondent nos. 1 and 2 are directed to redetermine the seniority of the petitioners vis-a-vis the respondent no.3 to 20 and other concerned officers in the light of the directions and principles laid down by the Hon'ble Supreme Court in paragraph 58 of its judgment in the case of Union of India Vs. M.Janga Mmayya (AIR 1977-SC-757), as discussed above, within a period of 4(four) months. The parties are directed to bear their own costs.

[Signature]
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MEMBER (A)
Dated 18.3.1987
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MEMBER (J)