

(12)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

....

Registration T.A. No. 338 of 1987

(Writ Petition No. 213/ 79)

Vinod Kumar Rai ... Applicant

versus

Union of India and ors.... Respondents

Hon' D.K. Agrawal, J.M.

Hon' Ms Usha Savara, A.M.

(By Hon' Ms Usha Savara, A.M.)

The petitioner filed writ petition no. 213 of 1979 before the Hon'ble High Court, Allahabad, which was transferred to the Tribunal and registered as T.A. No. 338 of 1987. By this petition, the petitioner has impugned Rule No. 4-10, of Chapter 5 (Recruitment and Promotion of the various cadres of Income Tax Department) in so far as it relates to prescribing that Income Tax Inspectors' would be considered for promotion as Income Tax Officer Group 'B', only after they have passed the Departmental Examination prescribed for Income Tax Officers and ^{the} impugned order dated 13-12-1978 issued by Deputy Director (Income Tax) New Delhi (Annexure-2) and prayed for quashing them, and also prayed for a direction to the Respondents to consider the case of the petitioner for promotion from the date he became otherwise, eligible i.e. from 1-1-1974. ^{W.} This prayer was incorporated as an amendment with the permission of the Court by ^{order} dated 16-3-1990. ^{W.}

2. Briefly stated the facts are that the applicant was appointed as Income Tax Inspector at Lucknow on 31-3-1967. He successfully passed the test for ^{W.}

his retention in service as Inspector held in July, 1973 and was subsequently confirmed in 1974. for promotion from the post of Inspector to the post of Income Tax Officer Group 'B', a departmental examination is held in which the general category candidates have to secure a minimum of 50% marks in each subject, with an over all aggregate of 60%. Once an Income Tax Inspector passes this examination, he becomes entitled to be promoted as Income Tax Officer Group 'B' as and when vacancy arises according to the seniority in the cadre. However, it is ~~considered~~ ^{contended} by the ~~Applicant~~ ^{applicant} that there is no purpose in holding the examination - as the applicant as an Income Tax Inspector has already appeared and passed an examination in the same subjects. Secondly, no such examination is held for the promotion of the Inspectors in the Central Excise, and it is only the Income Tax Inspectors who have to undergo a second examination for being promoted to the next higher post as Income Tax Officer, Group 'B'. Thirdly, Section 116 of the Income Tax Act mentions that the authorities of Income Tax, and Income Tax Inspector is one such authority. No such examination is held or prescribed for the other authorities, therefore, the Income Tax Inspectors have been treated differently which is clearly discriminatory. The discrimination between Income Tax Inspectors as a class ^{alleged}, because the scheduled caste/scheduled tribe candidates have to secure only 45% in each subject and 55% in the aggregate whereas the non-scheduled caste/tribe candidates have to secure 50% in each subject and aggregate of 60% in the same examination.

Shri B.K. Srivastava learned counsel for the applicant submitted that the petitioner had an excellent record and had received a cash award of Rs.1000/- for his outstanding performance. He was given charge as Income Tax Officer in Banda before passing the Departmental Examination ^{and} "n" discharged the additional responsibility with utmost satisfaction. Annexure-I which reveals that the petitioner worked in Banda as Income Tax Officer, while also working as Income Tax Inspector is attached. This goes to show that the applicant can shoulder responsibility of an Income Tax Officer. Shri Srivastava further submitted that though the petitioner was senior, yet, several Income Tax Inspectors who were junior to him, had been promoted, as they had passed the examination. However, no other authority mentioned in Section 116 of the Income Tax Act, 1961 was required to pass a second departmental examination before being considered eligible for promotion to the higher rank. Neither an I.T.O. Group 'B' nor I.T.O. Group 'A' is required to pass a second departmental examination for being eligible for promotion to the next higher rank. But, Income Tax Inspectors and I.T.Os Group 'B' work and perform their duties in the execution of the same direct tax laws. Shri Srivastava argued that the petitioner had been authorised to function as an Income Tax Officer in Banda in 1977, and also in 'H' Ward Allahabad in 1981, much before he passed the departmental examination, in 1984. Therefore, it was not necessary to have the said examination for the ^{and} Inspectors as the functions of ~~Inspectors~~ ^{and} I.T.Os. Group 'B' were the same. That being so, prescribing passing of a second examination is unreasonable and arbitrary and therefore, the impugned Rule No. 4.10 of

A2
4

Chapter 5 should be quashed, as also the impugned order dated 13-12-1978 (Annexure-2) and the respondents should be directed to consider the case of the petitioner for promotion from the day he became eligible, that is 1-1-1974.

3. Shri A. Mohiley, learned counsel for the respondents refuted the arguments of the petitioner's counsel. He submitted that promotion to the grade of I.T.Os Group 'B' is made from amongst those Inspectors who have passed departmental examination for Income Tax Officer Group 'B' and have rendered 3 years service in the grade. The basis for promotion is seniority-cum-merit. Although, Income Tax Inspectors are one of the authorities mentioned in Sec. 116 of I.T. Act, they have not been given the power of assessment under the Income Tax Act. The lowest officer endowed with the power of assessment is I.T.O. To ensure that he should be fully qualified to perform the duties assigned to him efficiently and properly under the law, the Government considers it essential that the departmental examination, which comprises of several papers on subjects connected with the purpose of I.T.Os duties has been devised, which is condition precedent ~~to the passing~~ ^{by the Government} ~~for officials~~ ^{by these officials}, who are to function on the post of I.T.Os. Not only that, even the directly recruited I.T.Os have compulsorily to pass the departmental examination and failure to pass the examination, entails discharge from service. Therefore, it is not correct to say that only Inspectors have to pass the departmental examination for I.T.Os.

4. Shri Mohiley further submitted that the nature of duties and functions of Income Tax Inspectors and the I.T.Os group 'B' differ substantially from each other.

A73

other. The I.T.O. is the pivot for the proper administration of all the provisions of direct taxation laws, but the function of the Income Tax Inspector is to assist the I.T.O. in discharge of ~~the~~ statutory functions. To say that there is no purpose in holding departmental examination in the same subject for Inspectors (which he has already passed for retention as Income Tax Inspector) is incorrect as the departmental examination called Income Tax Officer Group 'B' require the candidates to answer the questions with higher standard of knowledge, and with higher standard of valuation. The candidates have to secure a minimum of 50% in each subject with an aggregate of 60% whereas in the first Departmental Examination for Inspectors, the condition for passing is only to secure 50% marks in each of the subjects.

5. So far as the Central Excise Inspectors are concerned, the nature of their duties/ service are quite different from the nature of duties/service of the Income Tax Inspectors. After entering into the service in the department the officials are governed by different set of Rules for purpose of confirmation and promotion. In the Central Excise Department, the Inspectors have to render minimum eight years's service before they become eligible for promotion, where as in the Income Tax Department, minimum service required in the case of "qualified" Inspectors, i.e. who have passed I.T.Os. Group 'B' examination is only three years, and as such, there is no comparison between the Inspectors of the two Departments. The Inspectors of different departments have to function under different statutes ~~and~~ it is not for them to say whether any qualification is

14.

necessary or not.

6. Shri Mohiley also denied the averments of the applicant that he had functioned as I.T.O. Banda. Referring to Annexure-I, he pointed out that it clearly states that the petitioner was ordered to perform the duties of Income Tax Inspector Banda, in addition to his own duties as Income Tax Inspector at Allahabad. He was merely to put up 300 cases u/s 143(i) to the I.T.O., Banda, for finalisation and he was not to sign the assessment orders himself. He was directed only to assist the I.T.O. in finalisation of the assessment.

6. With regard to the contention of the applicant that he was senior, but some of his juniors had been promoted as Officer, Shri Mohiley pointed out that the petitioner had not passed the departmental examination, and, therefore, he was not eligible to be considered for promotion as I.T.O. Group 'B', while his juniors satisfied the requisite condition and were, therefore, eligible for consideration.

7. The relaxation in standard for passing the departmental examination had been given in favour of scheduled caste/tribe candidates in accordance with the Policy of the Government of India, and this is not in violation of Articles 14 and 16 of the constitution. On the other hand, the relaxation is given to promote their interests and in pursuance of Article 46 of the Constitution and cannot be called in question in view of Article 316 of the Constitution. There is a reasonable and legal basis for this relaxation and these candidates constitute a class by themselves. Ad.

8. Shri Mohiley placed reliance upon the decision of the Hon'ble Supreme Court in the cases of Mohd Sidiq Ali vs. Union of India, 1975, SCC (I&S) Page 454, for upholding the validity of classification between two classes of employees under the same employer. He reiterated that the two posts i.e. the Income Tax Inspectors and the Income Tax Officer Group 'B' belong to two different cadres; the distinction between the two is ordained by statute and is necessary for its implementation. He also relied upon the decision of the Hon'ble Supreme Court in the case of Federation of All India Customs and Central Excise Stenographers (Recognized) and others vs. Union of India and others decided in 1988 (Vol-2) Judgment Today, S.C. page 519. The Hon'ble Supreme Court held that the differentiation in two classes can be justified on the basis of the nature and the type of the work done... The Court noted that differentiation was justified on the dissimilarity of responsibility, confidentiality and the relationship with public etc. though there was similarity in the functional work. The administration is required to make a value judgment while classifying the posts and fixing the different conditions of service for them. Shri Mohiley also relied upon the decision in the case of Hundraj Kanyalal Sajnani vs. Union of India reported in Judgment Today 1990, Vol. 2 SC page 145.

9. We have heard both the learned counsel and perused the documents filed by them. The question before us is whether the Rule 4-10 of Chapter 5 (R&P) is arbitrary and purposeless, and for that reason is to be quashed. The petitioners' contention is simple; having once passed the departmental examination for Income Tax Inspectors, he should not again have

to appear for the same papers to become eligible for being considered for promotion to the post of Income Tax Officer Group 'B'. He has relied heavily on Annexure-I to support his claim that he was considered competent enough to discharge the duties as Income Tax Officer, Banda in 1977 - much before he had passed the departmental examination. We have perused Annexure-I with great care and the text of the order is as below:-

* Shri V.K. Rai, Inspector, Income Tax Office, Allahabad (at present posted in C-Ward) is hereby directed also to perform the duties of Inspector of Income Tax Office, Banda in addition to his own duties, with immediate effect. This order will remain effective till a regular Inspector is posted in I.T. Office, Banda.

Sd/- V.K. Misra
Inspecting Asstt. Commissioner
of Income Tax, Allahabad.

Copy forwarded to:

- i) Sri V.K. Rai, Inspector for information. He is directed to go to Banda at once and work there w.e.f. 16th Nov. to 26th Nov. 77 and then again from 28th Nov. 1977 onwards in a manner so as to complete at least 300 cases u/s 143(1) to be put up before the I.T.O., Banda for finalisation before 30th November, 1977.
- ii) x x x x x x
- iii) x x x x x x
- iv) x x x x x x
- v) The I.T.O., D-Ward Allahabad holding additional charge of I.T. Office, Banda, for information. He is directed to take necessary work from Shri V.K. Rai, Inspector in pursuance of this order and issue necessary instructions for his guidance.

4
Sd/- V.K. Misra
Inspecting Asstt. Commissioner
of Income Tax, Allahabad. ■

A perusal of this order makes it quite clear that Shri Rai, Inspector was to perform the duties of an Inspector at Banda in addition to his own duties as Inspector at Allahabad, and that he was to work under the guidance and supervision of the Income Tax Officer, Banda. He was to process 300 cases u/s 143(1) and put them up before the I.T.O. for finalization. In short, he was certainly not working as I.T.O. Banda. He was only assisting the I.T.O. and the final responsibility was to be borne only by the I.T.O. This order is very clear as to the intent of the Inspecting Assistant Commissioner and it is nowhere even remotely mentioned that the petitioner would be acting as I.T.O. Since the duties of the Inspector are clearly distinguishable from the duties of an I.T.O. the responsibility entrusted to each is different and so are the functions. In order to graduate from one cadre to the other, the petitioner who had already passed the Income Tax Inspectors' retention test was required to pass the Examination for promotion to the next higher grade i.e. Income Tax Officer. Though admittedly, the subjects are the same, it is clear that the second examination sets a higher standard of knowledge and valuation and the candidates are required to secure 60% aggregate in the Examination, whereas in the 1st test (which the petitioner passed) only 50% marks in each subject were the requirement. Clearly, the Inspectors who belongs to Class III service have to qualify in this examination before they are promoted to Class II service. So far as the claim of the petitioner that he was authorised to function as I.T.O. in 'H' Ward

:: 10 ::

AS
10

Allahabad in 1981, and therefore, he may be considered as having become eligible from that date i.e. 14-1-1981, ^{in concerned} attention is drawn to the case of S. Ramchandani and anr JT 1990(2)SC 145, wherein the Hon'ble Supreme Court has considered this fact of ad-hoc appointments and adjudicated upon the issue. Merely because an officer of one group performs the functions of the other is no reason for equating the two posts. "Such a demand is ~~irrational~~, for if it is accepted, in ^{no} organization the hierarchy of posts can be justified." We can do no better than follow ~~the~~ the aforesaid decision.

10. The comparison with the service conditions of Inspectors in Central Excise is neither logical nor rational. After persons are recruited to the various departments under the Ministry of Finance, there is no similarity between the duties and the functions performed by them. It has already been pointed out by Shri Mohiley that the Inspectors of Central Excise have to render minimum eight years' service before they become eligible for promotion, whereas Income-Tax qualified Inspectors only put in three years service to become eligible. Obviously, parity with their counterparts in Central Excise is not correct. The decision of the Apex Court in federation of All India Customs and Central Excise Stenographer's (recognized) and Ors JT 1988 (2) SC 519 lays down the basic principles on which differentiation would not amount to discrimination, violative of either Article 14 or Article 16 of the Constitution. It is attracted where equals are treated differently without any

:: 11 ::

A3
11

reasonable basis. Shri Srivastava has not made any real case of discrimination between Income Tax Inspectors and Central Excise Inspectors. That may be because the functions of each are totally different in a different set up and merely because the nomenclature is the same, their avenues of promotion & conditions of eligibility need not be the same.

11. The petitioners' plea of discrimination vis-a-vis the treatment offered to candidates of scheduled caste /tribe hardly merits a reply. The protection given to them by the Constitution of India has the active support of the Apex Court in a catena of decisions.

12. In view of the aforesaid, we are of the firm view that the petitioner's application has no merit. We see no reason to quash the Rule No. 4-10 of Chapter-5 (R & D) which lays down that Inspectors of Income Tax are considered for promotion as Income Tax Officers Group 'B' provided they have passed the Departmental Examination prescribed for Income Tax Officers and have put in service as Inspector for at least three years and are otherwise approved for promotion. Since this is the basic prayer of the applicant, his other prayer for quashing order dated 13-12-78 must also fail. The petition is, therefore, dismissed with no order as to costs.

b. Narain
MEMBER (A)

(sns)

December 14, 1990

Allahabad.

Dr. Qayyum
MEMBER (J) 14.12.90