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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

Registration T.A. No. 1002 of 1987
(W.P. No. 13098 of 1987)

R.C. Agnihotri and others Applicants.

Versus

Union of India and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicants were working as Upper Division Clerks in the Income Tax Department in the year 1978, although they have come from different sources. Prior to 1978, the next promotional post for the upper Division Clerks was the Head Clerks which they could get only after ending five years service and passing the ministerial staff examination. In the year 1978, a cadre of Tax Assistant was created to remove the stagnation on the posts of Upper Division Clerks ~~on~~ ^{as} 1/3rd of the cadre strength of the Upper Division Clerks were promoted in the said newly created cadre of Tax Assistant. Those who secured 50% marks in the papers (five in numbers) were put in the eligibility list on the basis of seniority but if they qualified 40 % marks in four papers, (Specified there in) they were put in the eligibility list of Tax Assistant for being promoted on the post of Tax Assistant on the basis of seniority in Upper Division Clerks cadre. The cadre of Tax Assistant thus was an intermediary cadre between the cadre of upper division clerks and the Head Clerks and for further promotions to the posts of Head Clerks, instructions contained in Board's letter dated 20.7.1978

which contemplates the promotion on the post of Head Clerks will be made from the cadre of Upper Division Clerks on the basis of their seniority in the cadre of upper Division Clerks which is the basic cadre was allegedly complied with. The Central Board of Taxes vide its letter dated 27.9.1978 desired that arrangements made for purposes on the posts of Head Clerks of promotion from the posts of Upper Division Clerks and the Tax Assistants were also to be considered by virtue of having seniority in their basic cadre of Upper Division Clerks.

2. The applicant Nos. 1 & 2 and few others who were promoted to the post of Tax Assistant represented through proper channel against the above decision of respondent no. 2 and claimed their right to be promoted to the posts of Head Clerks on the basis of their holding posts of Tax Assistants in the grade which was higher to the grade of Upper Division Clerks. Their representations were decided by the Commissioner of Income Tax, Kanpur who observed that unless the orders to the contrary are received the promotion to the cadre of Head Clerk is to be made from the Upper Division Clerks/ Tax Assistants according to their seniority in the Upper Division Clerks Cadre. The posts of Tax Assistants which were in continuous existence for more than three years from 30.5.1978 were converted into permanent posts u.e.f. 3.11.1981 in the Kanpur Charge which includes the charges of Commissioners of Income Tax, Meerut, Agra and Kanpur. Out of total No. 178 temporary posts, 141 posts were converted into permanent posts. A Departmental Promotion Committee was to be held in the month of March, 1982. The respondent no. 2 by its letter dated 26th March, 1982 decided the matter and directed

that in the matter of promotion to the grade of Head Clerks a status quo will continue to be observed and the promotion to the grade of Head Clerks should be made from Upper Division Clerks cadre. The Tax Assistants should also be considered by virtue of their seniority in that cadre irrespective of the fact that the Tax Assistants are confirmed in that grade. It was, thereafter, selections were made by the Departmental Promotion Committee to the post of Head Clerk in accordance with the seniority of the Upper Division Clerks/Tax Assistants, in the grade of Upper Division Clerks. Promotions were made after the said selections and the respondents No. 7 to 12 were selected/ appointed to the posts of Head Clerks. The respondents were holding the posts of Tax Assistants on the day when they were promoted to the post of Head Clerks and the grievance of the applicants is that they were junior to them in the cadre of Tax Assistants.

3. According to the respondent no. 7 it has been stated that he was promoted as Head Clerk on 30.3.1982 earlier to his promotion as Tax Assistant. His promotion as Tax Assistant was also subject to a condition that he will be promoted if he has not joined the post of Head Clerk. It has been pointed out by the applicant that those upper division Clerks who were not eligible to be appointed to the post of Tax Assistants were also promoted and the applicants who were working as confirmed Tax Assistants in the higher grade and were placed along with the upper divisions clerk in the cadre for consideration for promotion to the post of Head Clerks by virtue of their seniority and though, they ~~were~~ belonged to different class, they were discriminated and were not promoted. According to

the applicants, after confirmation they had acquired the right to be promoted to the post of Head Clerk but as they have not been promoted, they approached to the High Court by filing a writ petition.

4. The respondents have stated that the Kanpur charge, which comprises Agra and Meerut, total sanctioned strength of Head Clerks is 77 whereas only 53 Head Clerks are working. There was shortfall of 24 head clerks and on account of the interim order dated 21st January, 1983, no appointments on the posts of 24 Head Clerks can be made so far. The stand of the applicants have been refuted and it has been stated that Vide letter dated 26.3.1983, the Central Board of Taxes has reiterated that the promotion on the post of Head Clerks should be made from the upper division clerks and Tax Assistants should also be considered by virtue of their seniority in the cadre in respect of the fact that the Tax Assistants have been confirmed in their grades. Thus, confirmation of the tax assistants has no relevance for the purpose of promotion on the posts of Head Clerks/ Inspectors as the basic seniority held by the upper division clerk is the sole criteria for promotion. Similar matter came up for consideration before a Bench of this Tribunal in O.A. No. 125 of 1987 S.M. Raza Kazmi and others Vs. Central Board of Direct Taxes and others, decided on 26.8.1988. The Bench has directed to the respondents to evolve a scheme considering the suggestions given in our observations along with any other scheme that they may be able to evolve to remove the anomalous situation whereby the incumbents of promotional post which are in intermediary cadre are clubbed for their seniority with persons in a lower grade for consideration for promotion to the post of Head Clerks. Thereafter, the applicants' case be considered in that light.

In its judgment, the Tribunal gave the following alternatives;

1. A quota or roster could have been fixed as in the case of Inspectors for promotion to the post of Head Clerks in the ration in which the posts have been up-graded, i.e. 1:3, or alternatively option should have been invited from such of the Tax Assistants, who wanted to opt for the Head Clerks post and thereafter to the supervisory post in Grades 1 : 11 foregoing going their chances for the Inspector's line of promotion. A 3rd alternative could be that the post of Head Clerks by an open competition where all Upper Division Clerks of certain minimum years of service and Tax Assistants would have been allowed to compete.

The S.L.P. filed by the department against the said judgment was dismissed, thereafter, a scheme was framed. In pursuance of the scheme, certain promotions were made which were again challenged by the said S.M. Raza Kazmi, in O.A. No. 348 of 1990 decided by this Bench vide its order dated 9.5.1991. Prior to the decision, the rules were amended in the month of March, 1990. Under the amended rules, only Upper Division Clerks were entitled for promotion to the post of Head Clerks and the judgment of the Tribunal was not implemented and that is why the said applicant, again approached to the Tribunal and the Tribunal gave the following directions; "We direct that the respondents shall give promotion to the applicants in accordance with rules alongwith as per the order of the Tribunal dated 26.8.1988, referred to above, notwithstanding the fact there was any failure on their part to formulate the scheme. In case the applicants are found entitled, their appointment will take effect from that date and not from the date they were subsequently promoted".

5. Accordingly, this application also disposed of, in accordance with the said judgments in as much as the scheme

shall be followed to the effect &
laid down in the judgment with the further observations

that if some of these applicants have been subsequently, promoted, their promotions shall also take effect from that date. Let the compliance be made by the respondents within a period of 3 months from the date of receipt of the copy of this judgment. The application is disposed of with the above observations. Parties to bear their own costs.

Member (A)

Dated: 25th March, 1992

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Vice-Chairman