

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH

Original Application No. 197 of 1987

Shri Vijendra Singh ... Applicant  
Versus  
Union of India and Others ... Respondents

CORAM:

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member(A)

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

The applicant was appointed as Upper Division Clerk in the Income Tax Department at Kanpur vide order of the Commissioner of Income Tax dated 8.6.1966. After qualifying the Departmental Ministerial Staff Examination prescribed for the cadre of Upper Division Clerk in the year 1968, the applicant was confirmed on the cadre of Upper Division Clerk w.e.f. 7.9.1972. The applicant qualified the Departmental Examination for Inspector of Income Tax in the year 1973. He was elevated to the cadre of Tax Assistant on 31.5.1978 and was confirmed on the cadre of Tax Assistant vide order of the Comm-  
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missioner of Income Tax Kanpur/w.e.f. 3.11.1981. There after he was promoted to the cadre of Head Clerk on 7.5.81 and subsequently confirmed w.e.f. 12.3.1986. In the year 1985 he was selected for the post of

(18)

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Instructor in the Ministerial Staff Training Unit. The applicant qualified the Departmental Examination of Income Tax Officer, Group 'B' in June 1986.

2. The promotion to the cadre of Supervisor Gr.II in the pay scale of Rs.1600-50-2300-EB-60-2660 is made from amongst the Head Clerks in the pay scale of Rs.1400-40-1800-EB-50-2300 by the Commissioner of Incometax Kanpur on the recommendation of the Departmental Promotion Committee constituted for this purpose on the basis of seniority subject to rejection of the unfit. The Departmental Promotion Committee met on 24th, 25th and 26th of October, 1986 to consider the cases of Supervisors/Head Clerks/Upper Division Clerks/Stenographers for promotion to the cadre of Inspector of Income Tax in the pay scale of Rs.1640-60-2600-EB-75-2900. The applicant was shocked to learn that junior Head Clerks/Tax Assistants and other officials who are ranked below in the select list prepared for the promotion to the cadre of Inspector of Incometax by the Departmental Promotion Committee and the applicant was not promoted to the cadre of Inspector of Income tax. Although the applicant's name was included in the select list but his recommendation was kept in a sealed cover as there was some inquiry contemplated against him. The applicant preferred a representation against the same but he could not get any relief. He was again passed over. Again on 22nd January 1987 the junior officials were promoted and appointed to the cadre of Inspector of Income tax, the applicant was passed over this time also. This happened again on 19.2.1987. The applicant's

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(19)

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case was recommended by the Commissioner of Income Tax but no relief was granted with the result he has approached this Tribunal.

3. The respondents have opposed the application filed by the applicant and have contended that the promotion to these selection posts is made on the basis of seniority-cum-fitness. The case of the applicant was considered for the promotion in the cadre of Supervisor Gr.II and Income Tax Inspector also but as his conduct was under investigation the Departmental Promotion Committee kept the assessment in a sealed cover and after consideration it was rejected. It is an admitted position that when the Departmental Promotion Committee met, there was no charge sheet against the applicant and no charges were framed against him and no departmental enquiry proceedings were initiated nor any departmental enquiry started thereafter.

4. Shri MurliDhar, learned counsel for the applicant contended that as the departmental proceedings were not pending against the applicant and there was no charge sheet against the applicant it could not have been kept the assessment in a sealed cover. Under the orders the sealed cover was opened and found that he was assessed to be 'very good' and his name was also included in the list. The record which was produced before us by the respondents indicate that there were 39 posts in the year in question i.e. 1986. The record indicates that the Departmental Promotion Committee made recommendation in accordance with the relevant Rules. The relevant rules on the basis of selection was to be made is as follows: " Supervisors grade 1 and grade II, Head Clerks, Tax Assistants and

(20)

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Upper Division Clerks(here in after referred to as the Ministerial cadre) and Stenographers grade I and gradeII and grade III(here in after referred to as "Stenographers cadre) with 3 years service in respective grade who have qualified in the departmental examination for Income Tax Tnspectors. The names of all such candidates shall be arranged cadre-wise in two separate lists for each cadre. In the first list the names of all the qualified candidates falling in the cadre shall be arranged in order of Seniority in the department. In the second list, the names of all the qualified candidates falling in the cadre shall be arranged according to the date, or as the case may be, the year of passing, the departmental examination provided that the persons who pass the examination on the same date shall be arranged according to their seniority in the department. On the approval of persons in the said lists, relating to each cadre, by the departmental Promotion Committee, the name of all the selected candidates shall be arranged in Two Select lists in the ratio of 3: 1 - one containing the names of the persons from both cadres on the basis of seniority and the other containing the names of persons from both the cadres on the basis of the date or as the case may be the year of passing the departmental examination. Vacancies in the promotion quota shall be filled from the said two select lists in such a manner that ratio of 3 : 1 is maintained between the ministerial cadre and the Stenographers cadre".... Thus 50% posts were based to be filled on the basis of seniority and 50% on the basis of passing of the examination and accordingly the lists were prepared, ~~one~~ for the members i.e. for the ministerial cadre as well as Stenographers cadre according

to seniority and year of passing. There is no denial of the fact that none of the scheduled caste candidates who were selected for consideration passed the examination before 1980 and among the Stenographers only one passed the examination in the year 1973. Among the general candidates 4 passed the examination in the year 1973. In the list of ministerial cadre the applicant's name found place at no. 13 and he was categorised as 'Very good'. 2 persons who were categorised as 'outstanding' below his name i.e. at 22 and 23 while 2 were categorised as 'Outstanding' were at 5 and 6. With the result that according to the Rules if a person has been graded as 'Outstanding' in the year of passing list then he will be placed at the top of those candidates who passed during that particular year. Accordingly the applicant's position thus came down to 15.

5. So far as the basis of seniority is concerned the name of the applicant was at no.15 out of 27 persons. Though some of the names were common in both the lists. Out of these 27 persons the note against the applicant was that the disciplinary proceedings against him were contemplated that is why his case was kept under sealed cover. Similarly the Stenographers list and list of scheduled caste candidates were prepared and thereafter in view of the rules referred to above a combined panel (select list) is drawn. The names of all the selected candidates shall be arranged in two select lists in the ratio of 3 : 1- one containing the names of the persons from both the cadres on the basis of seniority and the other containing the names of persons from both the cadres on the basis of the date or as the case may be, the year of passing the departmental examination. In that list the applicant's name finds place at no.17 while in the

combined panel of Stenographers on the basis of seniority his name finds place at no. 19. Thus according to the year of passing if 50% posts were to go by the result of year of passing the applicant was excluded from it as there were only 29 posts <sup>excluding the posts</sup> for the members of scheduled caste community. Similarly in the combined panel in order of seniority his name was shown at no. 19 which included the names of Upper Division Clerks and ~~the persons who~~ finds place at no. 10 in the panel which was prepared on the basis of year of passing and he was at no. 11 in the panel which was prepared on the basis according to the seniority. Same was the case of Shri P.D. Saxena who was at no. 11 in the first list was placed at no. 13 and Sri C.S. Dubey who was at no. 13 in the first list was included at no. 14 in the second list. Incase these 3 names were either excluded from the list which was prepared on the basis of seniority then the name of the applicant would come at no. 15. It was thereafter, a combined list of 37 candidates were prepared including the members of scheduled caste community and this list has been prepared by placing the candidates on the alternative basis i.e. first year of passing the examination and then seniority and in the said list the name of the applicant was placed at no. 28 between Shri Abdul Waheed and Shri Inder Raj. Out of these persons the said One Shri Chauhan is at No. 19. He has been placed in the category of the 'Year of passing'. In the list of General candidates he has been placed at no. 9 from the category of the seniority (Ministerial cadre) and similarly Shri P.D. Saxena

(23)

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had been placed at No. 10 in that list. Though in the final list too included in the category of year of passing and so the case with S.C. Rastogi at no. 25 in the final list who has also been placed in the category of year of passing. With the result that from the seniority list from these cadre these three names are taken out as they are common in both the lists. In that list of Ministerial cadre the applicant's name will come at 11. Meaning thereby if out of 29 seats only half is to be taken 14 and half were go to the ministerial cadre and the applicant's number would be at 11 and as such he was to be given an appointment. As such from that quota he clearly was entitled to get his promotional post notwithstanding the fact that he was in both the categories. Out of the final list no. 19 were promoted vide order dated 3.10.86 while upto 26 were also promoted by the same date and those who are at 26 and 27 they were promoted w.e.f. 19.1.87 and no. 30 and 31 were also promoted on 19.1.87. As per general candidate it appears to be 29 even then the applicant may be at 29, the applicant was entitled to be promoted with the persons who have been promoted on 19.1.87 which was the case of some Inder Raj, Virendra Kumar and K.S. Chauhan.

6. We have taken the view that the applicant was entitled to be promoted and his result was wrongly kept in the sealed cover and the sealed cover which was opened by us it was found that he was given a particular category of 'Very Good'. Consequently the applicant is also entitled to be promoted w.e.f. the date his next juniors

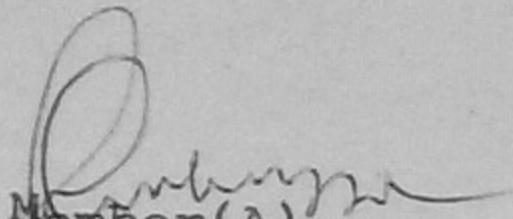
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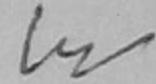
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were promoted. The respondents are directed to promote the applicant with effect from the date his next juniors were promoted without delay and his promotion be made back from the date his next juniors were promoted. This promotion will be notional with effect from the date but from the date actually he was promoted which should not be the date beyond a period of One month from the date of communication of this order. The application stand disposed of finally in these terms with no order as to the costs.

  
Member (A)

  
Vice Chairman

Dated: 20th August, 1992:

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