

CENTRAL ADMINISTRATIVE TRIBUNAL
DELHI BENCH

C.A.No./T.A.No. 1087 of 1989

DATE OF DECISION 12.7.91

B.S. Saxena ----- APPLICANT (S)

Sri Jagadish Sahai & Sri Ishwari Prasad Singh
ADVOCATE FOR THE
APPLICANT (S)

V E R S U S

UOI & another ----- RESPONDENT(S)

Sri Ashok Motilal ----- ADVOCATE FOR THE
RESPONDENT(S)

C O N T A I N S

The Hon'ble Mr. S. Das Gupta - Vice Chairman
Member (A)

The Hon'ble Mr. T. L. Verma, member (S)

1. Whether Reporters of local newspapers may be allowed to see the judgment? ✓
2. To be referred to the reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the judgment? ✓
4. Whether to be circulated to all other Bench? ✗


(SIGNATURE)

Amalendra/-

~~ON THE~~ CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
Allahabad.

Dated : Allahabad this the...12th day of July, 1996.

CORAM : Hon 'ble Mr. S. Das Gupta, Member-A
Hon 'ble Mr. T. L. Verma, Member-J

Original Application No. 1087 of 1989

B. S. Saxena, Retired Income-tax Officer,
171, Civil Lines, Ramji Saran Marg,
Station Road, Bareilly.Applicant.

(THROUGH COUNSEL SRI JANARDAN SAHAI & SRI ISHWARI PRASAD
SINGH)

V e r s u s

1. Union of India through Secretary, Govt. of
India, Ministry of Finance, Department of
Revenue, New Delhi.

2. Central Board of Direct Taxes, New Delhi,
through its Chairman. 9
.....Respondents.

(THROUGH COUNSEL SRI ASHOK MOHILEY)

O R D E R

(By Hon 'ble Mr. T. L. Verma, Member-J)

In this application, under Section 19 of the
Administrative Tribunals Act, 1985, order dated 7.11.89
rejecting the representation of the applicant for restoring
his seniority after counting his ad-hoc appointment as
Income Tax Officer Group 'A' with effect from 30.11.1976
and rule 5 of the Income Tax Officers Grade 'A' (Junior
Scale) (Special Departmental Recruitment) Rules, 1983,
are under challenge.

2. The facts of the case in short are that the applicant was initially appointed as Income Tax Inspector on 20.12.1955. He was promoted as Income Tax Officer Group 'B' on 20.4.1965 and as Income Tax Officer Group 'A' (Junior Scale) on adhoc basis on 30.11.1976. He was confirmed ~~under~~ⁱⁿ Group 'A' (Junior Scale) on 21.1.1980. The applicant claims to have continued to work as Income Tax Officer Group 'A' (Junior Scale) from the date of his adhoc promotion continuously till the date of his confirmation with effect from 21.1.1980. He was, therefore, entitled to seniority as Group 'A' (Junior Scale) Income Tax Officer with effect from 30.11.1976, the date on which he was given adhoc promotion. The grievance of the applicant is that the respondents have arbitrarily denied him benefit of the service of the period of his adhoc officiation and ~~xx~~ thereby denied him the legitimate claim for promotion to the post of Assistant Commissioner. Further case of the applicant is that the rules relating to seniority of direct recruits and that of the promotees as contained in Rule 5 of the Income Tax Officers Group 'A' (Junior Scale Special Departmental Recruitment) Rules, 1983 are violative of Articles 14 and 16 of the Constitution of India inasmuch as the same ignores the period rendered by a promotees as Income Tax Officer on adhoc promotion for the purposes of determining his seniority vis-a-vis direct recruits. Hence this application for ~~the~~ quashing order dated 7.11.1989 and for declaring Rule 5 of the Income Tax Officers Group 'A' (Junior Scale) (Special Departmental Recruitment) Rules, 1983 as ultra-vires and for issuing a direction to the respondents to assign seniority to the applicant as

Income Tax Officer Group 'A' (Junior Scale with effect from 30.11.1976 with all consequential benefits including arrears of pay and promotion.

3. The respondents have resisted the claim of the applicant. In the counter-affidavit filed on behalf of the respondents, it has been averred that as the applicant was appointed as Income Tax Officer Group 'A' on purely ad-hoc basis, no right for inclusion of the period of ad-hoc promotion for ~~being counted~~ ^{determiner} ~~its~~ seniority has accrued to the applicant. It has further been contended that the controversy involved in this application has already been finally settled by the full bench of the Central Administrative Tribunal in V. K. Naidu Vs. Union of India & others reported in Full Bench Judgements of the Central Administrative Tribunal 1989-91 page 168.

4. We have heard the learned counsel for the parties and perused the record. We will first address ourselves ~~as~~ to the challenge to the legality of rule 5 of the Income Tax Officers Group 'A' (Junior Scale) (Special Departmental Recruitment) Rules, 1983. The seniority rules of the Income Tax Officers were challenged before the Hon'ble Supreme Court in Writ Petition No. 4146 of 1978 and Writ Petition Nos. 546-47 of 1983. The Hon'ble Supreme Court has upheld the seniority rules by its judgement dated 16.3.1990 rendered in the aforesaid petitions. While dismissing of the writ petitions, Hon'ble Supreme Court has held that :-

"Before parting with these petitions, we cannot help observing that although the issues raised in all these petitions were set at rest by this Court conclusively earlier, the petitioners thought it necessary to tax the precious time of the Court by approaching it once again on grounds which were least justified. We hope and trust that this decision puts a final lid on the alleged grievances of the petitioners and no new pretexts are found hereafter to take up the same contentions under other garbs."

5. In view of the ratio of the decision of Hon'ble Supreme Court referred to above, we find no merit in the contention of the learned counsel for the applicant that rule 5 of the Income Tax Officers Group 'A' (Junior Scale) (Special Departmental Recruitment) Rules, 1983 is violative of the principles of Article 14 and 16 of the Constitution of India.

6. In view of the foregoing conclusion the next question that falls for our consideration is whether the applicant is entitled to the benefit of period of 3 years, 1 month and 21 days put in by him as Income Tax Officer Group 'A' (Junior Scale) on adhoc basis from 30.11.1976 to 20.1.1980 for determining his seniority. The question ~~whether the period of adhoc service rendered should be counted for determining the seniority or not came up for consideration before the Constitution Bench of Hon'ble Supreme Court in Direct Recruitment Class II Engineering Officers Association & others, Vs. State of Maharashtra & others~~ The Hon'ble Supreme Court in the said case has held that :-

"once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority."

7. In view of the above principle of law we now proceed to examine whether the promotion of the applicant as Income Tax Officer Group 'A' (Junior Scale) on adhoc basis was in accordance with rules or not. It is not in dispute that the applicant was appointed as Income Tax Officer Group 'A' (Junior Scale) on adhoc basis. The appointment to the post of Income Tax Officer Group 'A' (Junior Scale) according to rule are made on the recommendation of the regularly constituted Departmental Promotion Committee presided over by a Member of the Union Public Service Commission. We have carefully perused the averments made in the application and we find that no mention has been made as to whether the applicant was given promotion on adhoc basis as Income Tax Officer Group 'A' (Junior Scale) on the recommendation of the duly constituted Departmental Promotion Committee or not. Against this the respondents have by specific averments stated that promotions were made purely on ad-hoc basis. The applicant has not filed any rejoinder-affidavit to controvert the averments of the respondents. We have thus, no material before us to show that promotion of the applicant as I.T.O. Grade 'A' (Junior Scale) was in accordance with Rule. He is therefore, not entitled to the benefit of adhoc officiation for the purposes of determining his seniority.

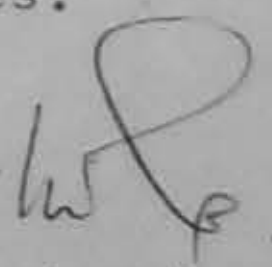
8. The facts of the case, decided by the Full Bench referred to above, are in pari-materia with the facts of this case. The Full Bench has held as follows :-

The applicants no doubt had been promoted on adhoc basis but such promotion cannot be equated to a regular induction into the Income Tax Officer Group 'A' (Junior scale). It is an admitted fact that all these applicants had been appointed as Income Tax Officer-Group 'A' (junior Scale) in the first instance on ad hoc basis following the criterion of seniority subject to fitness. Such appointments were after a screening by a Screening Committee in which a Member of the Union Public Service Commission was not associated, whereas for regular appointments to the post of a D.P.C. is convened with the Member of the U.P.S.C. acts as Chairman. The instance of an ad hoc appointee even though screened by a Screening Committee not having been adjudged as suitable for regular appointment to the service in 1980 and 1982 by a duly constituted D.P.C. had also been brought to our notice. Therefore, the ad hoc appointment of the promotees cannot be equated with regular appointment. The second issue is decided accordingly."

9. In view of the decision of Hon'ble Supreme Court and the Full Bench of the Administrative Tribunal referred to above, we find and hold that the applicant is not entitled to the benefit of the period of service he has rendered as Income Tax Officer Group 'A' on ad hoc basis for the purposes of determining his seniority, with effect from 30.11.1976. Therefore, the applicant is not entitled to the relief as prayed for in this application.

10. In the result this application is dismissed. The parties shall bear their own costs.


Member-J


Member-A

(Pandey).