

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
 AHMEDABAD BENCH  
 XXXXXXXX XXXXXXXX

(11)

O.A. No. XXXXXX 431 of 1987.

DATE OF DECISION 27/3/91

K.H. UPADHYAY & ORS. Petitioner

Mr. B.P. Tanna Advocate for the Petitioner(s)

Versus

Chief Commissioner of Income tax Respondent

Mr. R.P. Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi .. .. Vice Chairman

The Hon'ble Mr. R.C. Bhatt .. .. Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

1. K.H. Upadhyay, Mehsana
2. R.S. Bhatt, Mehsana
3. Miss. S.C. Thakkar, Ahmedabad
4. N.C. Vyas, Ahmedabad
5. C.M. Patel, Ahmedabad
6. Mrs. N.N. Vyas, Ahmedabad
7. P.H. Raval, Palanpur
8. J.P. Chauhan, Ahmedabad
9. M.K. Jadav, Ahmedabad
10. S.K. <sup>Yagnik</sup> Yagjim, Ahmedabad
11. Smt. P.P. Patel, Ahmedabad
12. P.K. Patel, Mehsana
13. Miss. D.A. Bhatt, Ahmedabad
14. B.D. Waghela, Ahmedabad
15. M.M. Mehta, Ahmedabad
16. N.J. Sadhu, Ahmedabad
17. K.C. Parmar, Ahmedabad
18. J.V. Brahmbhatt, Ahmedabad
19. G.D. Mansuri, Ahmedabad
20. P.K. Thakkar, Ahmedabad
21. V.F. Patel, Ahmedabad
22. A.G. Patel, Ahmedabad
23. P.M. Panchal, Ahmedabad
24. H.N. Kapadia, Ahmedabad

(Advocate - Mr. B.P. Tanna)

.. Petitioners

**Versus**

Chief Commissioner of  
Income-Tax(Adm.) & C.I.T.,  
Guj-I, Ayakar Bhavan,  
Ashram Road,  
Ahmedabad.- 380 009.  
(Advocate - Mr. R.P. Bhatt)

.. Respondent

O.A. No. 431 of 1987

JUDGMENT

Per : Hon'ble Mr. P.H. Trivedi

.. Vice Chairman

Dated : 27/3/1987

In this application, under section 19 of the  
Administrative Tribunals Act, 1985, various Upper Division

Clerks of Income-tax department, state that the principle No.6 of the order laying down the principles for determining seniority dated 22nd December, 1959 has not been followed. The modification to the said order which has been effected by department of Personnel and Training's O.M. dated 7th February, 1986 should have been applied to the case of recruits of 1977. The relief claimed by the petitioner is in terms related to para 7 of the order dated 7th February, 1986. These orders state that they shall take effect from 1st March, 1986. The petitioners pray that they be made applicable from 1977. They have cited 4 JT 1987 S.C. 321 Sonal Sihimappa v/s. State of Karnataka and other and relied specially upon para 19 thereof. In their reply, the respondents have stated that admittedly, the petitioners do not have any grievance regarding the principles adopted for determining seniority but only regarding the date from which they should be made applicable or given effect to. The inter-se seniority is fixed on the basis of roster maintained for direct recruits and promotes and the impugned list at Annexure 'B' was circulated on 22.6.1986. A copy of the revised list after considering representations showing the position of the petitioners is also prepared finally. The respondents state that if the prayer is granted, there is no reason why claims prior to those of 1977 will not arise.

2. Petitioners have also relied upon AIR 1977 S.C. 251- N.K. Chauhan v. State of Gujarat. The respondents have relied upon AIR 1985 S.C. 1367 - Dr. (Mrs.) Sushma Sharma v. State of Rajasthan, paras 32, 33, 38 and 43.

3. Both sides have waived hearing and made written submissions which are on record.

4. At the outset, we must state that the cases cited are distinguishable from the facts of this case. No statutory rules have been challenged. The only question to be decided upon is whether the instruction of 1959 which have been modified by the O.M. of 1986 should be given effect from 1986 or earlier. On perusal of the said instructions, it is clear that they have been issued in pursuance and on consideration of the decisions of the Courts including the Supreme Court. These instructions are procedural and deal with the bunching together of the promotees or direct recruits when sufficient number of either category is not available and vacant slots are to be provided for filling them up in later years. The modality of maintenance of vacancies and of computing them for filling them up and determining seniority have been prescribed. Since the instructions are procedural, it is not possible to accept the contention of the petitioners that they should be given retrospective effect. In para 7, it is stated "seniority already determined in accordance with the existing principles on the date of issue of these orders will not be re-opened. In respect of vacancies for which recruitment action has already been taken, on the date of issue of these order either by way of direct recruitment or promotion, seniority will continue to be determined in accordance with the principles in force prior to the issue of this O.M" There is much force in the contention of the respondents that if the case of the petitioner is accepted, there is no reason why retrospective effect should stop with the year 1977 and why even cases prior to that year will not need to be re-opened. It is a well-known principle of law that in matters of this nature settled State of affairs should not be unsettled by any judicial decision.

(16)

M.A.St.150/91.  
in  
O.A./431/87

Coram : Hon'ble Mr.P.H.Trivedi : Vice Chairman  
Hon'ble Mr.R.C.Bhatt : Judicial Member

04/04/1991

Heard Mr.D.V.Mehta and Mr.R.P.Bhatt, learned advocates for the petitioner and the respondents. Mr. D.V.Mehta, wants to challenge decision dated 27.3.1991, in OA/431/87, and against which he files an appeal. In the said judgment we have dismissed the case, and with it the interim relief given in the case also ends. The petitioner's contention is that he should be given an opportunity to place before the appellate court the merits of the case and therefore, the interim relief should be allowed to continue. The interim relief is regarding 23 additional posts to be filled subject to the result of the case and the result of the case is dismissed. We see no reasons why at this stage the petitioner has any cause because by the dismissal of the application itself, the merits of the case having been decided, the interim relief allowed until then is terminated and the petitioner states that he has no grievance left so far as that case is concerned. The petition is therefore, rejected.

  
( R.C.Bhatt )  
Judicial Member

  
( P.H.Trivedi )  
Vice Chairman

AIT