

IN THE CENTRAL ADMINISTRATIVE TRIAUNAL
AHMEDABAD BENCH

O.A. No. 95 OF 1987
~~Ex-Ax Nox~~



DATE OF DECISION 18-6-92

Shri S.P. Patil & Ors. Petitioners

Mr. J.R. Nanavati, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondents

Mr. M.R. Bhatt, Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.L. Mehta, Vice Chairman,

The Hon'ble Mr. B.B. Mahajan, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

1. S.P. Patil
2. A.S. Manohar
3. C.S. Harne
4. H.C. Jetly
5. K.N. Dhingra
6. D.C. Dave
7. K.T. Desai
8. M.P. Deodhar
9. S.R. Chalishazar
10. V.J. Bhatt
11. U.A. Joshi

All Income Tax Officers, Group 'A'

Addresses: C/o. Shri V.J.Bhatt,

Income Tax Officer,
Central Circle,
Ayyakar Bhavan,
Ashram Road, Ahmedabad. ... Applicants.

V/s.

1) Union of India
through the Secretary,
Ministry of Finance,
North Block,
Central Secretariat,
New Delhi.

2) The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
North Block
Central Secretariat,
New Delhi.

3) M.K. Mirani

4) Totaram

Address of Nos. 3 & 4
Inspecting Assistant Commissioners,
(Assessment) Vasant Nature,
Cure Building
Ashram Road, Ahmedabad.

5) Gujarat Income Tax Gazetted
Officers Association through
Shri P.S. Rashtrapal,
President of the Association,
Aayyakar Bhavan, Ashram Road,
Ahmedabad.

6) Shri Surendra Prakash Singh

7) Shri Badri Prasad Meena

8) Shri Desh Deepak Goel

9) Shri R.K. Kakkar

10) Shri Bhog Chand Meena

11) Shri D.K. Gupta,

12) Shri Anil Singh
13) Shri R.N. Gupta
14) Shri S.O. Charan
15) Shri D.P. Sharma
16) Shri B.K. Mishra
17) Shri K.V. Dave
18) Shri Balvir Singh

All C/o. Shri S.P. Singh
Asstt. Commissioner of Income Tax,
Central Circle, Ayyakar Bhavan,
Ashram Road, Ahmedabad. Respondents.

J U D G M E N T

O.A.No. 95 OF 1987

Date: 18-6-92

Per: Hon'ble Mr. B.B. Mahajan, Admn. Member.

Heard learned counsel Mr. J.R. Nanavati,
for the applicants and Mr. M.R. Bhatt, learned
counsel for the respondents.

2. Mr.S.P. Patel & 10 Ors., Income Tax
Officers, Group 'A' have filed this application
under section 19 of the Administrative Tribunals Act
1985, against the order of promotion of Respondent
No. 3 & 4 to the post of Assistant Commissioner of
Income Tax and against their inter se seniority
with the Respondent No. 3 to 16.

3. The applicants joined the Income Tax
Department as Inspectors and were subsequently
promoted as Income Tax Officers, Group 'B'.
They were further promoted as Income Tax Officers
Group 'A' (Junior Scale) on ad hoc basis by the

notification dated November 30, 1976 for a period of one year. However, their ad hoc appointment were extended from time to time till January 1980. They were promoted as Income Tax Officers, Group 'A' (Junior Scale) on regular basis vide notification dated 21.1.1980. The grievance of the applicants is that the respondent No. 1 & 2 have determined their seniority below that of Respondent No. 3 to 16 who are direct appointees without taking into account the period of continuous officiation of the applicants in the cadre of Income Tax Officers Group A (Junior Scale) on ad hoc basis. If that period of continuous officiation on ad hoc basis had been taken into account for the purpose of seniority, they would have ranked senior to Respondent No. 3 & 4 who had been promoted as Assistant Commissioner of Income Tax vide the impugned order dated 26th December, 1986 from Department of Revenue (Central Board of Direct Taxes) Ministry of Finance, Government of India. They have prayed that the order of promotion dated 26th December, 1986 may be quashed, Respondent No. 1 & 2 may be directed to determine a fresh seniority of the applicants vis-a-viz direct recruits on the basis of the continuous officiation of the applicants in the cadre of Income Tax Officers, Group 'A', Junior Scale from the respective dates

(1)

of their ad hoc appointment and to regulate their further promotion to the rank of Assistant Commissioner of Income Tax on the basis of the revised seniority list with effect from the date the same became due on the basis of this revised seniority and to grant them senior scale of pay and confirmation of other benefits from the dates the same became due on the basis of this revised seniority. The main grounds are that the applicants had continued on ad hoc promotion for four to five years without any break till regularisation and they were therefore counted entitled to have their entire service for the purpose of seniority. The promotion of the applicants on ad hoc was within the sanctioned strength and the orders of promotion were legal and therefore even if the promotion quota was extended the ground for not the same can not provide for taking into account the actual service rendered by the applicants. They have also stated that Rule 4 of the Recruitment Rules confers power on the Government to relax normal operation of the Rules and the present case provides an ideal situation for exercise of power of relaxation in order to ensure that the continuous unfortunate service rendered by the applicants for a number of years is not cut-off for the purpose of reckoning their seniority.

The Respondent No. 1 & 2 have pointed out that in the intake/Group A Income Tax Officers is regulated under the Income Tax Officers (Class-I) Service (Regulation of Seniority) Rules, 1973, according to which appointment has to be made 50% by promotion of the officers of Group B and 50% by direct recruitment. Their seniority is also maintained in the ratio of 1 : 1. The 1973 seniority Rules were framed under Article 309 of the Constitution of India in pursuance to the direction given by the Supreme Court. The applicants were given ad hoc promotion when large number of posts of large Income Tax Officers became available with scale expansion in the department. The ad hoc promotions were made by a Departmental Committee on the basis of seniority-cum-fitness whereas regular promotions are made on the basis of seniority-cum-merit by a Departmental Promotion Committee presided over by a Member of the Union Public Service Commission. Counting of ad hoc appointment for the purpose of list seniority is only possible when the normal quota and rota rule have collapsed. In the present case the seniority had been prepared under the direction of the Supreme Court and was scrupulously followed. They have also pointed out that if principles of seniority which are in force since 1973 are allowed to be disturbed there would be total chaos.

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in the department. We have heard the learned counsel for both the parties.

3. The learned counsel for the applicants has reiterated the pleas advanced in the O.A.

The question involved in this case has however already been determined by Full Bench of the Tribunal in C.V.K. Naidu & Ors. v/s. Union of

India & Ors., 1990(2) A.T.J. Vol.9 p.484. After discussing the various judgments of the Hon'ble Supreme Court on the subject, it had been held by the Full Bench that seniority in the Income Tax Service has to be regulated only in accordance with the specific rules framed under the proviso to Article 309 of the Constitution. On this ground, we have to rule out the application of the principle of continuous service in a post, for regulating seniority in the post" (para 85). It

was also held that ad hoc appointment made after a screening by a screening committee in which a Member of the U.P.S.C. was not associated cannot be equated with regular appointment (para 86).

4. In view of the above decision of the Full Bench, the service rendered by the applicants on ad hoc basis in the post of Income Tax Officers Group 'A' cannot be counted for the purpose of determining the seniority in the service. The

been
seniority of the applicants has thus / determined
by the Respondent No. 1 & 2 correctly according to
the Rules of 1973. There is thus no merit in the
application. The same is accordingly dismissed.

to
Parties / bear their own cost.

B. B. Mahajan
Member (A)

D. L. Mehta
Vice Chairman

O.A./95/87

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Coram : Hon'ble Mr P H Trivedi .. Vice Chairman
Hon'ble Mr P M Joshi .. Judicial Member

6/3/1987

Admit. Issue notice on the respondents returnable within 45 days from the date of this order on interim relief and on merits. The case is adjourned to 30th - June, 1987.

Phewar
(P H Trivedi)
Vice Chairman

Jm
(P M Joshi)
Judicial Member