

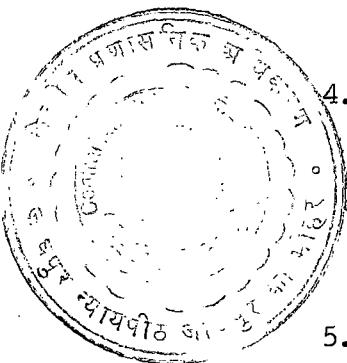
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 14.05.2002

O.A. No. 72/2001

1. Poona Ram son of Shri Lakha Ram Chaudhary aged about 33 years resident of 252, Krishna Mandir, Bhagat Ki Kothi, Jodhpur, at present employed on the post of UDC in the office of Income Tax, Jodhpur.
2. Rakesh Ghiya son of late L.M. Ghiya aged about 31 years resident of 44, Income Tax Colony, Jodhpur, at present employed on the post of Tax Assistant in the office of Income Tax, Jodhpur.
3. Damodar Lal Sharma son of Shri Babulal Sharma aged about 34 years resident of 224, Pariharnagar, Badwasiya, Jodhpur, at present employed on the post of Tax Assistant in the office of Income Tax, Jodhpur.
4. S.K. Harsh son of Shri K.K. Harsh aged about 43 years resident of Opp. Electric Sub Station, Siwanchi Gate Link Road, Veer Mohulla, Jodhpur, at present employed on the post of Tax Assistant in the office of Income Tax, Jodhpur.
5. Shiv Dutt Purohit son of Shri Puran Dutt Purohit aged about 44 years resident of Ladhra Ki Gali, Near Ekminar Masjid, Khanda Falsa, Jodhpur, at present employed on the post of Tax Assistant in the office of Income Tax, Jodhpur.
6. Shanti Chand Lodha son of Paras Chand Lodha aged about 28 years resident of Kheradiyon Ka Bas, Near Sathin House, Jodhpur, at present employed on the post of UDC in the office of Income Tax, Jodhpur.



... Applicant.

v e r s u s

1. Union of India through Secretary to Government of India, Ministry of Finance, Department of Revenue, 150, North Block, New Delhi.
2. Chairman, Board of Direct Taxes, 150, North Block, New Delhi.

3. Chief Commissioner of Income Tax, Rajasthan, Jaipur, Statute Circe, 'C' Scheme, Jaipur.
4. Shri S.A. Sayyed, Stenographer Grade II, Office of the Commissioner of Income Tax, Jodhpur.
5. Shri Harish Gurjar, Stenographer Grade II, Income Tax Office, Balotra.
6. Shri N.P. Arora, Stenographer Grade II, Office of the Commissioner of Income Tax, Jodhpur.
7. Smt. Pushpa Rajpurohit, Stenographer Grade II, Office of the Additional Director of Income Tax (Investigation), Jodhpur.
8. Shri Ram Prakash Dholpuria, Stenographer Grade II, Income Tax Office, Nagaur.

... Respondents.



Mr. Kamal Dave with Mr. B. Khan, Counsel for the applicants.

Mr. H.S. Rathore, Adv., Brief holder for Mr. Sandeep Bhandawat, Counsel for the respondents Nos. 1 to 3.

Mr. M.R. Singhvi, Counsel for the respondents Nos. 4 to 8.

CORAM :

Hon'ble Mr. Justice O.P. Garg, Vice Chairman

Hon'ble Mr. A.P. Nagrath, Administrative Member

: O R D E R:

(Per Hon'ble Mr. Justice O.P. Garg)

The applicants, who are six in number and are presently working on the ministerial side of the establishment of the Income Tax department, have filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985, with the prayer that a direction be issued to the respondents to regulate the filling up of the restructured post of Income Tax Inspector after implementation of the judgement dated 30.01.2001 passed by the Jabalpur Bench of this Tribunal in O.A. No. 837/97 - Cyril David vs. Commissioner of Income

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Tax, Jabalpur and Others. The applicants have also challenged Para 2(b) of the Income Tax Department (Inspector) Recruitment (Amendment) Rules, 1986, in so far as it provides for preparation of separate cadrewise list of the candidates on the basis of the date of year of passing the departmental examination for promotion to the post of Inspector. Para 2 (b) provides promotion of the candidates as per quota in the ratio of 3:1 for Ministerial and Stenographer cadres. This provision, it is prayed, may be struck down as being unconstitutional. The respondent-department though is represented through Shri Sandeep Bhandawat, has not filed any reply. The private respondents Nos. 4 to 8 have filed a joint reply through their counsel, Shri M.R. Singhvi.

2. Heard Shri Kamal Dave, assisted by Shri B. Khan, learned counsel for the applicants as well as Shri H.S. Rathore, holding brief for Mr. Sandeep Bhandawat, learned counsel for the official respondents and Shri M.R. Singhvi, on behalf of the private respondents Nos. 4 to 8.

3. Shri Kamal Dave frankly conceded that the operation of the judgement of Jabalpur Bench of the Tribunal dated 30.01.2001 in O.A. No. 837/97 - Commissioner of Income Tax, Jabalpur and Others, a copy of which is Annexure A/3, has been stayed by the Jabalpur Bench of Madhya Pradesh High Court, and, therefore, the applicants do not press the prayer contained in relief clause (1) of the O.A. Shri M.R. Singhvi, further pointed out that this Tribunal cannot implement the decision of the Jabalpur Bench of the Tribunal or issue directions in the teeth of the interim order passed by the High Court and whatever has been canvassed, considered and determined in the decision by the Jabalpur Bench of the Tribunal is not yet final as it is subject to ultimate decision of the writ petition filed in the Madhya Pradesh High Court. In view of the above facts, we are not

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required to consider the averments in the O.A. with reference to the first relief claimed by the applicants.

4. Shri Kamal Dave, however, canvassed the point that Para 2(b) of the Income Tax Department (Inspector) Recruitment (Amendment) Rules, 1986, a copy of which is Annexure A/1, is seriously prejudicial to the interests of the members of the Ministerial Staff other than the Stenographers as the strength of the Stenographers in the ministerial cadre is too small in comparison to the other members belonging to the big cadres. In substance, the submission of Shri Kamal Dave was that the Stenographers in the ministerial cadre, who form a small group, have been given unwarranted and disproportionate benefit in the matter of promotion to the post of Inspector with regard to the number of other members belonging to ministerial cadre. The learned counsel for the respondents repelled the above submission and pointed out that the controversy already stands settled by the decision of the Apex Court dated 02.09.98 rendered in Civil Appeal No. 2028 of 1993 reported in (1998) 7 SCC page 56. It was also urged that mere chances of promotion are not conditions of service and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. To fortify this submission, a reference was made to the decision of the Apex Court in the case of K. Jagadeesan vs. Union of India and Others, (1990) 2 SCC page 228, in which relying upon a decision of State of Maharashtra vs. Chandrakant Anand Kulkarni, (1981) 4 SCC page 130, it was held that a right to be considered for promotion is a term of service, but mere chances of promotion are not. It was also held that mere passing of the departmental examination conferred no right on the concerned employees to promotion. A reference was also made to another decision in the case of S.S. Bola and others vs. B.D. Sardana and Others, (1997) 8 SCC 522, in which it has been again reiterated that chances of promotion are not a condition of service.

5. We have given thoughtful consideration to the matter. The relevant rule, which, it is prayed, should be interdicted runs as follows:-

"(2) (b)

Supervisor Grade-I and Grade-II, Head Clerks, Tax Assistants and Upper Division Clerks (hereinafter referred to as the Ministerial Cadre), and Stenographers Grade-I, Grade-II and Grade-III (hereinafter referred to as Stenographers' Cadre), with 3 years' service in the respective grade, who have qualified in the Departmental Examination for Income-tax Inspectors. The names of all such qualified 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 a cadre shall be arranged in order of seniority in the Department. In the second list, the names of all the qualified persons falling in a cadre shall be arranged in order of seniority in the Department. In the second list, the names of all the qualified persons falling in a 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. On the approval of the persons in the said lists, relating to each cadre, by the Departmental Promotion Committee 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 the 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 the ratio of 3:1 is maintained between the Ministerial cadre and the Stenographers' cadre."

The Rule as it stands, cannot be said to be irrational, discriminatory or against fair play and natural justice. There is a rational basis for framing of the said Rules which has a direct nexus with the objective to be achieved. As a matter of fact, the above Rule reflects the policy and the anxiety of the Government to open up avenues for promotion to the higher posts on the basis of seniority subject to passing of the departmental examination from the lower ministerial cadre, which also includes the post of Stenographer.

5. The power of judicial review is very limited in such matters. This aspect of the matter came up for consideration in the case of Government of Tamil Nadu and Another vs. S. Arumugham and Others,

(1998) 2 SCC page 198, in which a particular policy of promotion laid down by the Government came to be challenged. The Tamil Nadu Administrative Tribunal by order dated 30.04.1991 passed in O.A. No. 1969 of 1990 and other connected OAs, quashed the GOMs No. 145 (Revenue) dated 29.01.90 and directed the Government of Tamil Nadu to review their Scheme as far as the Secretariat staff is concerned and further directed to evolve a different Scheme which would give the staff a wider perspective in all aspects of executive works which, according to the Tribunal, would be more useful to the staff in the Secretariat working in different departments. The Tribunal has also directed all Revenue Officers to be clubbed into one group and for the manner of deputing officers from that group it has also given directions as to how such grouping could be made. The decision of the Tamil Nadu Administrative Tribunal was set aside by the Apex Court by observing in Para 10 of the judgement as follows:-

"10. The Tribunal ought not to have directed the Government to change its policy. The Government has a right to frame a policy to ensure efficiency and proper administration and to provide suitable channels of promotion to officers working in different departments and offices. In Indian Railway Service of Mechanical Engineers' Association vs. Indian Railway Traffic Service Association, (1994) 26 ATC page 352, this Court reiterated that the correctness of a policy should not be questioned by the Tribunal. The appellants in their affidavit before the Tribunal have given in detail the history of these provisions and the justification for these provisions in the interest of efficiency and proper administration. The Tribunal cannot substitute its own views for the views of the Government or direct a new policy based on the Tribunal's view of how the allocation should be made. The three groups which have been formed as far back as in 1977 for the purposes of allocation consist of officers performing different functions and having different prospects and different avenues of promotion. They cannot be equated for the purposes of Articles 14 or 16. In the case of Govind Dattatray Kelkar vs. Chief Controller of Imports & Exports, AIR 1967 SC page 839, this Court held that the concept of equality in the matter of promotion can be predicated only when promotees are drawn from the same source. If the preferential treatment of one source in relation to the other is based on the difference between the two sources, the recruitment can be justified as legitimate classification. This reasoning directly applies in the present case. Therefore, the scheme does not violate Articles 14 or 16, nor is it arbitrary. The quota which should be fixed or the allocation which should be made for the purpose of deputing officers to the Tamil Nadu Revenue Subordinate Service is basically in the domain of the executive. Unless there is a clear violation of any provision of the Constitution, the

Tribunal ought not to have given directions for formulating a new policy and a different quota."

6. In the backdrop of the above legal position, the second relief claimed by the applicants, if granted, would certainly amount to over-stepping its jurisdiction by this Tribunal particularly when we find that Para 2(b) of the Rules, for the reasons mentioned above, does not warrant any interdictment. In conclusion, we find that the present O.A. is devoid of any merits and substance. It is accordingly dismissed.

Ans
(A.P. NAGRATH)
Adm. Member

O.P.G
(JUSTICE O.P. GARG)
Vice Chairman

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Part II and III destroyed
in my presence 12-7-01
under the supervision of
Section Officer [unclear] as per
order dated 14/5/01

Section Officer [unclear] record

Received
07/09/2002
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Leahy, T. Singers
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