

के प्रश्न (प्रक्रिया) लियमावली के नियम 22 के अन्तर्गत निःशुल्क प्रति

४/१०/०२

I Part

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of decision : 6.11.03

Original Application No. 89/2002 & 90/2002.

14

1. Sukh Chand Meena S/o Shri Panchu al Meena, aged about 31 years, R/o 6-B-35, New Housing Board, Bhilwara (Rajasthan), presently working on the post of Income Tax Inspector, in the office of Joint Commissioner of Income Tax Chittorgarh (Rajasthan).
2. Manohar Lal Meena S/o Shri Ramji Lal Meena, aged about 48 years, R/o Qtr. No. 5/III, Income Tax Colony, Sector 11, Hiran Magri, Udaipur (Rajasthan), presently working on the post of Income Tax Inspector, in the office of Joint Commissioner of Income Tax, Udaipur (Rajasthan).



Applicants.

versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, New Delhi.
2. Chief Commissioner of Income Tax, Income Tax Office, Udaipur (Rajasthan).
3. Commissioner of Income Tax, Income Tax Office, Udaipur (Rajasthan).

Respondents.

Mr. S. K. Malik counsel for the applicant.
Mr. Vinit Mathur counsel for the respondents.

CORAM

Hon'ble Mr. Justice G. L. Gupta, Vice Chairman.
Hon'ble Mr. G. R. Patwardhan, Administrative Member.

: O R D E R :
(per Hon'ble Mr. Justice G. L. Gupta)

The controversy involved in both the cases is identical. Hence they have been heard together and are being disposed of by this common order.

2. In short, the case for the applicants is that while working as Tax Assistants they were promoted to the post of Income Tax Inspector in the scale of

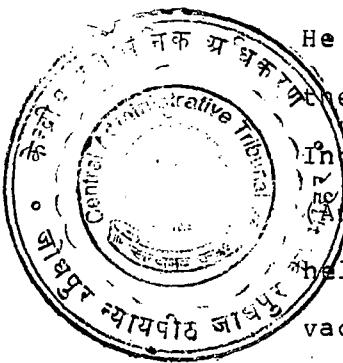
Rs.5500-9000 vide order dated 03.12.2001 after due selection but they have been reverted to the post of Tax Assistant vide impugned order dated 14.3.2002 without even issuing show cause notice to them.

3. The undisputed facts of the case are these :

Applicant Manohar Lal Meena was initially appointed as LDC on 09.01.1978 and was promoted to the post of UDC on 30.07.1992. He was promoted on the post of Tax Assistant w.e.f. 16.02.1996. Applicant Sukh Chand Meena was initially appointed as UDC on 26.05.1994.

He was promoted as Tax Assistant on 29.03.2001. Both the applicants were given promotion to the post of Income Tax Inspector vide order dated 03.12.2001 (Annexure A-2) after they passed the qualifying test held in June 1999 against 2/3rd promotional quota vacancies.

3.1 The say of the applicants is that the cadre strength of the post of Income Tax Inspector is 364 and as per reservation roster there has to be 27 posts for the ST category against the promotional quota and the number of the incumbents working on the posts meant for ST category against the promotion quota being not more than 27, the applicants could not be reverted to accommodate 5 directly recruited Inspectors, transferred from Gujarat. It is pleaded that while counting the number of ST candidates working in the cadre of Inspectors, the direct recruits could not be counted. It is stated that the reversion of the applicants has been ordered without



following the principles of natural justice and, therefore, the order is liable to be set aside.

4. In the counter, the respondents have come out with the case that for filling up 173 vacancies in the year 2000-2001 a DPC was held. The names of the applicants were included in the panel for one of the two feeder cadre i.e. Ministerial cadre. They were included in the panel against the ST vacancies then worked out as per the provisions prescribed in post based roster and the applicants were given promotion purely on provisional basis with a warning that they could be reverted, if it was found that their promotion was in excess of the vacancies available. It is stated that out of the cadre strength of 360, 280 posts were meant for the general category candidates and exactly 280 general category candidates were working, but in the category of SC there ought to have been 53 persons as per roster, however, only 48 persons were working, whereas in the category of ST, 32 persons were working against the strength of 27 prescribed as per the roster. In other words, there was an excess of 5 in ST category in the cadre of Inspectors and shortfall of 5 SC candidates in the SC category. It is averred that when this fact came to the notice of the authorities a Review DPC was held on 11.03.2002. The Review DPC noticed that in the panel prepared during the earlier DPC held in June 2001, 5 ST candidates who came on transfer from Gujarat were not included and if they were included there was no vacancy of Ministerial cadre available in the year

2001-2002 and the applicants being the junior most persons have to be reverted. It is further stated that no one has a vested right of promotion, and as the applicants had been granted promotion by mistake, contrary to the principles laid down in the OM dated 02.07.1997 and the other relevant rules, the impugned order has been issued.

5. In the rejoinder, the applicants' stand is that the roster register of direct recruits and promotees has to be maintained separately and as the 15 Inspectors transferred from Gujarat belonged to the direct recruitment quota, the applicants who are promotees could not be reverted on the ground that the Inspectors of ST category were more than the sanctioned strength.

6. We have heard the learned counsel for the parties and perused the documents placed on record.

7. The contention of Mr. Malik was three fold. One, 2/3rd vacancies of the Income Tax Inspectors are meant for promotees and in the reply it is not the case for the respondents that the number of promotees of ST category exceeded 18. Two, the 15 Inspectors transferred from Gujarat were directly recruited Inspectors and hence they could be counted towards the direct recruitment quota and if more than 1/3rd vacancies were filled by direct recruitment in any year, the applicants were not at fault. Three, the principles of natural justice were not followed while reverting the applicants.

8. Per contra, Mr. Mathur contended that the department has always a right to correct the mistakes. According to him, while calculating the vacancies in June 2001, five Inspectors belonging to ST category, who had been transferred from Gujarat, were left out and when this mistake was detected, a Review DPC was held. His contention was that after the inclusion of these 5 Inspectors in the cadre, no vacancy meant for the ST category candidates is available and the applicants, being the junior most, ST category Inspectors, had to be reverted. Pointing out that in the promotion order Annexure A-2 a warning was recorded to the applicants that they could be reverted on a review of vacancies if it was found that their appointment was in excess of the vacancies available, he contended that no fresh notice was required to be given to the applicants even if they had been given promotion after passing the qualifying test and on the recommendation of the DPC. He canvassed that the promotion being purely 'provisional' and 'until further orders' with a warning of reversion, was in the nature of ad hoc, and the same cannot be assailed on the ground that the principles of natural justice were not followed. He relied on the case of Punjab State Electricity Board vs. Baldev Singh 1998 SCC (L&S) 1369.

9. We have given the matter our thoughtful consideration.

10. It is admitted position of the parties that

to be in excess of the vacancies available they were to be reverted.

11.1 In our opinion, the use of words 'purely provisional' was in the context of the fixation of the seniority to be determined later on and also in the context of the pendency of the OA No. 71/2002 filed by one Shri Poon Ram and others. Since the litigation was pending in the Court, seniority of the promotees could not be determined and, in this context, it was stated that the promotion was purely provisional. The use of the words 'purely provisional' does not make the promotions ad hoc because the applicants had been granted promotion after they had successfully passed the qualifying test and their names had been recommended by the DPC.

11.2 In the order Annexure A-2 this condition was also imposed that the applicants would be on trial for a period of two years and would be liable to reversion if their performance during the said period was not found satisfactory. This clause means that the applicants were placed on probation for a period of two years on the higher post. There could not be any occasion of placing the applicants on probation if their promotion was ad hoc. The very fact that the applicants were kept on probation goes to establish that their promotion was on regular basis. It is not the case for the respondents that the performance of the applicants was not satisfactory and, therefore, they have been reverted.

12. The applicants' promotion cannot be treated to

before issuing the impugned order dated 14.03.2003 (Annexure A-1), no show cause notice was given to the applicant.

10.1 The respondents' stand, that the applicants had been given only ad hoc promotion and, therefore, there was no need of following the principles of natural justice, is devoid of merit.

10.2 A reading of the order Annexure A-2 does not show that the promotion of the applicants was on ad hoc basis. The opening words of the promotion order read that the applicants were promoted to officiate 'until further orders' on the post of Income Tax Inspectors. The very fact that the promotion was made 'until further orders' goes to show that it was not made on ad hoc basis. It is significant to point out that the promotion was granted to the applicants after they successfully passed the qualifying test held in the month of June 1999. Their promotion was recommended by the DPC. Thus, every step required for regular promotion was taken before granting promotion to the applicants on the post of Inspectors.

11. Mr. Vinit Mathur, learned counsel for the respondents, laid emphasis on the words 'purely provisional' appearing in the order Annexure A-2 to contend that the promotion was on ad hoc basis. He pointed out that the applicants were informed in the order Annexure A-2 that if their promotion was found

be ad hoc for another reason. G.I., Dept. of Per & Trg., O.M. No. 28036/8/87-Estt(D), dated the 30th March, 1988, provided the conditions for making ad hoc appointment and the cases where ad hoc appointments can be made. The O.M. says that only in the following circumstances, ad hoc appointment can be made :-



"(a) Where there is an injunction by a Court/Tribunal directing that the post may not be filled on a regular basis and if the final judgment of the Court/Tribunal is not expected early and the post also cannot be kept vacant.

(b) Where the DR quota has not been filled and the Recruitment Rules also do not provide for filling it up on transfer or deputation temporarily and the post cannot also be kept vacant.

(c) In short-term vacancies due to regular incumbents being on leave/deputation, etc., and where the posts cannot be filled as per Para. (v) above and cannot also be kept vacant."

12.1 Admittedly none of these situations existed when the applicants were given promotion. Therefore, the promotion of the applicants did not fall in the category of ad hoc.

12.2 The OM provided that the ad hoc promotions could be made for a limited period of one year. In the instant case as already stated, the promotion was not limited for one year but for a period till further orders. Therefore, the promotion of the applicants cannot be said to be on ad hoc basis.

13. Since the applicants' promotion has not been found to be ad hoc and was on regular basis, the ruling cited by the learned counsel for the

respondents is not helpful in deciding the case.

14. Once we come to the conclusion that the promotion of the applicants to the post of Inspectors was not on ad hoc basis but on regular basis it has to be accepted that before issuing the order of reversion, at least a show cause notice ought to have been given to the applicants, which was not done. Thus principles of natural justice were violated when the order Annexure A-1 was issued.

14.1 Respondents' case is that the applicants were the junior most Income Tax Inspectors and as the vacancies were not available they had to be reverted. Even if, the reversion of the applicants was to be ordered due to non availability of the vacancies then also a notice to show cause ought to have been given to the applicants who could explain their position.

15. Mr. Mathur learned counsel for the respondents has made available a copy of the letter dated 09.10.2003 written by the Chief Commissioner of Income tax, Jaipur, to the Chief Commissioner of Income tax, Jodhpur. It shows that total strength of the Inspectors in ST category in Rajasthan working as on date was 29 which includes 2 applicants and 3 others whose reversion orders have been stayed by the CAT. It further shows that the strength of the promotee Inspectors of ST category is 20 and strength of the direct recruitment ST category Inspectors is 9.

15.1. There can be 27 Inspectors of the ST category. Since 2/3rd posts are to be filled up by promotion, there can be 18 Inspectors of the ST category. It is stated that 20 promotee Inspectors are working in the ST category. Thus, according to the respondents, there is an excess of two promotee Inspectors in the ST category Inspectors. The respondents can certainly pass appropriate order of reversion of the two junior most promotee ST category Inspectors after following the principles of natural justice. It is not the stand of the respondents that the 2 applicants are the junior most promotee ST category Inspectors, rather order Annexure A-2 shows that out of the 5 Income tax Inspectors, the name of Shri Manohar Lal Meena appear at Sl. No.1 and that of Sukh Chand Meena at Sl. No.3.

16. It is further seen that the stand of the respondents for ordering the reversion of the applicants has not been consistent. The order dated 12.03.2002 (Annexure R-1), shows that the applicants have been reverted in order to accommodate the 5 SC candidates whereas in the reply, the stand is that there was no proper calculation of the vacancies meant for the ST category candidates, when the DPC was held for recruitment of 2000-2001. It is stated that the 5 ST candidates who came on transfer from Gujarat were not counted when the vacancies were determined.

16.1 It is admitted position that the 5 Inspectors who had come from Gujarat were directly recruited Inspectors. It is clearly stated in the Central Board

of Direct Taxes order dated 30.06.1986 that when a Non Gazetted direct recruit member is transferred from one charge to another charge, he shall be treated against the direct recruitment quota and if a promotee is transferred to another charge, he shall be treated against the promotion quota. This means that the 5 direct recruits who came from Gujarat shall be treated against the direct recruitment quota.

17. Keeping in view the facts which have emerged in the pleading and the communication dated 09.10.2003, we find it a fit case in which the order of reversion Annexure A-1 is quashed.

18. Consequently, the OA^{is} ^{order} allowed. The order Annexure A-1 is hereby quashed. This order, however, will not prevent the respondents from passing appropriate order against the two applicants after following the principles of natural justice.

19. No order as to costs.

sd
(G. R. PATWARDHAN)
MEMBER (A)

sd
(G. L. GUPTA)
VICE CHAIRMAN

P.C.J

वर्माणित सही प्रतिलिपि
Madan 07/11/03
मनुभाग अधिकारी (स्थायी)
राष्ट्रीय प्रशासनिक अधिकरण
बोधपुर

RK
on 10/11/03
(Parivartan)
D.S

✓24
PARIVARTAN