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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application Nos.93/2004

Date of decision: 19-11-2009

Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.

Hon'ble Mr. V.K. Kapoor, Administrative Member.

N.S. Poonia, S/o shri Lal Chand Poonia, aged about 38 years, r/o present local address C/o Narayan Singh Opposite Ram Kripa Road No. 5 Paota C Road, Jodhpur Permanent Address Plot No. 269 A Lane No. 8, Guru Jambeshwar Nagar A Gandhi Path Queence Road, Jaipur. Official Address: Inspector of Income Tax (Adhoc)Office of the Additional CIT Range 2 Commissioner of Income Tax I Jodhpur.

: Applicant.

Mr. Kamal Dave : Counsel for the applicant.

Versus

1. Union of India, through the Secretary, Ministry of Finance, Government of India, New Delhi.
2. Chief Commissioner of Income Tax, New Central Revenue Building Statue Circle, Jaipur.
3. Commissioner of Income Tax I, New Central Revenue Building Statue Circle, Jaipur.
4. Mrs. Jyoti Khanna, Income Tax Inspector, Office of the Commissioner of Income Tax I New Central Revenue Building, Statue Circle, Jaipur.

: Respondents.

None Present for the respondents.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

This O.A. has been filed by Shri N.S. Poonia, against the Union of India and three others under Sec. 19 of the Administrative Tribunals Act, 1985 in regard to his promotion from the post of Stenographer Gr. II to the post of Inspector of Income Tax. In this application he has sought for the following reliefs:

- a) That the impugned order dated 22.10.2002 allowing again promotion within a period of one year may be quashed and set aside. The respondents may further be directed to consider applicant's candidature being immediate next candidate in the panel of same DPC for promotion to the post of Income Tax Inspector against the vacancy fallen vacant

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on account of refusal of Smt. Jyoti Khanna with all consequential benefits including seniority and real monetary benefits.

b) That the respondents may directed to maintain the statutory ratio of 1:3 stenographers : Ministerial cadre in respect of the post filled in furtherance of recommendation of DPC held in the month of June 2001 covering vacancies available upto 31.03.2002 on account of promotion, superannuation, retirement (voluntary/compulsory) death etc.

2. The case in brief is that the applicant namely, Shri N.S. Poonia was working as Stenographer Gr. II in the Income Tax Department at Jodhpur. Respondent No. 4 Smt. Jyoti Khanna was immediate senior to him as Steno Gr. II. She was promoted as Income Tax Inspector from Steno Gr. II and she joined the said post on 22.06.2001. As per version of the applicant, respondent No. 4, submitted a representation on 17.04.2002 for reversion from the post of Inspector to the post of Stenographer Gr. II due to certain personal problems and her request was accepted by the then Chief Commissioner of Income Tax. The Chief Commissioner of Income Tax passed an order dated 06.09.2002, reverting Smt. Jyoti Khanna to the post of Stenographer Gr. II. After joining the post of steno grade. II, again on 16.10.2002, Smt. Jyoti Khanna requested that her case may be reconsidered and she be allowed to continue as Income Tax Inspector. The Chief Commissioner of Income Tax after giving her personal hearing issued instructions revoking the reversion, vide order dated 22.10.2002 and she was allowed to work as Inspector of Income Tax. The applicant prays that there is a rule that within one year of such order of reversion, a person's case cannot be re-considered for promotion. It is averred that while she was reverted, the applicant's case for promotion should have been considered, but it was of no avail. The applicant has relied on para 17.12 of the Swamy's compilation on Seniority and Promotion in Central Government Service which throws light on refusal of promotion by a government employee. The applicant has made objection to the promotion of respondent No. 4 contending that in the light para 17.12 he ought to have

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been promoted as Inspector of Income Tax. The applicant has further contended that the respondents have not followed the ratio of 1: 3 among Stenographer and Ministerial staff. The applicant has prayed for quashing and setting aside of all these orders and requested for considering his name for promotion to the post of Inspector of Income Tax as per prescribed norms. In support of his contention the applicant has filed certain documents as Annex. A.1 to Annex. A.5. The applicant has also filed his rejoinder to substantiate his points through his counsel.

3. The respondents have filed a detailed reply by which they rebutted the claims of the applicant. The respondents have clarified that a Departmental Promotion Committee (DPC for short) meeting was held for filling up the posts of Inspector of Income Tax from the Stenographers as well as Ministerial staff in the month of June 2001 in the ratio of 1:3 and the said ratio has been maintained. It is averred that the applicant's name was not in the panel drawn by the DPC for the recruitment years 2000-2001 and 2001-2002 and his name was not in the zone of consideration. The respondents have prepared separate lists for the Ministerial staff as well as for the Steno Gr. II and prepared a combined list in the ratio of 3:1 from the list of eligible candidates. As the applicant's name was not in the panel drawn by the DPC for the years 2000-2002, his case was not considered. As regards respondent no. 4, Smt. Jyoti Khanna she was promoted as Inspector of Income Tax and she joined the post on 02.6.2001. As per the request of respondent no. 4, vide her representation dated 17.4.2002, her request was accepted and she was reverted from the post of Inspector of Income Tax to the post of Stenographer grade II vide order dated 6.9.2002 and she joined the post of Steno Gr. II on 6.9.2002 itself. Later, she moved another application on 16.9.2002 requesting that her case be re-considered for promotion according and her request was accepted and her reversion to the post of Stenographer grade. II was revoked and she joined

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the post of Inspector of Income Tax on 22.10.2002. It has further been averred that the applicant's case was not linked up with respondent no. 4 as the applicant's name was not in panel drawn by the DPC., thus his contentions were not accepted. The request of respondent No. 4 was considered after giving her a personal hearing, the same was accepted by the competent authority; hence there was no irregularity on the part of respondents. Therefore, the respondents have prayed for the dismissal of the pleas made by the applicant.

4. (a) Learned counsel for the applicant narrated the whole case during the course of arguments. He dwelt upon the fact that the respondent No. 4 was promoted from the post of Stenographer Gr. II to that of Inspector of Income Tax. Later she was reverted to the post of stenographer Gr. II as per her willingness. Respondent no. 4 worked as Stenographer Gr. II for sometime and was again promoted the post of Income Tax Inspector vide order of Commissioner of Income Tax I Jaipur dated 22.10.2002. As per version of the applicant, respondent No. 4 worked as Income Tax Inspector for 15 months and subsequently reverted on the post of Stenographer Gr. II. It was alleged that the promotion can be refused before new orders are received. As respondent No. 4 refused promotion, she should not have been given promotion within a span of one year as per prescribed norms.

The respondents 2,3 wrongly revoked her reversion order on 22.10.2002, this order being arbitrary, is subject to challenge. Applicant being the next selectee should have been considered on this vacant post of Income Tax Inspector. On the issue of the order being of an administrative nature, was subject to challenge as per procedural norms; the counsel for applicant fervently contended that the procedure cannot be tilted on whims. The applicant's counsel relied mostly on para 17.12. of Swamy's Compilation for promotion of Central Government employees. It was further argued that respondent No. 4's grounds were accepted again; respondents 2-3 acted on

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administrative malice in granting promotion to her (i.e. respondent no. 4) Applicant being next in the seniority list; belonged to stenographer grade so his name should have been considered for promotion post. Applicant's counsel largely depended upon the detailed representation of the applicant; made a fervent request for reversion of respondent no. 4 to Stenographer's post, thereby paving the way for applicant's promotion.

4 (b) None was present on behalf of the respondents. Accordingly, reply given by the respondents would be the guiding matter from their side, as discussed in para 3 above.

5. It is an accepted fact the applicant and the respondent no.4 were working in the Income Tax Department as Stenographer Gr. II during the period in question viz. 2000-2001 , 2001 -2002. This has also been agreed upon by the applicant that respondent no. 4 was senior to him by one year. Promotion to the post of Inspector of Income Tax for the Ministerial category and Stenographer category was held during year 2000-2001, In the said process, respondent no. 4 was promoted from the post of stenographer Gr. II to the post of Inspector of Income Tax and she joined the said post on 22.06.2001. But subsequently, because of some personal problems, she made a request for her reversion to the post of stenographer Gr. II on 17.04.2002 and the said request was sent to the Chief Commissioner of Income Tax on 23.08.2002 for passing appropriate order. Her request was accepted and she joined the post of stenographer Gr. II on 06.9.2002. But after a short respite, she moved an application on 16.9.2002 requesting the authorities to allow her to continue on the post of Inspector of Income Tax. After personal hearing her reversion was revoked vide order dated 22.10.2002, and she was allowed to work as Inspector of Income Tax.

6. The applicant has contended that respondent no. 4 was reverted to the post of stenographer Gr. II; therefore once the post of Inspector of

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Income Tax was apparently vacant during the course of action, his name should have been considered for promotion to that post. The applicant has relied mainly on para 17.12. of Swamy's compilation on Seniority and Promotion which speaks about Refusal of Promotion in which it has been clarified that in case of refusal of promotion, during the validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for a period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. However, the official respondents have categorically stated that during the period in question the applicant's name did not figure in the zone of consideration and as such, his name was not included in the panel. Therefore para 17.12. will not be much helpful to the applicant's case. Moreover, the Chief Commissioner of Income Tax order is basically an administrative in nature and the promotion to respondent no. 4 was given effect to after due consideration and by giving personal hearing by the Chief Commissioner of Income Tax. The respondent no.4 was reverted to the post of Stenographer Gr. II on 6.9.2002; She made a representation on 16.9.2002 for revoking the reversion order and the same was considered by the competent authority; vide order dated 22.10.2002, she was permitted to work as Inspector of Income Tax. Para 17.12. does not cover the case under question as the respondent no. 4 had never refused promotion but she joined the post of Income Tax Inspector 22.6.2001 and worked on that post for more than one year. Owing to certain personal problems, she made a request for reversion to the post of Stenographer Gr. II which was agreed to and she joined post of Stenographer Gr. II on 6.9.2002. Again she made a request on 16.09.2002 for revocation of the reversion order and the same was allowed by the competent authority after due thought. Thus she had worked on the post of stenographer grade II only for a brief period.

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7. The respondents have stated that they have followed the 1:3 ratio. The applicant was not in the zone of consideration and his name does not figure in the panel prepared by the DPC. Therefore, the order of the official respondents does not smack any administrative malice as alleged by the applicant nor the rules were tilted to favour the respondent no.4. The detailed representation of the applicant was considered by the competent authority and there was no ground for promoting him to the post of Inspector of Income Tax as no vacancy was caused in the whole process.

Para 17.12. reads as under:

"When a Government employee does not want to accept a promotion which is offered to him, he may make a written request that he may not be promoted and the request will be considered by the Appointing authority, taking relevant aspects into consideration. If the reasons adduced for refusal of promotion are acceptable to the Appointing Authority, the next person in the select list may be promoted. However, since it may not be administratively possible or desirable to offer appointment to the persons who initially refused promotion, on every occasion on which a vacancy arises, during the period of validity of the panel, no fresh offer of appointment on promotion shall be made in such cases for period of one year from the date of refusal of first promotion or till a next vacancy arises, whichever is later. On the eventual promotion to the higher grade, such government servant will lose seniority vis-à-vis his juniors promoted to the higher grade earlier irrespective of the fact whether the posts in question are filled by selection or otherwise. The above mentioned policy will not apply where adhoc promotion against short term vacancies are refused.

[In cases where the reasons adduced by the officer for his refusal for promotion are not acceptable to the Appointing Authority, the he should enforce the promotion of the officer and in case the officer still refused to be promoted, then even disciplinary action can be taken against him for refusing to obey his order.]

The question involved in this case is not a refusal of promotion. Hence para 17.12 is not of much helpful to the applicant. Further more the respondent no. 4 had worked on the post of stenographer grade II only for a brief period. Therefore the applicant could not substantiate his claim. The corollary above tilts the balance in favour of respondent no. 4;

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moreover so, because the applicant's name did not find place in the zone of consideration during the period in question.

8. We are also of the view that on legal point this Original Application is not maintainable because of the fact that reversion to a lower post from a higher post is a punishment and any order of punishment cannot be passed without following certain procedure. Therefore, the order whereby the respondent no. 4 was reverted back was an illegal order and cannot stand to be correct in the eye of law. In this background the revocation of the reversion order passed by the competent authority is correct and legal.

9. In view of the above discussion there is no merit in this O.A and according it is dismissed. In facts and circumstances of this case there shall be no order as to costs.

V.K. Kapoor
[V.K. Kapoor]
Administrative Member.

S.M.M. Alam
[Justice S.M.M. Alam]
Judicial Member.

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Part II and III destroyed
in my presence on 8/7/11
under the supervision of
section officer () as per
order dated 07/07/2015

Section officer (Records)