

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...
ORIGINAL APPLICATION NO.322 of 2005
Jodhpur, this the 26th day of August, 2008
...

CORAM:

HON'BLE MR.JUSTICE M. RAMACHANRAN, VC(J)
HON'BLE MR.TARSEM LAL, MEMBER(A)

...

Madan Lal Kachhawaha, aged 60 years, son of Shri Ramchandra Kachhawaha, resident of Maliyon Ka Bagh, Mahamandir, Jodhpur (Retired as Senior Tax Assistant from office of Chief Commissioner of Income Tax, Jodhpur).

...APPLICANT

BY ADVOCATE: SHRI MANOJ BHANDARI

VERSUS

1. Union of India, through the Secretary, Ministry of Finance, North Block, New Delhi.
2. Chief Commissioner of Income Tax, Central Revenue Building, Bhagwan Das Road, Jaipur.
3. Chief Commissioner of Income Tax, 'Ayakar Bhawan', Paota 'C' Road, Jodhpur.
4. Rakesh Ghiya, presently working as Office Superintendent, CIT-Ist, Income Tax Department, 'Ayakar Bhawan', Paota 'C' Road, Jodhpur.

...RESPONDENTS

BY ADVOCATE:SH.VARUN GUPTA – For respondents 1 to 3
None for Respondent No.4

ORDER

MR.JUSTICE M.RAMACHANDRAN, VC(J):-

Applicant retired from service under the respondent department as a Senior Tax Assistant on 30th September, 2005. After retirement he found

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that some of his juniors in the cadre of Senior Tax Assistants had been promoted as Office Superintendents by order dated 27.10.2005 which was carried out after clearance by the D.P.C. The applicant is feeling aggrieved that although he was entitled and eligible to be considered against vacancies occurring for the years 2003-2004 and 2004-2005, he had been denied promotion because of the delayed action on the part of respondents in the matter of processing of the cases. Persons junior to him have been promoted to the post of Office Superintendent, but, promotion has been denied to him for no fault of his. Merely because he attained the age of superannuation, he could not be denied promotion against vacancies which existed prior to his attaining the age of superannuation. He has prayed that directions be issued to respondents to give him notional promotion on the presumption that DPC had cleared his name for promotion. Alternatively, his submission is that if D.P.C. had failed to consider him, the Tribunal may issue necessary directions to the Department to hold a review D.P.C. by taking note of his credentials so as to ensure that at least in the matter of retirement benefits, he is not subjected to discrimination.

2. Applicant had joined the respondent department in 1968 as a Peon, and, in due course, had been promoted as L.D.C. in 1977 and U.D.C. in 1989. He was further promoted as a Senior Tax Assistant and had been working as such from 2001 onwards. He has referred to the seniority list, as at Annexure A-4, to show that even though his name figured at a much better position in that list, persons juniors to him in the category of Sr. Tax

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Assistants now stand promoted as Office Superintends and the respondents omitted to advert to his claim.

3. Ld. Counsel - Shri Manoj Bhandari, appearing for the applicant made a reference to instructions on the subject of "Frequency of Meetings", as contained at Page 81 of Swamy's Compilation on Seniority & Promotion in Central Government Service, Ninth Edition-2002, and submitted that D.O.P.T. instructions are clear that D.P.Cs should be held at regular annual intervals so as to draw panels which can be utilized for making promotions against vacancies occurring during the course of an year. For this purpose it is essential for the concerned Appointing Authorities to initiate action to fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting the relevant information for placing before the D.P.C. D.P.Cs should be convened every year, if necessary on a fixed date. Ld. Counsel further submits that under law it is mandatory that a vacancy should be filled up in accordance with the Recruitment Rules in force on the date of the vacancy, unless rules made subsequently have been expressly given retrospective effect. Since amendments to Recruitment Rules normally have only prospective application, the existing vacancies should be filled up as per the Recruitment Rules in force. It is pointed out that no D.P.Cs were held during the years 2001 to 2004 and he would have been considered for promotion in 2004, as well as 2005, if such D.P.Cs had been convened as required under the administrative instructions. The claim is, therefore, confined to an

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appropriate direction to respondents so that he may be able to get notional promotion, and the benefits arising thereof.

4. On behalf of respondents, however, it is submitted that applicant could not have urged that he became entitled to be in the zone of consideration for promotion as Office Superintendent on the date he became a Sr. Tax Assistant. The ld. Counsel submits on the basis of instructions that minimum incumbency of three years is necessary for a person for being considered eligible for promotion (although in the counter reply the minimum occupancy period is stated as two years). It is submitted that there were no candidates available who were possessing the minimum qualification in the years concerned and the D.P.C. was not held because of this reason. It is further submitted that going by the above standards, applicant's claim, if at all, arose only by 22nd June, 2004 but a D.P.C. was held only in 2005 because of administrative reasons. The ld. Counsel also submits that the administrative instructions cannot be understood as a mandate for promotion from the date a vacancy arose. It is within the domain of the Government as to when the vacancies are to be filled up. It is a discretion vested with the department to either fill up a post, or to keep it vacant. The rules only provide that vacancies when filled up, should be filled on the basis of the rules prevailing as on that date. He stressed that the instructions, relied upon by the applicant, are not relevant.

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5. During course of arguments, ld. Counsel for the applicant had invited our attention to a decision of the Supreme Court in P.N.RAMACHANDRAN VS. STATE OF KERALA & OTHERS, reported in 2004(1) SCC 245 and also a decision of the Rajasthan High Court in CWP No. 1467 of 2007. The first decision referred to the requirement of holding D.P.Cs with a regularity and the decision of the Rajasthan High Court had adversely commented upon the delayed action of the department in filling up the vacancies which would have obliterated the rights of persons. This was not accepted as a healthy practice. But nothing has been brought to our attention from any authoritative pronouncement to accept a submission that a person who had retired from service was entitled to a notional promotion in a situation where his claim could not be considered because of delayed holding of DPC. Perhaps it would have been possible to examine such a situation if a person junior to the applicant had been given promotion from an earlier date. But, that is not so in the present case. The pleas made, as well as the documents produced before us indicate that a person junior to the applicant had been promoted only on 27.10.2005, after the D.P.C. meeting of October 2005. Well, by that time applicant had retired from service.

6. Therefore, in these circumstances we hardly see any circumstance for interference. Nor, it can be implied that the civil rights of the applicant have been violated although, of course, there was some amount of delay on the part of the respondents in holding of the D.P.Cs for identifying eligible

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persons for promotion. The grievance, therefore, is incapable of being redressed.

7. In view of the above, this O.A. is dismissed. Parties are left to bear their own costs.

Tarsem Lal
(TARSEM LAL)
MEMBER(A)

M. Ramachandran
(JUSTICE M. RAMACHANDRAN)
VICE CHAIRMAN(J)

Dated: August 26, 2008

'bss'

2018/12
[Signature]

R/C
Priory Clerk
29.08.08

Part II and III destroyed
in my presence on 15/11/14
under the supervision of
section officer () as per
order dated 19/8/2014
[Signature]
Section officer (Records)