

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION No. 316/2007

Date of Order 24.05.2012

(Reserved on 14.02.2012)

**HON'BLE MR. SUDHIR KUMAR, MEMBER (A)
HON'BLE MR. V. AJAY Kumar, MEMBER (J)**

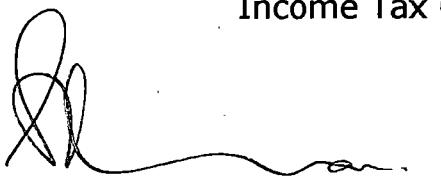
1. Yasheen Khan,
S/o Haji Mushraf Khan
R/o Near Lalgarh Masjid,
Rampura Basti, Bikaner,
Official Address in the office of
Income Tax Officer (TDS), Range I,
Bikaner.
2. Mushkand Singh Sran
S/o Shri Badan Singh,
R/o 3/18- Income Tax Colony,
Shivbari Chouraha, Jainarayan Vyas
Nagar, Bikaner, Officer address in the
Office of Income Tax Officer (ward 1 (i)),
Bikaner.

...Applicants

(By Advocate: Mr. Kamal Dave)

VERSUS

1. Union of India,
Through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
New Delhi.
2. Chief Commissioner of Income Tax,
Central Revenue Building, Janpath,
Jaipur.
3. Gajendra Prasad Awasthi,
Income Tax Inspector, Income Tax Office,
Sawaimadhopur.
4. Om Prakash Saini,
Income Tax Inspector,
Income Tax Office,



C.R. Building, Statue Circle,
Jaipur.

5. Umesh Chand Kachhawa,
Income Tax Inspector,
Income Tax Office, Nagore.

6. Narender Singh,
Income Tax Inspector,
Income Tax Office, Churu,
Through- Commissioner of
Income Tax, Rani Bazar,
Bikaner.

...Respondents

(By Advocate: Mr. Varun Gupta)

:ORDER:

PER MR. SUDHIR KUMAR, MEMBER (A):

The two applicants before us are employees of the Income Tax Department and are challenging the alleged erroneous seniority positions assigned to them in the seniority list circulated by the department in respect of Income Tax Inspectors, in which list the private respondents no.3,4,5 and 6 are also assigned some seniority positions.

2. The case of the applicants is that appointment by way of promotion to the posts of Income Tax Inspectors is granted from two streams i.e. Ministerial and Stenographers, in the ratio of 3:1. This ratio has been provided exclusively to provide avenues of promotion to both wings of the department, as prescribed through the Income Tax Department (Inspector) Recruitment Rules, 1969 (the annexure of which has been produced by the applicant at Annexure-A/3 of the OA). The 1969 rule provided

for preparation of the select lists of employees for the purpose of promotion to the posts of Inspectors in Column-11 as follows:-

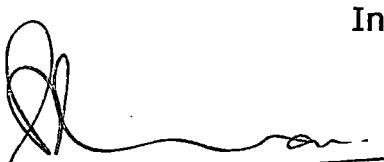
"Upper Division Clerks and higher ministerial grades, Stenographers (03) and Stenographers (Selection Grade), with three years service in the respective grade, who have qualified in the Departmental Examination for Income Tax Inspectors. The names of all such qualified candidates will be arranged in two separate lists. In the first list, the names of all the qualified persons will be arranged in order of seniority in the Department. In the second list, the names of all the qualified persons will be arranged according to the date/year of passing the departmental examination provided that the persons who pass the examination on the same date will be arranged according to their seniority in the Department. After the approval of the persons in the two lists by the DPC, the names of all those selected candidates will be embodied in two separate select lists. Vacancies in the promotion quota will be filled alternately from the two lists."

3. Thereafter, through the Gazette notification dated 20.09.1986, (Annexure A-5), the said Column-11 of the Government notification dated 08.09.1986 was notified to have been amended as follows, to be effective from the date 01.10.1985 onwards:-

"In the Schedule to the Income-tax Department (Inspector) Recruitment Rules, 1969:-

- (a) in column 3, for the word and figures "Class III", the word and letter "Group "C" shall be substituted.
- (b) in column 11, for the existing entries and the Note thereunder, the following entries shall be substituted, namely:-

"Supervisors Grade-I and Grade-II, Head Clerks, Tax Assistants and Upper Division Clerks (hereafter referred to as the Ministerial Cadre), and Stenographers Grade-I, Grade-II and Grade-III (hereafter 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 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 in the Department. On the approval of the persons in the said lists, relating to 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"

Explanatory Memorandum

Following representations from the staff side, the Government had issued instructions on the 1st October, 1985 prescribing a quota for the ministerial cadre and stenographer cadre in the grade of Income-tax Inspector earmarked for promotion. Since these instructions are already being followed and the amendments of the rules is to regularize the said position formally, no one will be adversely affected as a result of the retrospective effect being given to this notification."

4. The result of this amendment was that while the earlier rules prescribed that the names of all the qualifying candidates will be arranged in two separate select lists, as stated in the rules reproduced in para 2 above, and the vacancies in the promotion quota were to be filled by picking up persons alternatively from the two lists, and the result thereof was of having no weightage being prescribed for any particular list, that



rule was amended by the notification dated 08.09.1986 published in the Gazette on 20.09.1986 to say that on approval of persons' candidature by the DPC, the names of all the selected candidates were to be arranged in the two separate select lists in the ratio of 3:1, and that then the vacancies in the promotion quota were to be filled up from the said two select lists in such a manner that the ratio of 3:1 was maintained between the persons coming on promotion from the Ministerial Cadre and the Stenographers' Cadre. Apparently this modification notification was never challenged, and became final.

5. The applicants before us belong to the Ministerial Cadre of respondent department. In the seniority position of Income-Tax Inspectors notified on 01.01.2007, the Applicant No.1 was placed at seniority position 140 and the Applicant No.2 was placed at serial no.138. The applicants represented against their seniority positions, for its correction, pointing out that the Applicant No.1 had qualified the Departmental Ministerial Staff Examination, in the Month of July, 1997, and thereafter, he had qualified the departmental examination for Income Tax Inspectors in the Year 1991, yet promotion was given to him only vide order dated 25.06.2001. The applicants herein are aggrieved that by providing avenue of promotion in the ratio of 3:1, some Stenographers who had entered in service in the department much after the entry of the applicants were allowed higher seniority positions in application of the erroneous criteria

of granting seniority in the ratio of 3:1. They had given the example of one Shri Umesh Chandra Kachhawa, who was placed at seniority no.133, and had entered department on 10.06.1991, but came to occupy the seniority above the applicants, though he was only a toddler when applicant no.1 had entered in service with the department as Lower Divisional Clerk on 14.10.1974.

6. The applicants have therefore now assailed the amendment made through Annexure-A-5, Gazette Notification dated 20.09.1986, stating that it had proceeded on wrong principles while prescribing the procedure for assignment of seniority, since even in the case of promotions from reserved categories, where the prescribed ratio/percentage provided for SC/ST categories etc. are maintained, the incumbents so promoted are placed at the bottom of the seniority amongst the employees promoted as a result of same panel. Therefore, the applicants' contention is that the ratio of 3:1 as prescribed can only be maintained for the purpose of filling up of promotional posts, but that ratio should not extend any further right for grant of seniority also being assigned in the 3:1 ratio for selection, which has resulted in serious anomaly as regards the seniority positions. The applicants also produced the table showing the seniority positions of the Stenographers who were placed above the Applicant No.1, even though he was promoted as UDC in the year 1977. The applicants are aggrieved by the rejection of their grievances, and their representations dated



31.05.2007, through the impugned Annexure-A/1 dated 28.06.2007, declining to make the corrections as requested by the applicants herein, and reiterating that their seniority positions have been correctly determined in accordance with the prescribed Rules for Promotional appointments.

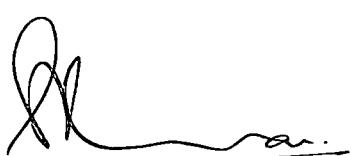
7. The applicants assailed the contention of the respondents on the ground that maintenance of the ratio of 3:1 for picking up persons from the two separate select lists had no nexus with the grant of seniority also, and that the rules for the grant of seniority for grant of promotion, and allotment of seniority after such grant of promotion from amongst people from two different Cadres, i.e. Ministerial and Stenographers, should be such so that a Junior Stenographer shall not be allowed to steal a march over a Senior ~~Stenographer~~^{Ministerial Staff}, even if he is having other requisite eligibility criteria. They had assailed the action of the respondent department in granting the promoted Stenographers seniority over and above the Ministerial Cadre employees, who were senior to them, but who were promoted along with them, and submitted that any such allotment of seniority to the promoted Stenographers over the promoted Ministerial staff is clearly beyond the scope of the above referred Rule, which had only required the ratio of recruitment by promotions from the two Cadres to be maintained as 3:1.

8. Further ground taken by the applicants in the OA is that opening of avenues of promotion, and grant of inter-se seniority,

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are two separate and distinct phenomena, and in no case can a provision for an avenue of promotion be extended to accord seniority also. Their submission was that while selection for promotion may be made in the ratio of 3:1 as prescribed, the seniority after such selection for promotion should be decided only according to the date from which an employee became eligible for such promotion, after rendering the prescribed qualifying service in the feeder grade.

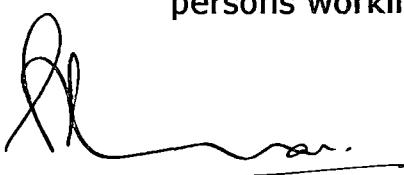
9. Admitting that every employee has a legitimate expectation of advancement in career, it was submitted that such advancement cannot result in a placement of the incumbents who were equally placed, but had entered department subsequently, above those who had entered department earlier. It was submitted that the seniority is a term which essentially denotes and relates to the date of entry in the Cadre, which makes the incumbents eligible for promotion. In the result, the applicants had prayed for relief by way of quashing and setting aside the impugned order dated 28.06.2007 (Annexure-A/1), vide which the department had clarified that there is no mistake in the revision of the seniority list of Income Tax Inspectors as notified, and had further prayed that the respondents may be directed not to relate the 3:1 ratio for the promotional posts as ratio for seniority also, and both may be declared separate and distinct, having no effect for



determining seniority. The applicants had also prayed for any other appropriate order or directions and costs.

10. In their reply written statement submitted on 06.08.2008, the respondents had denied that the contention of the applicants that the ratio in which the promotions were being granted from the two respective cadres, i.e. Ministerial Staff and Stenographers' cadre, has no nexus with the seniority to be assigned to them. It was submitted that the seniority has to be assigned to the Ministerial staff and Stenographers in the same sequential order in which the DPC recommends their names.

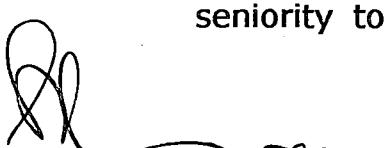
11. Along with their reply, the respondents had also filed a copy of the Government of India Notification dated 04.06.2001 as Annexure R/1, which had prescribed the modified guidelines for filling up of posts in Groups 'B', 'C' and 'D' of the Income Tax Department, subsequent to the approval of restructuring plan of the Income Tax department by the Union Cabinet, which contained the Annexure-“A” prescribing and describing the rules applicable for promotions to the posts of Income Tax Inspectors in respect of the recruitments upto the recruitment year 2000-2001, and the fresh Rules prescribed for Recruitment Year 2001-2002 onwards. It was emphasized that these rules had categorically stated that for the purpose of assignment of seniority, persons working in the higher grade will rank senior to persons working in the lower grade, as follows:-



"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 the cadre shall be arranged in order of seniority in the Department. In the second list, the names of all the qualified persons failing in the 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 seniority in the Department. 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 (including the DEOs) and Steno Cadre. For the purpose persons working in the higher grade with rank senior to persons working in the lower grade".

(Emphasis supplied)

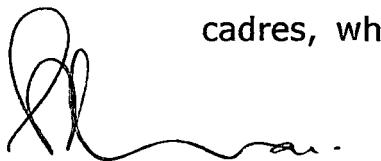
12. It was submitted that this stipulation that persons working in the higher grades of pay are automatically considered senior to persons working in the lower grade ^{flows} from the canons of Administrative Law, and was correctly followed when the seniority of the applicants was fixed on 01.09.2002, just after convening the DPC on 19.06.2001, and that applicants have not given any explanation or reason for their having raised this objection after a lapse of six years in the year 2007 only. It was further stated that the fact that one of the private respondents was just a toddler at the time of appointment of the Applicant No.1 in the department has no bearing upon the assignment of seniority to the officials concerned. It was further submitted



that the procedure adopted for assignment of seniority for SC/ST candidates cannot be compared with the present case. SC/ST Reservations provided for ⁱⁿ the same cadre as the general category candidates cannot be compared with the procedure adopted for assignment of seniority when the promotions of the candidates are being effected from two different streams, of the Ministerial Staff, and the Stenographers' cadre.

13. It was further submitted by the respondent department that where promotions are made on the basis of selection by a DPC, the seniority of such promoted remains in the order in which they are recommended for such promotions by the DPC. In the result, the official respondents submitted that the actions of the answering official respondents are completely in accordance with the rules framed, and cannot be assailed on account of any of the principles enshrined in the Constitution, and the Laws and Rules framed thereunder, and it was prayed that the OA be rejected with exemplary costs.

14. The applicants thereafter filed a rejoinder on 18.11.2008, more or less reiterating their earlier contentions, and submitted that even though a quota is prescribed to guarantee representation of each cadre in the promotional posts, but that cannot be construed to be an opportunity for the concerned incumbents to automatically become entitled to grant of a higher seniority position, while taking the persons from two feeder cadres, where selection criteria includes the merits and other



relevant factors. They submitted that the rule merely provided that in the final select list, the promotion ratio of 3:1 is required to be maintained, and in so far as the individual persons being picked up from the two separate select lists was concerned, it is not necessary that after every three incumbents picked up from the ministerial cadre, one stenographer has to be necessarily adjusted, which is what appears to have been done by the respondents, bringing about the anomaly pointed by the applicants.

15. In order to further prove their point, the applicants had cited another Memorandum of the respondent department, relating to the promotions to be provided on the basis of vacancies in the grade of Head Clerk, which were reserved for being filled up by promotion 75% from the grade of UDC, and 25% from the grade of Store Keepers. They submitted that the relevant notification had prescribed as follows:-

"The eligible UDC and Store Keepers shall be arranged in separate list that refers to their relative seniority in those grades. The DPC will make selection of 3 candidates from the list of UDC's and one from the list of Store Keepers. Thereafter, the selected persons from each list shall be arranged in a single list in a consolidated order of merit assessed by the DPC, which will determine the seniority of the persons on promotion to the Higher grade."

16. The applicants, therefore, submitted that after the selected candidates from each list are picked up, the consolidated order of merit to be assessed by the DPC should alone determine the



seniority of the persons on promotion to the higher grade. In the result, it was submitted that while considering the promotions from two different cadres, the Department had applied the principle for determining the seniority erroneously, and, therefore, their OA deserved to be allowed.

17. The private respondents no. R/3 and R/4 did not file any reply, but the private respondents no.R/5 and R/6 filed their reply written statement on 20.01.2009, in which they sought to take shelter behind the notification dated 04.06.2001 (Annexure-R/1), in which it has been mentioned/^{and}prescribed, as cited above, that while 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 Stenographers' Cadre, but in the seniority list, the persons working in the higher grade will rank senior to persons working in the lower grade. The Private Respondents R/5 & R/6 contended that the procedure as prescribed requires that for the purpose of assigning seniority, after every three incumbents picked up from the Ministerial cadre, one Stenographer has to be adjusted, which appears to have been correctly done by the respondents. In the result, they had prayed for the OA to be rejected, more so as the applicants have not challenged their seniority position assigned to them from 2001 onwards, but had challenged it much later, after delay of six years.

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18. Heard. During the course of arguments, learned counsel for the applicants produced a copy of the order dated 14.05.2002 passed in OA No.72/2001 by the Jodhpur Bench of this Tribunal itself, concerning the same matter, but in which somehow notification dated 04.06.2001 (Annexure-R/1) had perhaps not considered by the Co-ordinate Bench while passing the order. It had only considered the previous rule as notified through Annexure-A/5, notification dated 08.07.1986, and gazette notification dated 20.09.1986, but had upheld it. While deciding that OA, the Coordinate Bench on that date had relied upon the Hon'ble Apex Court judgment in Government of Tamil Nadu and Another vs. S. Arumugham and Others; (1998) 2 SCC 196, in which, while setting aside the judgment of the Tamil Nadu Administrative Tribunal, the Hon'ble Apex Court had in Para 10 of the judgment laid down the law 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.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 promotes 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....."

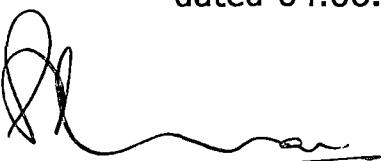


19. We have given anxious consideration to the facts and circumstances of the case. The rules as prescribed earlier, further amended through Notification dated 08.09.1986 and Gazette Notification dated 20.09.1986 (Annexure-A/5), had already been upheld by this Tribunal on 14.05.2002 while deciding O.A. No. 72/2001, as stated above, and it is a settled law. The only portion on which no judicial findings appear to have been arrived at so far is the Government order dated 04.06.2001 (Annexure R/1), which the Applicants had not even mentioned in their O.A. It appears to us that no fault can be found in the respondent department having followed the Rule as prescribed in the said order. Nothing in this amended order dated 04.06.2001 (Annexure R/1) is such which can be said to be against the principles of service jurisprudence, or the canons of administrative law, and can be assailed as being shocking to the conscience of a normal person. Therefore, the amended Rules notified through Annexure R-1 on 04.06.2011 are upheld. As a result, it is held that while giving ~~the~~ effect to the promotions, after having picked up three persons from among the eligible members of Ministerial staff, and one from among the eligible Stenographers, if the DPC had thereafter strictly followed the principle that the person working in the higher grade as on date of the DPC will rank senior to the person working in the lower grade as on the date of the DPC, no fault can be found in that procedure having been followed.



20. Prima-facie, it appears from the averments and the submissions of the respondent department that this procedure was strictly followed by both the DPC and the respondent department while consolidating the list of the persons recommended for being promoted to the posts of Inspectors, in the DPC meeting held on 19.06.2001, and the promotions granted by the Department thereafter w.e.f. 01.09.2002, though it has not been stated specifically in the impugned order Annexure-A/1, and it has merely stated that the respondents have strictly followed the prescribed Rules. Therefore, we do not find any merits in the contention of the applicants that weightage should be given to their prior seniority in the feeder cadre, and prior length of service in the feeder cadre, and hold that the position in the pay scale or grade as on the date of DPC would alone be relevant for the purpose of determining inter-se seniority, after picking up the persons from the two lists of the two feeder grades in the ratio of 3:1. But, still, it appears necessary to verify as to whether this principle was strictly followed in the case of the applicants' promotion or not.

21. Therefore, this OA disposed of, with directions to Respondent No.2, i.e. Chief Commissioner of Income Tax, Jaipur, to examine the records of the DPC meeting held on 19.06.2001, and pass a speaking order as to whether the principle as laid down in the last paragraph of Annexure-"A" of the Annexure R/1 dated 04.06.2001 cited above had been followed or not, and the





seniority list as notified may be left undisturbed or not. However, if, as on that date, the consolidated list of eligible persons from the two feeder cadre lists were not arranged by the DPC in such order as prescribed through Annexure R/1, the seniority as on 19.06.2001, the date of the concerned DPC meeting, shall be determined afresh, and the impugned seniority list at Annexure-A/2 shall be modified accordingly. The respondent no.2 is directed to complete this exercise within four months from the date of receipt of a certified copy of this order.

22. With the above directions, the OA is disposed of, but there shall be no order as to costs.

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(V. Ajay Kumar)
Member (J)



(Sudhir Kumar)
Member (A)

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