



**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 184/2008

Date of Order: 25th May, 2011.

CORAM:

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

Kundan Singh Rajpurohit S/o Shri Jog Singh, aged about 60 years, R/o 128-C, Lakshmi Nagar, Jodhpur, official address Retired Income Tax Officer, Head Quarters Commissioner of Income Tax-II Jodhpur.

...Applicant.

Mr. Kamal Dave, Counsel for the applicant.

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Chairman, Central Board of Direct Tax, Department of Revenue, North Block, New Delhi.
3. Chief Commissioner of Income Tax, Rajasthan, Jaipur.
4. Chief Commissioner of Income Tax, Jodhpur.

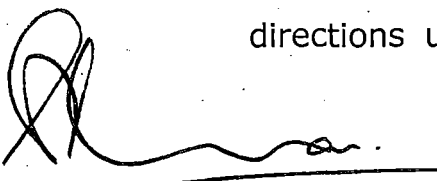
...Respondents.

Mr. Varun Gupta, Counsel for respondents.

ORDER

(Per Sudhir Kumar, Administrative Member)

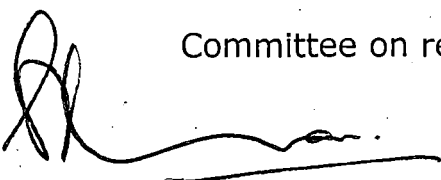
The applicant is a retired Income Tax Officer, who is before us, as he is aggrieved by the respondents not having convened the Departmental Promotion Committee in time for the consideration of the case for his promotion to the post of Assistant Commissioner of Income Tax, and has prayed for the directions upon the respondents to convene the Departmental



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Promotion Committee, determine the actual number of regular vacancies, which arose in each years, and consider his candidature along with the other incumbents, and allow the benefits of post retiral notional promotion to him along with all monetary benefits, and revision of his pensionary benefits. He has not impugned any order passed against his interest, but has assailed the inaction on the part of the respondents on his representation Annexure A/1 dated 01.05.2007, through which he had prayed the respondents to hold the meeting of the Departmental Promotion Committee for 307 posts of Assistant Commissioners of Income Tax then available, since his serial number in the seniority list of Income Tax Officers as on 31.05.2005 was at 493, and 211 persons above him had already been covered in the last meeting of the Departmental Promotion Committee held in May 2005, and 38 more were to have retired upto 31.05.2007, which would have left only 245 persons eligible for being considered for promotion against 307 posts, and since he was going to retire 15 months later, i.e. on 31.07.2008.

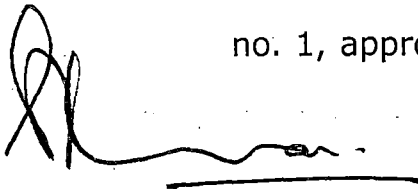
2. The applicant has submitted that according to him about 164 posts were vacant to be filled up in the year 2007-2008 and another approximately 118 promotional posts were to be filled up in the year 2008-2009 from amongst the Income Tax Officers, and thus, the applicant was within the zone of consideration for promotion, but the respondents had failed to carry out their duty of holding the Departmental Promotion Committee on regular intervals every year. He cited the decision



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of Hon'ble the Supreme Court in the case of Union of India vs. N.R. Banerjee and Ors., and the another decision in the case of Sayed Khalid Rijvi vs. Union of India [1993 Supp. (3) SCC 575] to state that since preparation of select list every year is mandatory, and all eligible candidates within the zone of consideration as on the date of Departmental Promotion Committee are required to be considered, and consideration should be done separately in respect of the vacancies of each of the years, the respondents have acted in a manner pre-judicial to the legitimate expectations of the employees in respect of promotions, and the inaction of the respondents had denied the status and the monetary benefit to him, which could have accrued to him, and therefore his rights under Article 21 and 300-A of the Constitution of India had been denied to him.

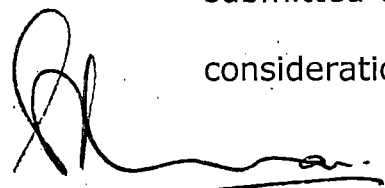
3. In their reply written statement, the respondents admitted the fact of the pending backlog of promotions, as well as the delay in filling up the vacancies. However, they submitted that in the budget for the year 2001-2002, the Finance Minister had announced that requirements of staff at all levels will be scrutinized, to ensure reduction of manpower by 2% per annum, and achieving a reduction of 10% of manpower over five years, which had resulted in issuance of instructions vide OM No. 2/8/2001-PC, dated 16.05.2001 by the Department of Personnel & Training in this regard. It was submitted that the respondent no. 2, being aggrieved by this decision, had, through respondent no. 1, approached the Union Cabinet with the request to exempt



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the Income Tax Department from the operation of this OM, but a Committee of Secretaries, subsequently appointed as per the directions of the Union Cabinet, decided in its meeting held on 27.07.2005 that no exemption from manpower reduction requirement will be provided to the respondent-department.

4. It was submitted that since as per the Recruitment Rules for the posts of Assistant Commissioners of Income Tax, 50% of the posts have to be filled up by direct recruitment, and 50% by promotion from among the Income Tax Officers, as a result filling up of the vacancies through promotions was delayed. The respondents submitted year-wise vacancies for promotional posts for the years 2003-2004 upto 2006-2007, and submitted that to cover up the backlog, a decision was taken to hold two Departmental Promotion Committee meetings in respect of two years together, in order to minimize the delays in promotions, and the Departmental Promotion Committee meetings for the years 2007-2008 and 2008-2009 were held together on 28 to 30.08.2008. It was submitted that the meeting of the Departmental Promotion Committee could not be conducted earlier due to non-availability of the Annual Confidential Reports of the Income Tax Officers concerned, coming in the zone of consideration, and that the respondent-department had taken pro-active steps for convening the meeting of the Departmental Promotion Committee as soon as it was possible. It was further submitted that in the list of the proposed candidates for zone of consideration as Annexure R/1 dated 04.07.2008, the name of





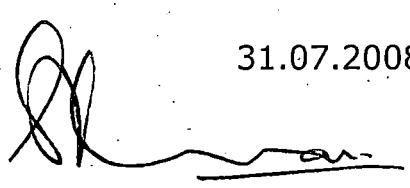
the applicant found place at serial number 62 of the eligibility list for promotion against the year 2008-2009. However, by the time, subsequently, the Departmental Promotion Committee meeting came to be held from 28 to 30.08.2008, the applicant had already superannuated, and retired from service on 31.07.2008. Since as per the Government Rules & Regulations, an individual gets the benefits of promotion only on assumption of office, which was not possible in the case of the applicant, as he had already superannuated by the time the Departmental Promotion Committee meeting was convened, the case of the applicant could not have been considered by the Departmental Promotion Committee meeting held after the date of his retirement. It was denied that there was any mala fide intention or bias against the applicant, and no undue delay had been caused on the part of the respondents in convening the meetings of the Departmental Promotion Committee. It was submitted that the case of the applicant was considered by the Departmental Promotion Committee for the year 2008-09, but since he had already superannuated before that date, his name could not be recommended for promotion, as he could not have joined duties as Assistant Commissioner of Income Tax even for one day for availing of the benefits of promotion. It was submitted that the delay in convening the Departmental Promotion Committee had been caused due to procedural delays beyond the control of the respondents, and it cannot be said that there has been any administrative bias on the part of the respondents, infringing the rights of the present applicant.



1/22

5. The applicant filed a rejoinder, reiterating his submissions that when OM dated 08.09.1998 specifically provides that Departmental Promotion Committee should be convened at regular intervals, it was incumbent upon the respondents to have anticipated vacancies well in advance, and to have prepared the panel for consideration and collected the documents like ACRs, integrity certificates, seniority lists etc. well in time, which they had not done. The applicant reiterated that he was waiting for the Departmental Promotion Committee to be convened, but in spite of facing stagnation since 1995, he was disappointed that his case for promotion was not considered, as the Departmental Promotion Committee was convened only after he superannuated on 31.07.2008. Yet he had prayed for his Original Application to be allowed and for directions upon the respondents to convene a Departmental Promotion Committee now, to consider his candidature for the promotional post of Assistant Commissioner of Income Tax against the vacancies of the year 2008-09.

6. Heard. Fortuitous circumstances are a part of one's service career. In the case of the present applicant, even the respondents do not deny that the applicant's name was in the zone of consideration for promotion by the Departmental Promotion Committee, which was to be convened after issuance of the letter dated 04.07.2008 (Annex. R/1), when the applicant was still in service. However, the applicant superannuated on 31.07.2008, and the Departmental Promotion Committee

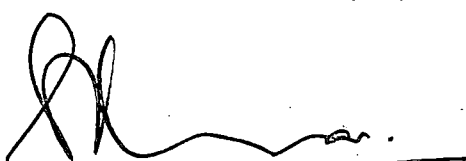


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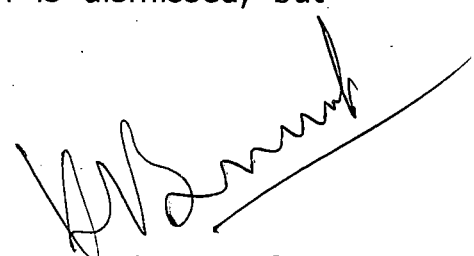
ultimately got convened only from 28 to 30.08.2008. It is only a fortuitous circumstance that the applicant missed his promotion to the post of Assistant Commissioner of Income Tax by one month, because, hypothetically, if he was to retire one month later on 31.08.2008, he could have at least held the promotional post for one day on 31.08.2008, after completion of the proceedings of the Departmental Promotion Committee meeting held from 28 to 30.08.2008.

7. But in the facts and circumstances of the present case, since the respondents are correct in their submission that the financial benefits flowing out of a promotion can flow to an employee only if he joins the post at least for one day, and after his superannuation, the applicant cannot now hold the post of Assistant Commissioner of Income Tax even for one day, his prayer for consideration of his case for promotion by a D.P.C. to be convened now is misplaced, and cannot be allowed.

8. In the result, the Original Application is dismissed, but there shall be no order as to costs.



(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER



(DR. K.B. SURESH)
JUDICIAL MEMBER