

CENTRAL ADMINISTRATIVE TRIBUNAL

OA No. 433 of 2012
Jodhpur, this the 29th July, 2013.

CORAM :

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (J)
Hon'ble Ms. Meenakshi Hooja, Member (A)

P.A. Raghvan S/o Late Shri P.s. Aravamudhan aged about 58 years, resident of Quarter No. III/23, Income Tax Colony, Mandore Road, Jodhpur, at present employed on the post of Income Tax Officer TDS (1/2) Paota 'C' Road, Jodhpur.

..Applicant.

(Through Adv. J.K. Mishra)

Versus

1. Union of India through Secretary, Central Board of Direct Taxes, Ministry of Finance, Government of India, North Block, New Delhi.
2. Chief Commissioner of Income Tax (CCA), C.R. Building, Statue Circle, B.D. Road, Jaipur.
3. Shri Hans Raj Meena, Income Tax Inspector, Income Tax Office, Near Prakash Talkies, Swaimadhopur (Raj).
4. Shri Ajay Singh Bairwa, Income Tax Inspector, Income Tax Office, Central Range, Statue Circle, Jaipur.
5. Shri Ram Kishan Bairwa, Income Tax Inspector, Income Tax Office, CIT-I's Office, Statue Circle, Jaipur.

...Respondents.

(Through Adv. Mr. Varun Gupta, for Respondents No. 1 & 2.)

(Through Adv. Mr. Vishal Sharma, for Respondents No. 3.)

(Through Adv. Mr. Kamal Dave, for Respondents No. 4 & 5.)

ORDER (Oral)

Per K.C.Joshi, Member (Judicial)

The applicant Shri P.A. Raghvan, who is working as Income Tax Officer, TDS (1/2), Paota 'C' Road, Jodhpur, has filed this petition under Section 19 of the Central Administrative Tribunals Act, 1985, saying that he was initially appointed as LDC and subsequently promoted as Income Tax Officer as per the available avenues of promotion. The posts of Inspector, Office Superintendent, Senior T.A., T.A., Stenographer Grade I, Stenographer Grade II and

Stenographer Grade III constitute the feeder channels for promotion to the post of Income Tax Officer provided that one has passed the departmental examination ITO Group 'B' i.e. Income Tax Officer. The Recruitment Rules provide that a candidate who has secured 50% (45% in the case of SC/ST candidate) or more marks in a particular subject or subjects in one examination will be exempted from appearing in that subject or those subjects in the subsequent examination. The applicant belongs to general category and has passed the departmental examination for promotion to the post of Income Tax Officer Group 'B' in the year 2006 and was placed at Sl. No.70 of the seniority list of Income Tax Inspectors as on 01.01.2012. His name was considered by the DPC convened for the post on 20.03.2012 and he was subsequently appointed vide promotion order dated 03.10.2012. The grievance of the applicant is that the private respondents No. 3 to 5 filed a representation application before the respondent No. 1 praying therein that since they have qualified with the requisite qualifying marks of 50% in ITO (Betterment) Result – 2011 they should be considered for promotion against the general quota posts available on the basis of own merit and in this context the respondent No. 1 directed the respondent No. 2 by way of letter as at Annex. A/1. The applicant averred that these directions were issued on 18.10.2012 and a review DPC has been ordered to be convened for 29.10.2012 vide order dated 23.10.2012 as at Annex.A/2. There is no mention of the clear vacancies against which the DPCs are to be held. This gives a reasonable apprehension to the applicant that they may be

reverted and private respondents No. 3 to 5 are likely to be promoted against the vacancies created on account of the reversion of the applicants. The second respondent, instead of deciding the said representations, with a predetermined objective, ordered for convening a review DPC for considering the candidature of the private respondents in particular and other similarly situated candidates who have improved their marks percentage in ITO re-examination and, therefore, the applicant has filed this OA for the following reliefs :-

“(i) That impugned order dt. 18.10.2012 (Annexure A-1), letter dated 23.10.2012 (Annexure A/2) and all subsequent orders, if any, passed thereof, may be declared illegal and the same may be quashed. The applicant may be allowed all the consequential benefits as if the impugned order were never in existence.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded.”

2. Respondents No. 4 and 5 while filing a detailed reply to the petition raised several objections including preliminary objection regarding the maintainability of the petition and stated that the order Annex. A/1 is an inter-departmental communication and Annex.A/2 is only a copy of the constitution of the review DPC order for the year 2012-2013 and the applicant has no right to remain on the post of ITO's because the respondents No. 3 to 5 are entitled to get the promotions earlier to the applicants, therefore, they have prayed for dismissal of the application. The reply of the private respondents also contends that in the promotion order as at Annex.A/4, itself there is a condition that their promotion is subject to review if any specific

directions or OM is issued by DOPT/CBDT in future necessitating a review of the recommendation of the DPC.

3. The private respondents No. 3 filed a detailed reply averring the same facts and also denied the right of the applicant to be appointed on the post of ITOs because the respondents No. 3 to 5 are entitled to have the promotion on the basis of own merit.

4. The respondents No. 1 and 2 also strongly denied the right of the applicant by filing a detailed reply and further prayed to dismiss the O.A. being without merit.

5. A rejoinder has been filed by the applicant reiterating the same grounds as averred in the O.A. The counsel for the applicant contended that the Hon'ble Punjab and Haryana High Court in the case of L. N. Gupta and Ors. Vs. J. Singh in CWP 13218/2009 .. decided on 15.07.2011 quashed the DOP&T's order dated 10.08.2010 while considering the provisions of the Articles 16 (4) A, 16 (4) B and 335 of the Constitution as held by the Hon'ble Apex Court in Nagraj's case.

6. The counsel for the respondents contended that the Hon'ble Bombay High Court in the similar matter directed the Department to implement the order dated 10.08.2010 and a similar matter is pending before the Hon'ble Apex Court in Special Leave to Petition No. 5859/2012 S.W.and Ors. Vs. UOI and Ors filed against the judgment of the Hon'ble Bombay High Court, and in which the stay on implementing the order dated 10.08.2010 of the DOP&T was rejected by the Hon'ble Apex Court

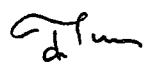
7. We have considered the rival contentions of both the parties and as per the record available at present, no action has been taken as per Annex.A/1 and Annex.A/1 simply directs the concerned authorities to reconsider representations made by the aggrieved officers in the light of the position explained above and to take appropriate decision at their own and a review DPC has only been constituted. Therefore, we are proposing to dispose of this petition at this stage with certain directions only without touching the merits of the case. Accordingly, we dispose of this petition with the directions that the appropriate competent authority shall decide the representations as per Annex.A/1 after hearing the applicant as well as the respondents No. 3 to 5 and the other aggrieved persons who may submit their representations within a week of receipt of this order, and after deciding such representations, the respondent-department may hold the DPC as per Rules or Law, within four months from the date of receipt of this order. It is further ordered that meanwhile the applicant shall not be reverted from the post at which he is presently working till the representation are finally decided by the competent authority and review DPC is held. If the applicants have any grievance thereafter they may file a fresh OA before this Tribunal if so advised.

8. No order as to costs.



[Meenakshi Hooja]
Member(A)

jrm



[K.C. Joshi]
Member(J)