

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

(21)

O.A. No. 434/2012

Jodhpur this the 29th day of July, 2013.

CORAM

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

1. Parvez Ahmed S/o Shri Nasrullah Siddique aged about 41 years resident of C/o Shri Prem Prakash, Street No. 2, Meghwal Basti, Outside Nagauri Gate, Ram Mohalla Road, Jodhpur, at present employed on the post of Income Tax Inspector, in the office of Addl. Director of Income Tax (Investigation), Jodhpur.
2. Yogendra Kumar Soni S/o Shri Gopal Soni aged about 39 years resident of C/o Naresh Soni House No. 42, Outside 2nd Pole, Mahamandir, Jodhpur at present employed on the post of Income Tax Inspector in the office of CCIT, Lal Maidan, Paota C Road, Jodhpur.

.....Applicant

(Through Advocate Mr 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.

(Through Advocate Mr Varun Gupta)

3. Shri Dhan Raj Meena, Office Supdt., Ward-2, Income Tax Office, Near Prakash Talkies, Sawaimadhopur.

(None present)

4. Shri Neme Chand Meena, Office Supdt., Circle-1, Income Tax Office, 6, New Fatehpura, Udaipur.

(Through Advocate Mr Vishal Sharma)

..... Respondents

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(22)

ORDER (Oral)**Per Justice Kailash Chandra Joshi, Member (J)**

The applicants Shri Parvej Ahmed and Shri Yogendra Soni who are working as Income Tax Inspectors have filed this OA under Section 19 of the Central Administrative Tribunal Act, 1985 saying that after their initial appointments as LDC and UDC respectively they have been promoted subsequently to the post of Income Tax Inspectors as per the availability of avenues of promotion. The post of Office Superintendent, Senior TA, TA Stenographer Grades I, II and III are the feeder posts to the post of Income Tax Inspector provided that one has passed the departmental examination i.e. Income Tax Inspector as per the recruitment rules. The candidates who have secured 50% (45 % in the case of SC/ST) 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.

2. It has been further averred that applicant No. 1 belongs to General Category and applicant No. 2 belongs to OBC. They passed departmental examination for promotion to the post of Income Tax Inspector in the year 2007 and 2001 respectively. Their seniority position is reflected in seniority list of Office Superintendent issued vide letter dated 25.01.2012 by which they are placed at S. No. 25 and 29 respectively. That a DPC was

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convened on 23.03.2012 and on the recommendations of the same they were promoted vide individual orders dated 25.04.2012 as Income Tax Inspectors and joined their duties.

3. The grievance of the applicants is that the private respondents belong to ST Reserved Category qualified the departmental examination for Income Tax Inspector under relaxed standard meant for SC/ST and after availing betterment chances secured 50% marks, and they are now claiming their promotion against the General Category vacancies as per general merit on the basis having qualified the requisite marks of 50% in the betterment results and there they should be considered for promotion against the General Quota post on own merit. In this context respondents No. 1 has directed respondents No. 2 by way of directions in letter dated 18.10.2012 Annex. A/1 and a review DPC has been ordered to be convened vide letter dated 23.10.2012 on 29.10.2012 as at Annex. A/2. In this order 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 applicants that they may be reverted and private respondents No. 3 & 4 may be promoted against the vacancies created on account of reversion of the applicants. It has been alleged that the second respondent instead of deciding the said representation, with a pre-determined objective, ordered for convening Review DPC for considering the candidature of the private respondents in particular and other

similarly situated candidates who have improved their marks percentage in Income Tax Inspector re-examination, therefore, the applicants have filed this OA for the following relief (s) :-

- I. "That the applicants may be permitted to pursue this joint application on behalf of two applicants under rule 4 (5) of CAT Procedure Rule 1987.
- II. 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.
- III. 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.
- IV. That the costs of this application may be awarded."

4. Respondents No. 1 and 2 while filing a detailed reply to the petition also raised several objections during hearing 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 also prayed for dismissal of the application. It was also referred that in the promotion order as at Annex.A/5 and A/6, 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. The respondents No. 1 and 2 have thus 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 applicants reiterating the same grounds as averred in the O.A. The counsel for the applicants further 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 DoPT'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.

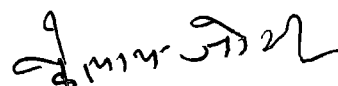
6. The counsel for the respondents contended that the Hon'ble Bombay High Court in the similar matter directed the Department to implement the order dated 10.08.2010 and a similar matter is pending before the Hon'ble Apex Court in Special Leave to Petition No. 5859/2012 S.W. and Ors. Vs. UOI and Ors 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/officials 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 applicants as well as the respondents No. 3 & 4 and the other aggrieved persons who may submit their representations within a week of receipt of this order, and after deciding such representations, the respondents-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 applicants shall not be reverted from the post at which they are presently working till the representations 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. There shall be no order as to costs.



(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER



(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER