

CENTRAL ADMINISTRATIVE TRIBUNAL

Original Application No. 452 of 2012

Jodhpur, this the 29th day of July, 2013.

CORAM :

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

1. **Prakash Kumar S/o Shri Satya Narayan Prasad** aged about 38 years at present employed on the post of Office Superintendent in the office of Joint Commissioner of Income Tax, Barmer Range, Rai Colony, Barmer.
2. Hanuman Priya Jain S/o Shri Vinod Kumar Jain aged about 34 years at present employed on the post of Office Superintendent in the office of Income Tax Office (TDS) Rani Bazar, Bikaner.
3. Ghanshyam Kuamr S/o Late Shri Narayan Lal aged about 40 years at present employed on the post of Office Superintendent in the office of Income Tax, Commerce House, Collectorate Road, Rajsamand.
4. Ganpat Lal Gehlot S/o Shri Moda Ram aged about 54 years at present employed on the post of Office Superintendent in the office of Income Tax (Ward 1(2) Rani Bazar, Bikaner.

C/o Prakash Kumar R/o 39, 'Sri Kusalnagar', Shobhauto Ki Dhani Road, Kheme Ka Kua, Jodhpur.

..Applicants in OA No. 452/2012

(Through Adv. 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.
3. Shri Bhagwat Prasad Meena S/o Shri Harchand Meena, Sr. T.A., Office of Chief Commissioner of Income Tax, 6, New Fatehpura, Udaipur.
4. Shri Kailash Chand Meena, Sr. T.A., Joint Commissioner of Income Tax, Range-II, Rajad Bhawan, CAD Circle, Kota.

...Respondents.

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

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

ORDER (Oral)
Per K.C.Joshi, Member

The applicants of this OA are allowed to join in one OA, as prayed. The applicants in this OA No. 452/Jodhpur/2012 who are working as Office Superintendent in the different offices of Income Tax have filed this joint application under Section 19 of the Administrative Tribunals Act, 1985 stating that after their initial appointments on the post of LDC (applicant Nos. 1 and 2) Data Entry Operator (applicant No. 3) and applicant No. 4, Peon, they have earned their further promotion as per their respective avenues of promotion and lastly became Office Superintendents.

2. That the post of Office Superintendent is a 100% promotion post the feeder cadre being Senior Tax Assistant with three years regular service. The applicant No. 1 and 2 belong to the unreserved category and applicants No. 3 and 4 belong to the OBC category. Their seniority on the feeder post of Senior Tax Assistant was issued vide letter dated 27.01.2012 and their names are placed at Sl. Nos. 15, 16, 33 and 31 respectively.

3. The applicants came within the zone of consideration for promotion to the post of Office Superintendent against the unreserved vacancies for which the DPC was convened. On the basis of the recommendation of the DPC the applicants were promoted to the post of Office Superintendent vide orders dated 25.04.2012, 25.04.2012, 25.10.2012 and 26.09.2012. It has been alleged that the persons

belonging to the reserved category who could not get their promotion due to non-availability of reserved category vacancies represented for considering their candidature as per their promotion against unreserved vacancies/posts as per general merit on the feeder post perhaps in pursuance of the OM dated 10.08.2010 of the DOP&T which inter alia, makes the following clarification.

"3. It is clarified that SC/ST candidates appointed by promotion on their own merit and seniority and not owing to reservation or relaxation of qualifications will be adjusted against unreserved points of reservation roster, irrespective of the fact whether the promotion is made by selection method or non-selection method. These orders will take effect from 2.7.1997, the date on which post based".

4. Their claim is for promotion against unreserved posts which can be possible only by uprooting and displacing the applicants' or some other general candidates. Thereafter, the 1st respondent has directed to reconsider the representations of the reserved category candidates as per Annex.A/1 dated 18.10.2012 and the 2nd respondent instead of deciding the said representations, has ordered for convening review DPC for considering the candidature of the private respondents in particular and other similarly situated candidates. The review DPC was been scheduled for 29.10.2012 as at Annex.A/2. As the applicants have a reasonable apprehension that they may be reverted and private respondents No. 3 and 4 or others may be promoted against those vacancies, they have 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."

5. Respondents No. 1 and 2 while filing a detailed reply to the OA also raised several objections during hearing including the preliminary objection regarding the maintainability of the OAs and stated that Annex. A/1 is an inter-departmental communication and Annex.A/2 is only copy of the constitution of the Review DPC for the years 2012-13 and the applicants have no right to remain on the post of Office Superintendent because the respondents No. 3 and 4 are entitled to get the promotions earlier to the applicants and it was further stated that in the promotion orders itself as at Annexs. A/4, A/5, A/6 and A/7 there is a condition that their promotion is subject to review if any specific direction or OM is issued by the DOPT/CBDT in future necessitating a review of the recommendations of the DPC. Thus, the respondents have denied the right of the applicants and further prayed to dismiss the OA being without merit.

6. 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.

7. 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

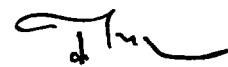
8. We have considered the rival contentions of both the parties and as per the record available at present, no action has been taken as per Annex.A/1 and Annex.A/1 simply directs the concerned authorities to reconsider representations made by the aggrieved officers/officials in the light of the position 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 applicant as well as the respondents No. 3 and 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 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 they are presently working till the representation are finally decided by the competent authority and the review DPC is held. If the applicants have any grievance thereafter they may file a fresh OA before this Tribunal if so advised.

9. No order as to costs.



[Meenakshi Hooja]
Member(A)



[K.C.Joshi]
Member(J)

mehta