

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 44/2008

Friday this the 3rd day of April 2009.

C O R A M

**HON'BLE DR. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER**

C.N. Sukumari Antherjenam W/o NKS Namboothiri
Stenographer Gr.1 (Retd.)
Office of the Additional Commissioner of Income Tax
Thiruvalla Range
residing at Neelamana Illam, Karakkal PO
Peringara, Thiruvalla -689 108 .. Applicant

By Advocate Mr. K. Gopalan

Vs.

- 1 The Chief Commissioner of Income Tax
Cochin, C.R. Building, IS Press Road
Cochin- 682018
- 2 The Central Board of Direct Taxes
represented by its Chairperson
Govt. of India, Ministry of Finance
Department of Revenue
New Delhi.
- 3 The Pay & Accounts Officer (Central Civil Pensions)
Central Pension Accounting Officer Govt. Of India
Trikoot-2, Bhikaji Cama Place
New Delhi-110 066
- 4 Union of India represented by the
Secretary to Govt. of India
Department of Revenue,
Ministry of Finance,
New Delhi. .. Respondents

By Advocate Mr. TPM Ibrahim Khan, SCGSC

The Application having been heard on 3.3.2009 the Tribunal delivered the following

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant, a retired Stenographer Gr. I of the Office of the Additional Commissioner of Income Tax Thiruvalla Range, is aggrieved by Annexure A-1 dated 11.6.2007 and Annexure A-2 dated 15.6.2007.

2 The applicant entered service as LDC on 16.9.1965 in the Income Tax Department at Indore and got transferred to Kerala on 1.4.1984. She qualified in the Income tax Inspectors Examination in 1990. She filed O.A. 515/2005 before this Tribunal seeking promotion as Inspector w.e.f. 20.1.2004 which was disposed of by this Tribunal directing the respondents to conduct a review DPC in respect of the applicant on ad hoc basis and if found eligible she be treated as notionally promoted to the post on 20.1.2004 and grant all consequential benefits. Purportedly in compliance with the directions of the Tribunal, the first respondent issued Annexure A-1 memorandum dated 11.6.2007 stating that there was no error in the ad hoc promotion order dated 20.1.2004 and that the applicant cannot be considered for ad hoc promotion. Subsequently the respondent has issued A-2 corrigendum dated 15.6.2007 arbitrarily fixing the sequence for the five slots in Stenographer cadre. Aggrieved by the order, the applicant has filed this O.A. on the grounds that the Tribunal's observation that the distribution should have been Stenographers by seniority (first two) and Stenographer by date of passing (the third) vacancy, the applicant would have been considered under the second vacancy in the seniority quota, was not followed, that the respondents failed to follow the ratio of 3:1 as between seniority and the date of passing in fixing the sequence as stipulated under Annexure A-6 Rules, that the respondents have arbitrarily fixed the

DY

sequence in the case of five slots of Stenographer cadre and that the respondents have ignored the findings of the Tribunal in following the ratio of 3:1 between the ministerial and Stenographers cadres.

3 In the reply statement the respondents have contended that the Annexure A-3 order dated 20.12.2004 was only for ad hoc promotion to the post of Income Tax Inspector for the year 2003-04 on the basis of instructions of CBOT dated 20.1.2003 wherein it was specifically directed that promotion of the ministerial and stenographer cadres to be made in the ratio of 4:1. (R-1). However, in compliance with the directions of the Tribunal in O.A. the review DPC considered continuing with the same ratio of 3:1 for ad hoc promotion also. Thus out of a total 17 promotions, 5 slots would have been earmarked for stenographer cadre. The five slots would be distributed as date of passing, seniority, date of passing, seniority and date of passing. Even if the above ratio is followed, out of the two vacancies earmarked for stenographer seniority quota, only one could be filled under general category and the other has to be kept reserved for S.T. candidate. The review DPC also noted the fact that four separate rosters are maintained for promotion to the cadre of Inspector and reservation entitlements are being maintained separately for all the above four groups on the basis of sanctioned strength of each group. The applicant being junior would not have been considered against the general category vacancy there being candidate senior to her.

4 The applicant in her rejoinder submitted that out of the total vacancies under promotion quota only 17 officials were promoted vide Annexure A-3 dated 20.1.2004 as one vacancy had been kept vacant for ST candidate under Stenographer group date of passing quota. Thus, out

TM

of 4 slots available for Stenographer Group reservation of 2 slots for ST candidates one each for seniority and date of passing) is unsustainable and against the existing rules. She also contested the statement of the respondents that the sequence of the 5 vacancies would begin with "stenographer-date of passing" in continuation of the promotion effected vide A-4 order dated 19.5.2003 during the year 2003 wherein the last slot distributed for stenographer cadre was "steno seniority" as admitted in Annexure A-1 which was reduced to 2 slots by changing the sequence to begin with Stenographer date of passing in A-2 corrigendum.

5 The learned counsel for the applicant argued that if the list of Annexure A-4 promotion order dated 19.5.2003 is followed, the very first vacancy of promotion order in Annexure A-3 dated 20.1.2004 would have gone to stenographer cadre and that the review DPC has not rectified the mistake in Annexure A-1 despite A-6 rules and the finding of the Tribunal in O.A. 515/ 2005. The counsel argued that out of 17 posts 5 slots would have been earmarked for Stenographer cadre and that as per A-6 Rules the sequence should be fixed beginning with seniority in the ratio 3:1.

6 The learned counsel for the respondents argued that out of the two vacancies earmarked for Stenographer seniority quota only one could be filled under general category and the other has to be kept vacant for ST candidate as per the reservation roster and that the applicant being junior could not be considered against the general category vacancy there being candidate senior to her.

7 We have heard learned counsel for the parties and have gone through the pleadings.

TM

8 The issue relates to filling up of vacancies of Inspector of Income Tax on ad hoc basis w.e.f. 20.1.2004. The feeder grades consists of ministerial cadre and stenographer cadre in the ratio of 3:1. When on 20.1.2004 ad hoc promotion was made and the respondents resorted to 4:1 ratio the applicant approached the Tribunal through O.A. 515/2005 and obtained a direction to conduct review DPC in respect of the applicant. Pursuant to the above direction the respondents conducted review DPC and came to the finding that there is no error in the ad hoc promotion order dated 20.1.2004.

9 According to the Recruitment Rules in respect of Income Tax Inspectors notified on 28th December, 1969 and amended in 8th September, 1986 Ministerial cadre (consisting of Supervisors Grade-I and Grade-II, Head Clerks, Tax Assistants and Upper Division Clerks) and Stenographers cadre (consisting of Stenographers Grade-I,II and III) with 3 years service in the respective grade and who have qualified in the departmental examination for Income Tax Inspectors shall be arranged in two separate lists and the vacancies in the promotion quota shall be filled from the two select lists in such a manner that the ratio 3:1 is maintained between the ministerial and Stenographers cadre. Four separate lists and roster will have to be maintained for filling up of vacancies to the grade of Inspector by promotion (i) from amongst the officers of the Ministerial group, on the basis of seniority cum fitness (ii) from Stenographers group on the basis of seniority-cum-fitness (iii) from the Ministerial Group on the basis of date/year of passing of the examination and (iv) from the Stenographers group on the basis of date/year of passing the examination.

Ty

10 Now let us examine the selection done on 20.1.2004. There were 17 promotional posts of Inspector available as on that date. Out of the total slots of 17, five slots would have been earmarked for Stenographers cadre. The five slots would be distributed as **date of passing, seniority, date of passing, seniority and date of passing**. While allowing the O.A. 515/2005 the Tribunal directed the respondents to conduct review of the DPC meeting held on 15.1.2004 for promotion to 17 posts of Inspectors in the ratio of 3:1. Accordingly if review DPC is conducted as directed by the Tribunal, **five posts** would have gone to Stenographers cadre out of which **three** would have gone to **date of passing** and two to **seniority**. All the three slots earmarked for **date of passing** will go to general candidates who have passed the examination on an earlier date than the applicant. Out of the two slots available for **seniority** one slot will go to a senior general category candidate and the other slot has to be kept vacant for want of a ST candidate. The applicant was not in the select list as her date of passing of the departmental examination is 1990 whereas all the employees considered had passed the examination much earlier. Therefore, on review DPC as directed by the Tribunal in O.A. 515/05 the applicant is not found eligible to be appointed.

11 The learned counsel for the applicant has invited our attention to the impugned order dated 11.6.2007 (A-1) in which the respondents have stated that though there are 18 vacancies, only 17 persons were promoted as 1 vacancy reserved for ST community was kept unfilled. In the reply statement the respondents have shown that the 13th slot is reserved for ST community. It is for the competent authority to look into the matter and take a decision whether the applicant could be promoted on adhoc basis

11

against the slot earmarked for the ST community which is kept unfilled for want of qualified hands.

12. With the above observation the O.A. is disposed. No costs.

Dated 3rd April, 2009.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

kmn


K.B.S. RAJAN
JUDICIAL MEMBER