

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.473/2002

Friday this the 5th day of July 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

C.Madhavan, Stenographer (Gr.II),
Office of the Joint Commissioner of Income Tax,
Municipal Building, West Fort,
Trichur-680004. Applicant

(By Advocate S/Shri P.Balakrishnan and R.Amritharaj)

Vs.

1. Union of India represented by
Secretary, Ministry of Finance,
Department of Revenue, New Delhi.
2. The Chief Commissioner of Income Tax,
CR Building, I.S.Press Road, Cochin 682018.
3. Shri P.G.C.Pillai, Inspector of Income Tax,
Office of the Joint Commissioner of Income Tax,
QMC/842, Hospital Road, Quilon 691 001.
4. Smt.Annamma Kurien, Inspector of Income Tax,
Office of the Joint Commissioner of Income Tax,
Kottayam-686 001.
5. Shri KM Thomas, Inspector of Income Tax,
Office of the Joint Commissioner of Income Tax,
Kottayam 686001.
6. Filomina Babychan, Inspector of Income Tax,
Income Tax Office, I.S.Press Road,
Cochin-682 018. Respondents

(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 5th July, 2002
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant, Stenographer Grade II while working in the
office of the Joint Commissioner of Income Tax, Mumbai charge
passed Income Tax Inspectors Examination in the year 1979. On
account of domestic and personal reasons he sought
inter-Commissionerate transfer to Kerala charge, undertaking that

he would take bottom seniority in the transferred charge. He joined Kerala Charge on 5.10.87 with bottom seniority. His grievance is that while he has been awaiting promotion as Inspector of Income Tax on the basis of his position in the date of passing examination quota, the respondents 3 to 6 to whom the applicant became junior on account of the inter-Commissionerate transfer, but who had passed examination only subsequent to the date of passing of the examination by the applicant were promoted by A-4 and A-5 orders as Inspectors of Income Tax while he was not promoted. The applicant challenged this action by filing O.A.222/2002. The application was disposed of as agreed to by the counsel at the admission stage itself directing the 2nd respondent, to consider the grievance of the applicant which had been projected in the representations and to give the applicant an appropriate reply. Pursuant to the above direction, the 2nd respondent has passed A-9 order dated 15.6.2002 turning down the claim of the applicant. Aggrieved by that the applicant has filed this application challenging A-9 order and for a direction to the respondents to promote the applicant in a vacancy meant for date of passing from the cadre of Stenographers on the basis of his passing the departmental examination for Inspectors of Income Tax in the year 1979 based on the Recruitment Rules as at A-3 and grant him all consequential benefits.

2. We have perused the application and all the materials placed on record and have heard Shri P.Balakrishnan, learned counsel for the applicant and Shri C.Rajendran, appearing for the respondents 1 to 3. Shri Balakrishnan, learned counsel of the applicant invited our attention to the undertaking given by the

applicant while making the request for transfer on compassionate grounds quoted in paragraph 4 of the application stating that the applicant had only undertaken to forgo the seniority but had not undertaken to forgo the benefit arising out of passing examination earlier. Since the Recruitment Rules provide that against the date of passing the examination quota, a person who has passed the examination earlier could be promoted earlier than those who have passed the examination subsequently and that the stand taken by the respondents in the impugned order is contrary to the provisions of the Recruitment Rules. Since the applicant has undertaken only to forgo the seniority, he cannot be deprived of the benefit of having passed the Inspectors Examination earlier, argued the learned counsel. Learned counsel further argued that in the case of some officials viz., Smt. Janaki Viswanathan, Shri R. Dhananjayan and Mrs. Prabha Nair etc. in spite of their inter-Commissionerate transfers they have been promoted in the date of passing quota reckoning the date of their passing examination although they were also given transfer to other charges at their request.

3. We have gone through the impugned order very carefully. The questions raised by the applicant's counsel have been clearly and in unambiguous terms explained in paragraphs 3 and 4 of the impugned order which reads as follows:

"Shri C. Madhavan's representation dated 20.8.2001 and 18.12.2001 have been very carefully considered in view of the facts and circumstances discussed in detail below, Shri C. Madhavan's request to reconsider the promotion orders issued on 4.7.2001 (or any subsequent promotion order for that matter) promoting officials under date/year of passing quota cannot be accepted. Admittedly. Shri Madhavan had joined Kerala Charge on 5.10.1987 from Bombay

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Charge. It may be a fact that he had passed the Inspectors Examination in 1979 itself while he was working in Bombay Charge. But as per rules, his year of passing cannot be taken as 1979 but this could be taken only as 1987. The terms and conditions concerning inter charge transfers which were prevailing at the time of Shri Madhavan's transfer from Bombay Charge to Kerala Charge were contained in the Central Board of Direct Taxes, New Delhi's letter F.No.A.22020/37/86-Ad.VII dated 30.6.1986. Para 2 (b) of the said letter reads as under:-

"The transferee will not be entitled to count the service rendered by him in the former charge/office for the purpose of seniority in the new charge/office. In other words, he will be treated as a new entrant in the charge/office to which he is transferred and will be placed at the bottom of the list of the temporary employees of the concerned cadre in the new charge/office".

The scope of clause 2 (b) was further clarified in the Central Board of Direct Taxes' letter F.No.A.22020/37/86-Ad.VII dated 12.2.1987 as under:-

" i) Para 2 (b) of the aforesaid circular dated 30.6.1986 which stipulates that the transferee will not be entitled to count the service rendered by him in the former charge/office for the purpose of seniority in the new charge/office is sufficiently wide to cover condition (h) of the Board's earlier Circular F.No.16/15/69-Ad.IX dated the 12th December, 1969 i.e. it will place the official as junior most for the year both in the year of passing list and in the seniority-wise list where two such lists are maintained. Accordingly, for the purpose of including in the examination-wise list also the effect of operation of para 2 (b) will be that the official transferred to the new charge will rank below all the persons who have passed the examination in the new charge upto the date of his transfer". (emphasis supplied)

The above clarification makes it clear that a person who has come on transfer from another Charge, if he has passed the Inspector's examination while he was working in the earlier charge, in order to consider him under 'date/year of passing quota', he will be placed below all the existing officials in that cadre who have passed the Inspector's examination upto the year in which the official has joined the new charge. On the basis of the above clarification, Shri Madhavan's name will be placed below all the eligible officials who have passed the departmental examination for Inspectors in the year 1987 and not before that. Without the above clarification, the condition in 2 (b) of the Board's letter dated 30.6.1986 that "the service rendered by him in the former charge/office will not be counted for the purpose of seniority in the new charge/office" becomes redundant, because if Shri Madhavan is given seniority from 1979 itself (the year in which he has passed the Inspectors' examination while he was in Bombay Charge) whereas he had joined Kerala Charge only in 1987, for the purpose of determining the eligibility under "Date/Year of passing quota", he would become senior to those who have joined service in the Department in Kerala Charge or those

who have joined on transfer from other charges between the year 1979 and 1987, which is not envisaged in the scheme for inter charge transfer. Moreover, as per the Central Board of Direct Taxes' instructions cited supra, those who are given inter charge transfer on compassionate grounds cannot forfeit/overtake the claims of those who are already working in the new charge. Since Shri Madhavan has admittedly given an undertaking to abide by the terms and conditions when he was transferred to Kerala Charge in October 1987, he is presumed to have agreed to the terms and conditions stipulated in the Board's letter dated 30.6.1986 read with the subsequent clarification dated 12.2.87(supra) and therefore, there cannot be any grievance in the matter.

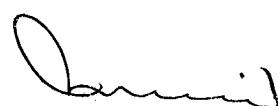
With regard to the cases quoted by Shri Madhavan that in other charges some persons were considered for promotion as Inspectors considering their original date/year of passing, this office has no comments to offer as there are no means to verify the correctness of the statement. Even assuming that the claims of Shri Madhavan are correct in this respect, it can only be stated that whatever has been done by this office is as per the relevant rules and regulations. In any case, promotion made in violation of a rule in some other charge cannot be quoted for being followed in Kerala Charge also as a matter of right or precedent. The rules have to be followed correctly in letter and spirit whenever they are followed/implemented."

4. : In the light of the clarification contained in letter dated 12.2.1989 that by accepting inter-Commissionerate transfer at bottom seniority the official would lose not only the seniority, but also the benefit of the date of passing the examination in the earlier year, the case of the applicant that he retains the position of date of passing even despite his transfer has absolutely no force. The position has been clearly explained in the impugned order with which we find no reason to interfere. Further, regarding the case of the other officials having been considered for promotion with effect from the date of their passing of the examination despite their inter-Commissionerate transfer, the 2nd respondent stated that since the instances quoted are in other Commissionerates, he does not have any comment to offer. However the stand taken by the

respondents is justified on the ground that it is in conformity with the scheme of inter-Commissionerate transfer. The condition that on inter-Commissionerate transfer, a person would take bottom seniority and would be a new entrant in the transferred seniority unit is in tune with the well accepted principal that the chances of officers in one seniority unit should not be defeated by a person coming from a totally different seniority unit for his advantages.

5. In the light of what is stated above, since the impugned order is very clear, unambiguous, categoric and unexceptionable, we do not find any reason to admit this application and to deliberate any further. Application is, therefore, rejected under Section 19(3) of the Administrative Tribunals Act, 1985.

Dated the 5th July 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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APPENDIX

Applicant's Annexures:

1. A-1 : True copy of the order BC No.153-15/77 dt.31.8.87 of the Chief Commissioner of Income Tax, Bombay City I.
2. A-2 : Extract from the Disposition list of Non Gazetted Establishment as on 1.9.99.
3. A-3 : True copy of Notification dt.8.9.86 of the Ministry of Finance (Department of Revenue).
4. A-4 : True copy of Order F.No.11/Estt/2/CC/CHN/Con/2000-01, dated 4.7.2001 of the 2nd respondent.
5. A-5 : Order F.No.11/Estt/2/CC/CHN/Con/2000-01 dated 12.12.2001 of the 2nd respondent.
6. A-6 : True copy of representation dt.20.8.2001 addressed to the 2nd respondent.
7. A-7 : True copy of representation dt.18.12.2001 addressed to the 2nd respondent.
8. A-8 : True copy of order dt.8.4.2002 in OA No.222/02 of the Central Administrative Tribunal, Ernakulam Bench.
9. A-9 : True copy of memorandum dated 15.5.2002 of the 2nd respondent.

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