

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 498/96

Tuesday, this the 9th day of June, 1998.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR S.K. GHOSAL, ADMINISTRATIVE MEMBER

R. Prasannakumaran Nair, S/o P. Raghavan Nair,
Working as Inspector of Income Tax,
Investigation Circle - II,
Division - I, Cochin - 18.

...Applicant

By Advocate Mr N. Unnikrishnan.

Vs.

1. The Chief Commissioner of Income Tax,
Central Revenue Building,
I.S. Press Road, Cochin - 18.
2. The Commissioner of Income Tax,
Central Revenue Building,
I.S. Press Road, Cochin - 18.
3. Shri Sajjive B,
Inspector of Income Tax,
Office of the Commissioner of Income Tax,
Aayakkar Bhavan, Kawdiar,
Thiruvananthapuram.
4. Smt. S. Visalakshy, Inspector of Income Tax,
Office of the Senior Authorised Representative,
Income Tax Appellate Tribunal,
Warriam Road, Cochin - 16.
5. Shri K. Achuthankutty, Inspector of Income Tax,
Office of the Assistant Commissioner of
Income Tax, Palakkad.

...Respondents

By Advocate Mr P.R. Ramachandra Menon, Addl.CGSC. for R 1 & 2.

The application having been heard on 9.6.98, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks the following reliefs:

"(i) to call for the records of Departmental Promotion
Committee, Review Departmental Promotion Committee and all records
leading to the issuance of the Annexure A-12 ;

(ii) to declare that the applicant is entitled to get his seniority position fixed as per the promotion order C.No.2(2)/Estt./88 dated 19.8.1988 (Annexure A-1);

(iii) to declare that grant of seniority to the respondent No.3 to 5 ignoring the rightful seniority of the applicant is illegal and violative of Articles 16, 21 and 309 of the Constitution of India;

(iv) to declare that grant of seniority to respondents No.3 to 5 and the loss of seniority to the applicant are void abinitio and violative of the principles of natural justice;


(v) to declare that Annexure A-12 order is illegal, invalid, arbitrary, unjustified and violative of the principles of natural justice and therefore, to quash the same;

(vi) to issue direction to the 1st respondent to treat the applicant senior to the respondents No.3 to 5 in all circumstances of the case; and

(vii) to direct the respondents to consider the claims of the applicant as enumerated in representation dated 9.5.1994 and 17.10.1995 (Annexure A-9) and to issue necessary orders thereon within a reasonable time."

2. Applicant is aggrieved by A-12, the impugned order, which affects his seniority. There is no grievance for the applicant as to his seniority position shown in the seniority lists published upto 1990. It is only thereafter, the applicant feels aggrieved that his seniority has been affected adversely by virtue of the later seniority list, A -5.

3. Applicant has raised various grounds challenging A-12. One of the grounds is that the seniority list as on 1.1.1994 (A5) was published behind his back. The other one is that his seniority has not been fixed as per the ratio fixed i.e., 3 : 1. Yet another one is that the quota system and the order in which different groups within a cadre should be considered for the purpose of promotion as clarified in A16 order based on seniority for Ministerial staff, on the basis of the date of passing of the Departmental tests for Ministerial staff, on the basis of



: 3 :

of the Departmental test seniority for Stenographer, and on the basis of the date of passing / for Stenographers, the respondents have not complied with.


4. It is admitted in the reply statement filed by the respondents that instead of following the 3 : 1 ratio, the respondents have followed the ratio of 6 : 2. It is also admitted by the respondents that the seniority position of the applicant was reviewed and re-reviewed. It is not known under what authority the respondents have followed 6 : 2 ratio when it is clarified in A-16 that the quota of 3 : 1 has to be maintained between the two groups in respect of vacancies earmarked (for date/year of passing of candidates by following, if necessary, separate years of passing for the two groups) .

5. As far as the preparation of the seniority list as on 1.1.94 (A-5) behind the back of the applicant is concerned, though the respondents would contend that the applicant was made aware of the same, apart from the bald averment, there is no evidence in support of the same. In the absence of any evidence, we are unable to accept the stand of the respondents that the applicant was made aware of it.

6. As far as the ratio is concerned, we have already stated that it is the admitted case of the respondents that it is done in violation of the ratio of 3 : 1.

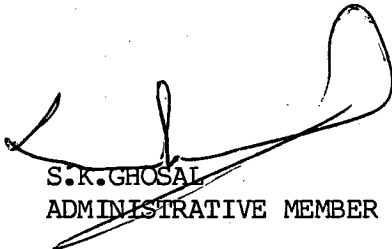
7. From a reading of A-12, the impugned order, the reply statements, and also from the submission made by the learned counsel for the respondents across the Bar it is clearly seen that the respondents have not complied with the provisions applicable to the preparation of the list for the purpose of seniority and A-16 has been ignored.

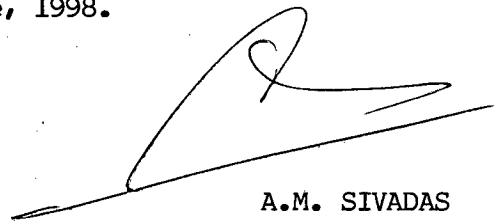
8. For these reasons, A-12 is liable to be set aside.

9. Accordingly, A-12 is set aside. Applicant is permitted to submit a detailed representation to the first respondent within fifteen days from to-day. If such a representation is received, the first respondent shall consider the same and pass a speaking order within two months from the date of receipt of the representation. If any promotion is to be effected due to unavoidable reasons, ^{in the meanwhile} the department will inform those persons promoted that it is only provisional and subject to the orders passed by the first respondent on the representation of the applicant. 

10. The Original Application is disposed of as above. No costs.

Dated the 9th of June, 1998.


S.K. GHOSAL
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER