

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 515 / 2005

Thursday this the 15th day of February, 2007

CORAM :

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER**

C.N.Sukumari Antherjenam
Neelamana Illam
Karakkal PO, Peringara
Thiruvalla - 689 108

Applicant

(By Advocate Mr. K.Gopalan)

Versus

1. The Chief Commissioner of Income Tax
Cochin, CR Building
IS Press Road
Cochin - 682 018
2. The Central Board of Direct Taxes represented by its
Chairperson, Government of India
Ministry of Finance
Department of Revenue
New Delhi
3. The Pay & Accounts Officer (Central Civil Pensions)
Central Pension Accounting Office
Government of India
Trikoot - 2 Bhikaji Cama Place
New Delhi - 110 066
4. Union of India represented by the Secretary
to Government of India,
Department of Revenue
Ministry of Finance
New Delhi

Respondents

(By Advocate Mr. P.M.Saji, ACGSC)

The application having been heard on 02.02.2007, the
Tribunal on 15.02.2007 delivered the following :

ORDER

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant who had been functioning as
Stenographer, Grade I and who had also passed the

departmental Income Tax Inspectors examination retired in that capacity on 31.10.2004 and her grievances is that her case was not considered for promotion to the post of ITI under the one-third Stenographers quota when the department had issued orders of promotion on ad-hoc basis vide order dated 20.01.2004 (Annexure A-3).

2. As per the Recruitment Rules the post of ITI is filled up by direct recruitment on the one hand and promotion on the other. So far as promotion posts are concerned the feeder grades consists of Office Superintendents / Senior Tax Assistants / Tax Assistants / UDCs and Stenographers Grade I / II / III with three years service in the respective grade and with a pass in the departmental examination for Income Tax Inspectors. The above grades have been classified as ministerial cadre (all the feeder grades except Stenographers grades) and the Stenographer cadre (consisting of Stenographer Grade I / II / III). The ratio adopted for promotion from the ministerial and stenographers cadre was 3:1. Again within each Division, a Sub-division is made whereby three posts would be filled up on seniority basis while one would be according to date of passing the examination.

3. The aforesaid ratio of 3:1 in respect of ministerial cadre and stenographers cadre temporarily under went a change of 4:1 but ultimately brought back to its original position

of 3:1 (Annexure A-5 refers).

4. Following promotion orders were passed between 2003 and 2005 :-

- (a) Vide Annexure A-4 dated 19.05.2003, regular promotion to the post of Inspectors of Income Tax in the scale of Rs.5500-9000 was made in which out of a total of ten promotees only one happened to be from the stenographers cadre.
- (b) On 20.01.2004 ad-hoc promotion order was also passed vide Annexure A-3, in which as many as 17 promotees were there of whom only two were from the stenographers cadre, and
- (c) ultimately vide Annexure A-7 order dated 28.03.2005 regular promotions of 19 Inspectors were made. Most of the ad-hoc promotees figure in this regular promotion order at Annexure A-7. In this list there were three promotees from stenographers cadre.

5. It appears that in the aforesaid promotion order dated 28.03.2005 (Annexure A-7) was based on the ratio of 3:1 for ministerial and stenographers cadre.

6. While uniformly 3:1 ratio was followed, while according ad-hoc promotion vide Annexure A-3 ratio followed was 4:1. The applicant is aggrieved by the varied ratio from 3:1 to 4:1

which, according to her, has damaged the promotion prospectus of the applicant. Hence this OA seeking the following reliefs:-

- i, Quash Annexure A-1 Memorandum
- ii, Declare that the applicant was entitled to be promoted as Income Tax Inspector along with the officials promoted as per Annexure A-3 order dated 20.01.2004 and to the accompanying monetary benefits following such promotion.
- iii, Direct the respondents to pay the applicant the monetary benefits by way of increase in salary and other benefits due to an Income Tax Inspector promoted with effect from 20.01.2004 or any subsequent date as she may be found entitled to.
- iv, Direct the respondents to re-fix and disburse the applicant's pensionary benefits on the basis of the salary applicable to an Income Tax Inspector promoted with effect from 20.01.2004 or any subsequent date as she may be found entitled to by issuing revised pension payment orders.

7. Respondents have resisted the OA. According to them, Annexure A-3 order was purely of temporary nature and only for a limited period of one year and therefore the applicant cannot agitate against the same. Further, the Board's instruction dated 20.10.2003 was specific that ad-hoc promotion of ministerial cadres and stenographers cadres would be in the ratio of 4:1 (Annexure R-1). Thus, the respondents justified their action and prayed for dismissal of the OA.

8. The applicant had filed rejoinder wherein he had reiterated his earlier stand with better particulars and tabular columns.

9. Respondents have filed an additional affidavit in which they have stated as under :-

" Promotion to the cadre of Income Tax Inspector is effected from stenographer grade on the basis of seniority and the date of passing of departmental examination to Income Tax Inspectors. On this basis, 2 separate lists had been prepared in the Departmental Promotion Committee meeting held on 15.01.2004 for ad-hoc promotion, i.e one list containing the name of stenographers according to their seniority position in the Disposition List as on 01.01.2004 and another list containing the name of stenographers in the order of their date of passing of Departmental Examination for I.T.I. At the time of effecting the ad-hoc promotions, there existed only 3 promotional vacancies under stenographer quota. The vacancies had to be filled as under :-

Stenographer Group	Seniority	01
Stenographer Group	Date of passing	01
Stenographer Group	Seniority	01

(Reserved for SC)

Out of the above, the first vacancy was filled up by Shri K.Sadasivan Pillai, who is senior to the applicant. The second vacancy had to be filled by a candidate on the basis of the date of passing of departmental examination for ITI. From the details given below it may be seen that the year of passing of departmental examination in respect of the applicant was 1980 whereas that of Shri T.S.Suresh Babu was 1987 (though Shri T.S.Suresh Babu had qualified the departmental examination during the year 1981 before joining the Kerala Region, the date of his joining Kerala region has been treated as his date of passing of examination). Therefore, Shri T.S.Suresh Babu was considered for promotion under date of passing quota. Since the third vacancy, which had to be filled under the seniority quota, was earmarked for a reserved category (SC) candidate as per the share of reservation entitlements, applicant's name could not be considered against that vacancy being a general category candidate. The above post was kept vacant by the said Departmental Promotion Committee for want of eligible reserved category candidate."

10. The learned counsel for applicant submitted that by virtue of restoration of the ratio from 4:1 to 3:1 the respondents have restored the earlier promotion policy. Annexure A-5 is relevant. As such, it is expected of the respondents to dispassionately prepare a panel in which event the applicant would have figured in, in the list of ad-hoc or regular promotees during 2004 or 2005 (before her retirement). This has not been done. The applicant has cited the following decisions in her favour.

1. (2001) 10 SCC 276 (Paras 5,7)
2. (2000) 7 SCC 210 (PARA 5)
3. (2003) 6 SCC 35
4. (2004) 1 SCC 136
5. 1988 (5) SLR 537 (Punjab & Haryana)
6. (1995) 4 SCC 246 (Para 8)
7. (1996) 9 SCC 214

11. Per contra the counsel for respondent submitted that the applicant was rightly omitted to be considered as there was no slot to accommodate her and vacancies meant for reserved candidate cannot be diverted to be filled in, under general category. The counsel had specifically taken us to the tabular columns contained in the additional reply statement as under :-

"At the time of effecting the ad-hoc promotions, there existed only 3 promotional vacancies under stenographer quota. The vacancies had to be filled as under :-

Stenographer Group	Seniority	01
Stenographer Group	Date of passing	01
Stenographer Group	Seniority	01
(Reserved for SC)		

Out of the above, the first vacancy was filled up by Shri K.Sadasivan Pillai, who is senior to the

applicant. The second vacancy had to be filled by a candidate on the basis of the date of passing of departmental examination for ITI."

12. Arguments were heard and document perused. The applicant retired by 31.10.2004. As such, she cannot have any quarrel in respect of promotion orders issued posterior to the retirement of the applicant. In so far as promotion during her service, one permanent promotion order was issued (Annexure A-4) and another issued was on ad-hoc basis vide Annexure A-3. In Annexure A-4 only one stenographer was promoted and his name figures in Sl.No.7 of Annexure A-4. Thereafter, three of the ministerial cadres were promoted vide Sl.Nos.8, 9 & 10. If this list was to be continued for the purpose of locating the slot for stenographers cadre in the ratio 3:1 the very first vacancy should have gone to stenographer cadre since the previous three went to ministerial cadre. This was not done. Instead four from the ministerial cadre were promoted on ad-hoc basis and the fifth one was from stenographer cadre and similarly the next four (6 to 9) were from ministerial cadre, followed by one stenographer cadre Sl.No.10. Beyond this all the seven ad-hoc promotions were granted to ministerial cadre only. Even if the contention of the respondents as contained in the additional reply statement as to the availability of three vacancies under stenographers quota is accepted, the distribution thereof viz., on the basis of seniority, and date of passing is not in order. The distribution should have been stenographers by seniority (first

two) and stenographer by date of passing (the third vacancy). If these were followed the applicant would have been considered under the second vacancy in the seniority quota. The third vacancy could have been easily earmarked for being filled up under reserved quota. Admittedly, this has not been done. The error committed by the respondents in arranging the sequence as seniority, year of passing and seniority has resulted in the applicant's not having been considered for promotion on ad-hoc basis under seniority quota. Had the applicant been considered and if found eligible promoted the same would have resulted on the drawing higher emoluments in the post of Inspector and that would have favourably affected in her favour in the fixation of pension and gratuity. It is this mistake that is sought to be rectified through this OA by way of direction to the respondents to consider the case of the applicant for promotion to the post of Inspector in the stenographer cadre on seniority basis. The contention has substance. Shifting the slot in the vacancy has telescopically affected the career prospectus off the applicant. The applicant has made out a case as explained above. In view of the above, **the OA succeeds.** Respondents are directed to conduct a review DPC in respect of the applicant for promotion to the post of Inspector on ad-hoc basis and if found eligible, she be treated as notionally promoted to the post on 20.01.2004 and revised pay worked out to arrive at the revised terminal benefits on the basis of the revised pay scale. Once such a revision of terminal benefits takes place, the respondents shall

inform the Bank and other authorities concerned, of the revised pension and terminal benefits which shall be payable to the applicant.

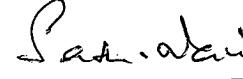
13. The above drill be performed within a period of four months from the date of communication of this order.

14. No costs.

Dated, the 15th February, 2007.



K.B.S.RAJAN
JUDICIAL MEMBER



Sathi Nair
SATHI NAIR
VICE CHAIRMAN

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