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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O. A. No. 89/89 499
T. A. No.

DATE OF DECISION 19.7.1990

K John Applicant (s)

M/s N Sugathan & KM Paulose Advocate for the Applicant (s)

Versus

The Central Board of Direct Respondent (s)
Taxes rep. by its Secretary (Ad.VII),
North Block, Central Sectt., N.Delhi & 2 others

Mr.K Prabhakaran, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P.Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V.Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *No*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. To be circulated to all Benches of the Tribunal? *No*

JUDGEMENT

(Mr.S.P.Mukerji, Vice Chairman)

The facts of the case lie within a narrow compass.

The applicant and one Shri P.G.Manmadhan Nair were working as Lower Division Clerks in the Income Tax Department in Madhya Pradesh and Jodhpur respectively. The applicant was appointed as LDC in 1974 while Shri Nair in 1976. They were promoted as Upper Division Clerks in their respective ranges the applicant in 1979 and Shri Nair in 1982. Both of them had represented for being transferred to Kerala Charge. By a common order dated 12th November, 1982, Annexure-A2, they

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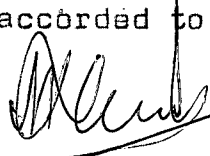
were transferred to Kerala Charge. Both of them were designated as LDCs because of the fact that at the time of their request for transfer they were holding the post of LDCs. Both of them gave their willingness to join as LDCs in Kerala Charge, when they were allowed to take over the charge only on the condition that they gave their willingness to join as LDCs. Accordingly Shri Nair joined as LDC in the Kerala Charge in 10.1.1983 and the applicant on 17.2.1983. Formal orders in both the cases were issued reverting them as LDCs with effect from the dates of their being relieved from their parent charge. The applicant represented against the reversion to the Board on 5.11.1984, but his representation was withheld. Subsequently by order dated 18.4.1988, Annexure-A5 issued by the Chief Commissioner of Income Tax, Shri Nair's order of reversion from UDC to LDC was cancelled and he was posted as UDC in the existing vacancy. His seniority in the cadre of UDC in Kerala Charge was directed to be reckoned only from the date of his joining as UDC. By subsequent order, his name was placed below all of the existing UDCs (Direct Recruits) in the Kerala Charge on the basis of the date of joining duty.


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2. The applicant's grievance is that, on coming to know of the favourable decision given in case of Shri Nair he represented for similar treatment. But his representation was summarily rejected by the non-speaking order at Annexure-1 dated 16.1.1989. In the present application he has sought the same benefits as have been given to Shri Nair.

3. We have heard the arguments of the learned counsel for the parties and gone through the documents carefully. There is no doubt about the facts of the case and the identity of the circumstances between the applicant and Shri Nair. If at all there is any difference, the difference is in favour of the applicant inasmuch as he was appointed as LDC and promoted as UDC earlier than Shri Nair. If in case of Shri Nair, in identical circumstances and his willingness to join Kerala Charge as LDC notwithstanding, his reversion as LDC in Kerala Charge was cancelled and he was allowed to join as UDC in the Kerala Charge with effect from 10.1.1983, we see no ~~any~~ ^{clearly} reason why the same treatment should not be accorded to the applicant before us. Nothing has been made out by the respondents to distinguish the applicant's case in law from that of Shri Nair in so far as the applicant's reversion as LDC is concerned.

4. In the facts and circumstances, we allow the application, set aside the impugned order at Annexure-A1 and direct that the applicant should be deemed to have joined as UDC in Kerala Charge on 17.2.1983 with the same benefit of seniority and pay and allowances as had been accorded to Shri Nair. There will be no order as to costs.


19/7/90
(A.V. HARIDASAN)
JUDICIAL MEMBER


19.7.90
(S.P. MUKERJI)
VICE CHAIRMAN

19.7.1990

22-11-91
(25)

CCP-70/91 in OA-89/89

SPM & AVH

Mr Sugathan
Mr K Prabhakaran

The learned counsel for the respondents seeks 2 weeks time for implementing the judgement of this Tribunal by payment of higher wages on the basis of the notional promotion to the applicant w.e.f. 17.2.83 by Exbt.P2.

List for further direction on 9.12.91

M/Sm
22-11-91

NVIC DND

None for the parties. Call on 3.1.92

DQ

9/12/91

3.1.92

SPM&AVH

Mr.Sugathan-for applicant.

Mr.K.Prabhakaran

At the request of the learned counsel for the respondents, list for further directions on CCP on 21.1.92. He should clarify on that date under what circumstances the applicant was promoted as UDC in 1991 while Shri Nair was so promoted in 1988.

M/Sm
3.1.92

21.1.92

(19)

SPM & AVH

Mr Sugathan
Mr Prabhakaran

The learned Counsel for the respondents seeks some more time to file a reply on the clarification as directed by us on 3.1.92. He may do so within a week with a copy to the applicant.

List for further directions on

31.1.92

M/Sm
21.1.92

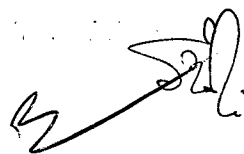
31.1.92
(14)

SPM 8AULT

Mr. Sugathan
Mr. K. Prabhakaran

At the request of the
learned Counsel for the respondents,
list for further direction on

5.2.92



31.1.92


5.2.92
(14)

SPM 6AULT

Mr. Sugathan
Mr. Prabhakaran

A statement has been filed
by the original respondent. List
for further direction on the c.p.

on 17.2.92



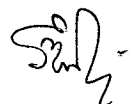
5.2.92

17.2.92
(19)

SPM 8AULT

Mr. Sugathan
Ms. Balaji

At the request of the
learned Counsel for the petitioner,
adjourned to 28.2.92





17.2.92

Statement by
Respond on 5.2.92
P.S.

28-2-92
(27)

-3-

CCP-70/91 in
OA-89/89

SPM & AVH

Mr N Sugathan for petitioner
Mr K Prabhakaran for respondents

We have heard the learned counsel for the parties on the CCP.

The learned counsel for the respondents has filed a statement and has clarified that in implementation of our judgement dated 19.7.90 in OA-89/89, the petitioner has been given notional appointment as UDC in Kerala charge w.e.f. 17.2.83 as directed by this Tribunal. In regard to pay and allowances, the learned counsel for the respondents indicated that Shri Manmadhan Nair was actually promoted as UDC w.e.f. 18.4.88 when the reversion order was cancelled and a clear vacancy which arose in 1987 was available. He clarified that the next clear vacancy arose on 1.6.90 but the petitioner was given promotion as U.D.C. w.e.f. 7.2.91 as some time was taken in getting the formalities of sanction from the headquarters.

In the above circumstances, we direct the respondents to give ^{to the petitioner} ~~at least~~ promotion with the benefit of pay and allowances from 1.6.90 when a clear vacancy was available as UDC. Orders should be issued immediately in full compliance of our aforesaid judgement.

With this direction, the CCP is closed.

(AVH)

(SPM)

28-2-1992

FO (111)
FUE closed
02/03