

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
~~XXXXXX~~ 208 of 1991

DATE OF DECISION 24.12.1991

T.V.Subramanian _____ Applicant (s)

Mr.G. Sivarajan _____ Advocate for the Applicant (s)

Versus

Central Board of Direct Taxes and 12 others Respondent (s)

Mr.NN Sugunapalan, SCGSC
for R.1to3. Advocate for the Respondent (s)

CORAM: M/s Sukumaran and Usha-For.R.8.

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?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Hon'ble Mr.S.P.Mukerji, Vice Chairman)

In this application dated 3.2.1991 filed under Section 19 of the Administrative Tribunals Act, the applicant who has been working as Inspector of Income-Tax, Ernakulam has prayed that the impugned order dated 22.2.90 at Annexure 'C' determining the seniority of 32 Income-tax Inspectors on the basis of the findings of the Review D.P.C. but not including his name be set aside and he should be declared to be entitled to be considered by the review D.P.C. held in August, 1979 on the ground that one Shri Nandakumaran was so considered. His further prayer is that in the Seniority List he should be placed at item No.7 immediately above Shri Jayachandran with all consequential benefits.

2. The brief facts of the case are as follows.

According to the applicant he joined the Income-Tax Department as L.D.C. (Rs.110-180) on 29.11.1968. He was promoted as Stenographer (Ordinary Grade) (Rs.130-300) on 22.6.69 and confirmed on 1.8.69. He passed the Departmental Examination for promotion as Inspector in July, 1973. He was promoted as Stenographer (Senior Grade) in the scale of Rs.425-700 on 1.9.75 and confirmed in that grade on 12.12.79. He was promoted as Inspector (Income-Tax) with effect from 22.9.80. The applicant's contention is that Stenographer(SG) is one of the feeder categories along with the ministerial staff for promotion as Inspector. The D.P.C. is to prepare two separate Select Lists one for Stenographers and another for ministerial staff and the promotion quota vacancies are to be filled up alternately from these two lists. The applicant was promoted as Inspector on 22.9.80 on the basis of the D.P.C. which met in September, 1980. In the Seniority List of Steno (SG) the applicant and two others namely S/Shri Nandakumaran and Madhavan were placed on the basis of date of their common date of confirmation ie., 12.12.79 but even though all the three were eligible to be considered for promotion as Inspector in 1979 as they had by then completed 3 years of service as Stenographer (SG), they were considered by the D.P.C. and promoted by a common order only in 1980. Shri Madhavan in a Writ Petition before the High Court challenged the proceedings of the D.P.C. held in 1979 in which he had been overlooked for promotion as Inspector in 1979 even though he was officiating as Stenographer (SG) in the ^{full} scale of Rs.425-700 whereas U.D.Cs, in the lower scale of Rs.330-560 were considered because of their earlier date of confirmation as U.D.Cs. Another Division Bench of this Tribunal in the judgment dated 17.8.89 (Annexure.A) to which one of us (Shri SP Mukerji) was a party while disposing of the ^{Review D.P.C.} Writ Petition transferred to the Tribunal directed that a/

as in August, 1979
should be constituted to consider the applicant therein
for promotion as Inspector and determine his placement
in the Select List on the basis of his length of service
as Stenographer vis-a-vis Head Clerks who were also in
the same scale of Stenographer (S.G) officiating or
confirmed on the date of D.P.C. met. It was also directed
that as Stenographer (.S.G) he will be deemed to be
senior to those who are officiating or confirmed as U.DC
but not promoted as Head Clerk on the date the D.P.C.
met. According to the applicant ^{by law} _h this order was taken up
before the Supreme Court by way of Special Leave but the
S.L.P. has been dismissed. The applicant's case is that
like Shri Madhavan who was his immediate senior in the
cadre of Stenographer (S.G), he should also be considered
by the review D.P.C. applying the ratio of the aforesaid
order of the Tribunal. He submitted representation to
the Commissioner of Income-Tax on 14.9.89 at Annexure.B.
A similar representation was made by Shri Nandakumaran
another Stenographer (S.G) who was senior to Shri Madhavan.
Based on the direction of the Tribunal a Review D.P.C.
as in August, 1979 was held in February, 1990 and a
revised panel of ~~seniority~~ candidates was drawn up at
Annexure.'C'. The applicant's grievance is that whereas
the names of S/Shri Nandakumaran and Madhavan who were
similarly situated like the applicant ^{were} _h included, his
name was not included in the Select List even though on
the ministerial side one Shri Jayachandran was included
in the panel when he started officiating as Head Clerk on
12.8.76 whereas the applicant started officiating in the
equivalent grade of Stenographer (S.G) with effect from
1.9.75. A tabular statement indicating the status of
promotion of the applicant and S/Shri Nandakumar, Madhavan
and Jayachandran has been appended at Annexure.'D'. The

applicant's representation dated 1.3.90 at Annexure-F was rejected by the communication dated 31.5.90 at Annexure-G. indicating that the decision of the Tribunal in the case of Shri Madhavan cannot be made available to the applicant/as he was not a party to that case. It was also indicated that the Board's order dated 12.7.85 ~~was having~~ ^{has} only prospective effect. The applicant took up the matter with the Central Board of Direct Taxes by further representation at Annexure-H. The applicant's apprehension is that he will be missing his promotion as Income-Tax Officer for which D.P.C. is to meet shortly. The applicant's further contention is that S/Shri Nandakumaran, Madhavan and the applicant were promoted as Inspector by a common order and there is no reason why he should have been overlooked by the review D.P.C. of 1979. Shri Nandakumaran was considered because the High Court had declared him senior to Shri Madhavan but the applicant is likewise immediate junior to Shri Madhavan. If all the three could be considered together in 1980 there is no reason why ~~not~~ they should/have considered by the review D.P.C. of 1979. If Shri Nandakumaran could be included in the panel, even though he was not a party in the O.A. decided by the Tribunal, the claim of the applicant should also have to be considered on similar lines.

3. In the counter affidavit the respondents have corrected the applicant's averment by stating that for consideration by the D.P.C. for promotion to the grade of Inspector from the feeder cadre of U.D.C/Stenographer(O.G) the procedure is that the names of all qualified persons are to be arranged in order of seniority based on the length of service in the grade of UDC/Stenographer (OG). Only those who are confirmed in higher grades are placed ^{than} higher ~~to~~ ^{than} those who are in the lower grades and no weightage

is given to unconfirmed persons even though they are officiating in the higher grade. They have also stated that having been promoted as Inspector of Income-Tax on 22.9.80 the applicant cannot reopen his case after ten years. They have clarified that Shri Madhavan was working as Stenographer in the scale of Rs.550-900 with effect from 20.11.78 which is in the same scale as that of Inspector whereas the applicant was working only as Inspector (.S.G) in the scale of Rs.425-700. The Tribunal's order has been made applicable only in case of Shri Madhavan and the applicant was not eligible for consideration at that time. If the applicant had been aggrieved like Shri Madhavan, he should have been moved the High Court with Shri Madhavan. Since the High Court had declared Shri Nandakumaran as senior to Shri Madhavan in the cadre of Stenographer (S.G) he was also considered by the review D.P.C. As regards Shri Jayachandran, they have stated that he was promoted as U.D.C. on 1.1.64 and was confirmed on 29.6.68. The applicant was promoted as Stenographer (O.G) equivalent to that of U.D.C. on 29.11.1968 and confirmed on 1.8.69. They have stated that the applicant was not eligible to/considered as per the then existing rules for promotion as Inspector in 1979 and have also stated that none of the applicant's juniors has been considered for promotion as Income-Tax Officer.

4. Of all the contesting respondents, respondent No.8 has filed a counter affidavit. He has stated that accepting the contention of the applicant will upset the seniority of Inspectors which was finalised 11 years ago and that the inter-se seniority between the applicant and the contesting respondents in the U.D.C cadre was finalised

as far back as in 1968. Respondent No.8 has challenged ^{forwarded} the finding of the Tribunal at Annexure.A in which it was held that a person who was selected and officiating in the higher post should be treated as senior to persons who are working in the lower post irrespective of the question whether they are confirmed in the lower post or not. He has stated that L.D.Cs who were working with the special pay of Rs.20/- ~~were~~ got automatic jump to the grade of Stenographer (O.G) on 1.8.69 which is equivalent to that of U.D.C. This has placed the L.D.Cs without the special pay at a disadvantage. Consequently a number of L.D.Cs who were senior to the applicant in the L.D.C.'s grade got chance to hold higher post of U.D.Cs/Head Clerks much later. He has also stated that he had passed the Departmental Examination for promotion as Inspector in 1971 whereas the applicant passed it in July, 1973. He, however, accepts that he was promoted as Head Clerk which is equivalent to that of Stenographer (S.G) in 1977 and confirmed in that post on 1.2.83. It may be remembered that the applicant was promoted as Stenographer (S.G) on 1.9.75 and confirmed on 12.12.1979.

5. In the rejoinder the applicant has stated that the inter-se seniority of Inspectors has been settled only by the impugned order dated 22.9.90 at Annexure.C. and the question of unsettling a settled seniority as alleged by the Respondent No.8 does not arise. The applicant asserts that he was promoted to the post of Stenographer (O.G) on 13.6.89 and it was not a matter of automatic promotion on conversion of 1.8.1969.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. It may be remembered that Stenographer

cadre and ministerial cadre are two distinct entities though both of them constitute the feeder categories for promotion as Inspector. In the matter of parity or equation of various grades in these two cadres Stenographers (O.G) have to be equated with U.D.Cs both being in the pre-revised scale of Rs.330-560. Stenographers (S.G) likewise have to be equated with Head Clerks both of them being in the scale of Rs. 425-700. Stenographer (S.G) in the scale of Rs.550-900 enjoy a higher pay scale than Inspector's who are in the scale of Rs.425-800. The ratio in the judgment of this Tribunal in TA.K.617/87 at Annexure.A to which one of us (Shri S.P.Mukerji) was a party was that a person officiating in the higher grade in the feeder cadre will have to be deemed to be senior to all those who are still functioning in the lower grade irrespective of the date of confirmation in the lower grade. That is, a Stenographer officiating in the ~~Selection~~ ^{Senior} Grade of Rs.425-700 will rank senior not only to Stenographer (OG) in the scale of Rs.330-560 but also U.D.Cs who are also in the lower scale of Rs.330-560. Even though the officiating Stenographer (SG) ~~was~~ confirmed as Stenographer (O.G) later ^{than} ~~on~~ the date of confirmation of any of the candidates who are still in the lower scale of U.D.C. This ratio was supported by the clarificatory order issued by the respondents themselves on 12.7.85, the relevant portion of which was quoted in the judgment at Annexure.A, but for this judgment we quote it again:

"2. The existing practice for preparing the list for consideration to the DPC has been reviewed in the context of General Principles of seniority laid down by Ministry of Home Affairs in their O.M.No.9/11/55-RPS dated 22.12.1959. It has been found that the

existing practice is anomalous and against the General Principles of Seniority. In order to supersede the instructions contained in Board's letter no. 69/59/73-Ad.VII dated the 9th November, 1973 referred to above and to follow the General Principles of Seniority. According to the General Principles of Seniority persons working in the higher grades are to be treated as senior to those working the lower grades."

The direction of the Tribunal in that case was as follows:

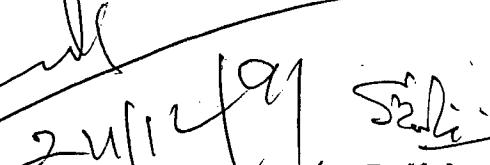
"However, we allow the petition with the direction that a review D.P.C. as in August, 1979 should consider the petitioner for promotion as I.I.T. and determine his placement amongst those who are included in the impugned order of 18th August, 1979, on the basis of his length of service as Stenographer (S.G) vis-a-vis the Head Clerks officiating or confirmed on the date the D.P.C. met. As Stenographer (S.G) he will be deemed to be senior to those who are officiating or confirmed as UDCs but not promoted as Head Clerk on the date the D.P.C. met. If the D.P.C. finds the petitioner fit for promotion, he should be given notional promotion from the date his immediate junior Head Clerk/U.D.C. was promoted as I.I.T., with all consequential benefits of pay, seniority and future promotion including arrears of pay and allowances, if any."

Applying the same ratio to the applicant before us we find that since the applicant started officiating as Stenographer (S.G) in the scale of Rs.425-700 with effect from 1.9.75 whereas the Respondent No.8 Shri Jayachandran according to his own averment in the counter affidavit was promoted in the equivalent grade of Head Clerk in the scale of Rs.425-700 in 1977, the applicant is entitled to be considered by the D.P.C. in 1979 which considered the case of Respondent No.8 also and Respondent No.2 ^{and} included the Respondent No.8 at Sl.No.7 in the impugned Seniority List of Inspectors at Annexure.C. We accept the applicant's contention that since his ^{name} was not included in the impugned Seniority List at Annexure.C dated 22.2.1990 he has a legitimate cause of action about his seniority in the cadre of Inspector of Income-Tax. The fact that the applicant got accelerated promotion from Stenographer (O.G)

to Stenographer (S.G) as compared to those in the ministerial cadre cannot be any ground to deny him his legitimate dues of being considered to be senior ^{earlier but still} to those who were confirmed ^{or} officiating in the lower grade of Stenographer (O.G.) or U.D.C.

7. In the conspectus of facts and circumstances, we allow this application to the extent of directing the respondents to get the case of the applicant considered ^{again} by a review D.P.C. as of 1979 by deeming him to be eligible and senior to Respondent No.8 Shri K.Jayachandran and if he ^{is} selected to give him appropriate placement in the list of 32 Inspectors in para 3 of the order of Respondent No.2 dated 22.2.1990 at Annexure.C with all consequential benefits. There will be no order as to costs.


(A.V. Haridasan)
Judicial Member


(S.P. Mukerji)
Vice Chairman

24.12.91

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