

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 339/2000

FRIDAY, THIS THE 26th DAY OF APRIL, 2002

C O R A M

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

K.Unnikrishnan S/o Gopalan Nair
Lower Division Clerk
Office of the Joint Commissioner of Income Tax
Assessment, Sepcial Range-I
Ernakulam
residing at Kattoor House
Konikkara P.O.
Ollur, Trichur Distt.

Applicant

By Advocate Mr. K. S. Madhusoodanan

Vs.

1. Union of India to be represented by
Secretary, Revenue Department,
New Delhi.
2. The Chief Commissioner,
Income Tax, Kochi.
3. Bigi Abraham,
Income Tax Office,
Quilon.

Respondents.

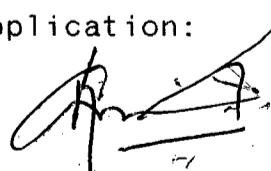
By advocate Mr. T.C. Krishna for R 1 & 2
By Mr. Biji Abraham R-3 in person

The Application having been heard on 26.3.2002 this Tribunal
delivered the following on 26.4.2002.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

The applicant filed this O.A. aggrieved by A-11
order dated 25.3.99 issued by the second respondent rejecting
his representation dated 3.3.99 for promotion as Upper
Division Clerk. He sought the following reliefs through this
Original Application:



(i) Call for the records connecting Annexure A-1 to A-11 from the concerned respondents

(ii) Call for Ann. A-11 from the 2nd respondent and set aside the same.

(iii) Declare that the applicant is entitled to be promoted as UDC over and above the 3rd respondent with all consequential benefits.

(iv) Direct the 2nd respondent to promote the applicant as UDC and place him just above the 3rd respondent and pay all monetary benefits accruing therefrom with 18% interest.

and

(v) Such other relieves as this Hon'ble Tribunal deems fit and proper.

2. The facts which are not in dispute are that the applicant entered the service of Incometax Department as Lower Division Clerk on 29.7.92 and he passed the Departmental Examination for ministerial staff in 1995. The vacancies of UDCs are to be filled in the ratio of 1:1 from the promotees and direct recruits.

3. The applicant claimed that in 1996 after 10 LDCs were promoted to UDC, the applicant was the 5th in the order of seniority of LDC qualified to be promoted as UDC. In 1996-97 as stated in A2, A3, A4 13 vacancies occurred against which only one LDC was promoted by A-6 order dated 2.9.96. According to him 6 vacancies should have been earmarked for LDCs. Further during April-May, 1997 even though there were no retirements only 1 UDC and 6 Assistants were promoted to Head Clerks on the same day by A-7 order dated 23.5.97 of second respondent, 2nd respondent promoted third respondent and 11 other LDCs to officiate as UDCs by A-9 order dated 23.5.97. Out of the said 12 persons S1.NO. 10Smt. Somiya Anil Kumar alone had passed the departmental examination for ministerial staff in 1995. All others including 3rd respondent had passed examination in July, 1996. Despite the



fact that the applicant had acquired qualification in 1995 and there was sufficient number of vacancies prior to the acquisition of qualification by the 3rd respondent and 11 others he had not been promoted. As his A-10 representation dated 3.3.99 highlighting his grievances along with the request to appoint a review DPC and to prepare yearwise select list for promotion to UDC by restricting consideration of only those who were qualified in the particular year and to grant promotion as UDC w.e.f. due date was rejected by A-11 order dated 25.11.99, he filed this OA seeking the above reliefs.

4. The third respondent filed reply statement resisting the claim of the applicant. According to him he had been promoted on the basis of legally constituted DPC for promotion to the cadre of UDC. He was promoted after 17 years after qualifying himself for promotion by passings the Departmental examination in 1996 and he was the seniormost at the time of convening the DPC in May, 1997. The applicant's contention that he passed the departmental examination in 1995 and hence he should be promoted had no substance as the date of passing of the departmental examination was not the criteria for promotion to the cadre of UDC. Thirteen vacancies calculated by the applicant in 1996-97 were patently wrong in as much as the applicant had reckoned the retirement vacancies from February, 1996 whereas it should have been reckoned from April, 1996 to March, 1997 only. There was no merit in the contention of yearwise list for 1996-97 and 1997-98 to be separately prepared as separate

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DPCs had been convened in 1996-97 and 97-98 strictly in accordance with rules for the vacancies existing on the date of the respective DPC.

5. Respondents 1 & 2 filed reply statement resisting the claim of the applicant. According to them the vacancy which occurred on 29.2.96 was also considered and included for the anticipated vacancies of 1995-96. The vacancy due to superannuation which occurred on 31.3.96 had been counted against 1996-97 as the vacancy as such arose only on 1.4.96. The total number of vacancies for the year 1996-97 worked out by the applicant as 13 was not correct. The six vacancies indicated by the applicant as retirement vacancies during 1996-97 was due to retirement of Tax Assistants. Since there was a stay order from this Tribunal in filling up the vacancies of Tax Assistants in O.A. 76/96 the promotion to the post of Tax Assistant from the UDC could not be made. Hence the said vacancies could not be taken in to account while holding the DPC for the year 1996-97 on 14.8.96. As such the vacancy on account of retirement in 1996-97 as shown by the applicant could be taken only as 5. The five vacancies shown by the applicant as promotion in May 1996 was regarding consequential vacancies arising from the promotion of 5 Tax Assistants as Head Clerks. Though the Tax Assistants were promoted as Head Clerks the consequential promotions to Tax Assistants from UDC could not be made because of R-1 stay order. The said stay order was ultimately vacated on 15.7.97 when the final orders in that OA was passed. As such on the date of DPC viz. on 14.8.96 the vacancy that could be taken into account was only 6. Applying the proportion of 1:1 among promotees and direct

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recruitees only 3 vacancies would be available for promotion. Out of the 3 vacancies available for promotion one vacancy was adjusted under GFR 77 to accommodate a candidate who was considered in DPC held on 24.1.96 and promoted in the order dated 24.1.96. Even if the above candidate should not have been adjusted under GFR 77, the same would not benefit the applicant as there were seniors to the applicant. Further out of the 3 vacancies for consideration for the year 1996-97 one vacancy had been earmarked for ST candidates as per the then existing roster of appointment. As there was no ST candidate the said vacancy was kept vacant. The said vacancy was later considered by the DPC held on 4.5.97 when a ST candidate became qualified in the departmental examination held in 1996. Thus out of the 3 vacancies identified as arising in the year 1996-97 only one vacancy was found to be eligible to be filled. It was this vacancy that was filled up by promoting Sri P.J. Jacob as UDC as mentioned in A-6. It was submitted as there was already a stay order by this Tribunal in the case of Tax Assistants which was not vacated till 4.5.97 the date of DPC it was decided to fill up the vacancies of UDCs which may arise if the promotions were to take place to the cadre of Tax Assistants. The Departmental Examination held in the year 1996 were out and a number of LDCs who were seniors to the applicant including the 3rd respondent had passed the examination and became eligible for promotion as UDCs. Hence they were also considered in the DPC for promotion. Preparation of yearwise panel by DPC was necessary only when DPC had not met for a number of years. Here the DPC met every year. The contention of the applicant that the third respondent could not be considered for the vacancy which arose prior to 1.10.96 it was submitted that

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the same was without any factual or legal basis. It was submitted that for promotion to the different grades in the Income Tax department the qualifications had been specifically prescribed by the statutory rules. As far as the recruitment to the post of UDC is concerned Recruitment Rules provided that a LDC who had a qualifying service of three years and passed the departmental examination for ministerial staff was eligible for consideration. Thus, the 3rd respondent having passed the examination in 1996 and completed 16 years service acquired eligibility much before the DPC held on 21.5.97 and there was no irregularity in promoting him. There was also no rule to the effect that before considering the candidates who had qualified in a later year all candidates irrespective of their seniority who had qualified in an earlier year should be considered for promotion to the cadre of UDC. There was also no OM/order directing that a person passing in a Departmental examination for higher grade in a particular year even if he had the required qualifying service should wait upto the next October for being considered for promotion to that grade. Since DPC had met in 1996-97 and 97-98 separately as per rules the question of preparation of separate lists also did not arise. The representation submitted by the applicant was considered and a detailed reply was given. The O.A. was devoid of any merit and was liable to be dismissed.

6. Heard learned counsel for the applicant and the official respondents.

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7. The learned counsel for the applicant took us through the factual aspects and submitted that the third respondent and 10 others acquired test qualification only in July, 1996 as per A-8 long after occurrence of the vacancies and that the applicant acquired the test qualification in 1995 long before the occurrence of vacancy and hence his exclusion for being considered for promotion to the post of UDC was discriminatory and in violation of Article 14 of the Constitution. He further submitted that the third respondent could not be considered against a vacancy which occurred prior to 1996 in terms of Department of Personnel & Training OM dated 13.5.91 to ensure that regular meetings of DPC were to be held every year for each category of posts so that an approved select panel was available in advance for making promotion against vacancies arising over a year. The carrying forward of retirement vacancies occurred in February and March, 1996 towards April, 1996 to March, 1997 and the denial of various promotions referred to in A3 to A7 could not be countenanced in the eye of law.

8. We have given careful consideration to the submissions made by the learned counsel for the parties and the pleadings of the parties and have perused the documents brought on record.

9. The first relief sought for by the applicant is to call for the records connected with A-11 and set aside A-11. A-11 reads as under:

F.No.23/Estt/39/CC/98-99

Office of the
Chief Commissioner of Income
Tax, Cochin



Dated the 25th March, 1999

O/o Joint Commissioner of Income Tax
(Assessment), Special Range,
Ernakulam

To

Shri K. Unnikrishnan
Lower Division Clerk
Lower Division Clerk
Spl. Range-1
Ernakulam.

(through the JCIT (Assessment), Spl. Range-I Ekm

Sub: Promotion to the grade of UDC for the year
96-97 by preparing yearwise select list-reg

Ref: Your representation dated 3.3.1999.

Your representation dated 3.3.1999 on the above
subject has been carefully considered and you are
informed as under:

Your statement that there were 13 vacancies
in the year 1996-97 is not correct. You have
calculated the vacancies for the year 96-97 by taking
into account the retirement vacancies from February
1996 onwards. The retirement vacancies for this
purpose could be calculated from April 96 to March 97
only. Your calculation of vacancies by taking into
account the promotions made in May 96 is also not
correct. No such promotions have been made from the
grade of UDC giving rise to 5 vacancies in that
grade. The DPC for 96-97 has considered the
vacancies existing as on the date of DPC and the
retirement vacancies upto March, 1997.

2. As regards the promotions made in 1997-98,
the DPC has considered the vacancies existing as on
the date of DPC and anticipated retirement vacancies
during that year and anticipated vacancies due to the
promotion to the grade of ITI/HC/TA which is in
order.

3. As DPCs have been held in 96-97 and 97-98
separately as per rules, the question of preparation
of yearwise select lists again for 1996-97 and 97-98
does not arise.

4. Accordingly your representation is rejected.

Sd/- T. John George
Deputy Commissioner of Incometaxs(H)
for Chief Commissioner of Incometax
Cochin

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9. Applicant's main ground is that had all the vacancies including those due to promotion to the post of Tax Assistants which occurred in the year 1996-97 were considered he would have come within the zone of consideration for promotion as UDC ahead of those who appeared in the departmental examination in 1996. According to the respondents due to the stay order granted by this Tribunal in OA NO.76/96 this could not be done. As per R-1(g) interim order we find that this Tribunal had ordered that no further promotion should be made to "the category in question". From the reply statement we find that the category in question was the cadre of Tax Assistant. As the vacancies of Tax Assistants could not be filled up the consequential vacancies could not be considered. In this view of the matter, we do not find any infirmity in the reasons given in A-11.

10. Apart from the above the applicant had passed the departmental examination conducted in 1995. We also note that the DPC for the year 1995-96 was held in January, 1996. Similarly respondent No.3 and others have passed the departmental examination conducted in 1996. Even if the applicant's contentions are accepted and the number of vacancies in 1996 are increased we are of the view that those who have appeared and passed the departmental examination in 1996 have to be considered on the same analogy under which the applicant was considered for the vacancies in 1995-96 when he had passed the examination conducted in 1995. We are of the view that just because the results of the examination for the year 1996 was published/^{late} will not be a reason to deny consideration of the employees who had cleared the examination conducted in 1996 for the vacancies which had

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occurred in 1996-97. From A-8 we find that examination was conducted in July, 1996 but the results were published in October, 1996. If the applicant whose results were published in January, 1996 having appeared in 1995 could be considered for the vacancies occurred in 1995-96 we do not find any reason why the candidates who appeared in July, 1996 and whose results were published in October, 1996 could not be considered in the DPC for the vacancies which occurred in 1996-97. In this view of the matter also we do not find any merit in the grounds raised by the applicant.

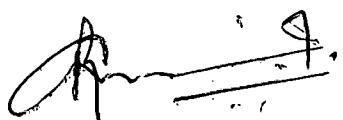
11. We also do not find any merit in the applicant's contention that if year-wise panels are made, he would have been included in the DPC for 1996-97 in the light of our above analysis. Further we also did not find any infirmity in the reasons given in A-11 for not counting the resultant vacancies of UDCs due to promotion of Tax Assistants.

12. In the result, we hold that the applicant is not entitled for the reliefs sought for in this Original Application. Accordingly we dismiss this Original Application leaving the parties to bear their respective costs.

Dated the 26th April, 2002.



K.V. SACHIDANANDAN
JUDICIAL MEMBER



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of the promotion order issued for 2nd respondent.
2. A-2: True copy of the relevant extract of chart showing superannuation dtd.12.2.96.
3. A-3: True copy of the relevant extract of chart of retirement during 96-97.
4. A-4: True copy of the order No.1/96 dtd.16.5.96.
5. A-5: True copy of the order No.2/96 dtd.31.5.96.
6. A-6: True copy of the order C.No.1(7)Estt/96-97 dated 2.9.96.
7. A-7: True copy of the promotion order F.No.11/Estt/3/CC/Con/97 dtd.23.5.97 passed by the 2nd respondent.
8. A-8: True copy of the relevant extract of the order No.CIT/O.E.Estt/2/96-97 dated 17.10.96.
9. A-9: True copy of the order F.No.11/Estt/5/CC/Con/97 dated 23.5.97 issued by the 2nd respondent.
10. A-10: True copy of the representation dated 3.3.99.
11. A-11: True copy of the order No.F.No.23/Estt/39/CC/98-99 passed by the Deputy Commissioner of Income tax (H) dtd.25.3.99.

Respondents' Annexures:

1. R-1(a): True copy of the interim order passed in OA 76/96 dated 1.2.96.

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30.4.02