

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 378/98

Friday, this the 21st day of January, 2000.

CORAM:

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

HON'BLE MR G RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. All India Income Tax Stenographers' Association, Kerala Branch, Ernakulam represented by its Secretary Shri K.V. Jacob, Office of the Commissioner of Income Tax, Central Revenue Building, Cochin - 18.
2. K.J. Issac,
S/o.K.E. Joseph,
Working as Stenographer Grade II,
Office of Deputy Commisioner of Income Tax,
Central Range, South Ernakulam Cochin - 16.
3. P.D. Philomina,
W/o. Joy C.D.,
Working as Inspector of Income Tax,
Office of the Commissioner of Income Tax,
Cochin.

..Applicants

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. Central Board of Direct Taxes,
North Block, New Delhi,
represented by its Chairman.
4. Union of India represented by the
Secretary to the Government of India,
Ministry of Finance, Department of
Revenue, North Block, New Delhi.

..Respondents

By Advocate Mr. Sunil Jose, ACGSC

The application having been heard on 21.1.2000, the Tribunal on the same day delivered the following:

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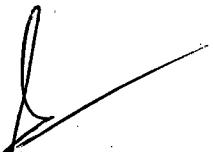
ORDER

HON'BLE MR AM SIVADAS, JUDICIAL MEMBER

Applicants seek to declare that the 1st respondent is bound to act in accordance with A-1 Recruitment Rules read with A-2, A-3 and A-4 in the case of promotion to the post of Income Tax Inspectors between Ministerial Cadre and Stenographers' Cadre in the ratio of 3:1 between them, that promotion and seniority granted in the ratio of 6:2 is null and void and to direct the respondents to review the promotion and seniority granted to the Ministerial Cadre and Stenographers' Cadre from 1985 in strict adherence to A-1 Recruitment Rules read with A-2, A-3 and A-4 and to issue modified seniority list and notional promotion to the Stenographers including the 2nd and 3rd applicants.

2. Applicants are aggrieved by the promotion granted to the Ministerial Cadre Staff in clear violation of the Recruitment Rules. The Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi as per letter F.No.A-32011/2/86-AD.VII dated 26.8.1987 issued broad guidelines relating to the introduction of quota system for the purpose of promotion to the post of Inspector of Income Tax. The quota system is 3:1. The Department has been adopting wrong procedure in favour of the Ministerial Cadre over the Stenographers. The procedure adopted by the Department is against the general principles of seniority. Aggrieved by the illegal action in the adoption of ratio of 6:2 instead of 3:1 in respect of promotion to the post of Income Tax Inspectors, the Secretary of the 1st applicant association sent a letter to the Deputy Commissioner of Income Tax, Cochin with a specific request to review all promotions made since 1985 and to refix the seniority on 3:1 ratio. The Assistant Commissioner of Income Tax

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as per letter dated 26.7.1995 informed that a review shall be made regarding existing practice of adopting the ratio of 6:2 in the matter of promotion to the cadre of Inspectors. Recently, the Chief Commissioner of Income Tax has published a seniority list of Income Tax Inspectors on 1.1.1997 which would show that the respondents have clearly flouted the Recruitment Rules and favoured promotion to the Ministerial Cadre.

3. Respondents contend that quota system was introduced with effect from 1.10.1985. On the basis of the quota system, the posts under the promotion quota are to be divided among the Ministerial Group and Stenographer Group in the ratio of 3:1. As per instructions, promotion the post of Inspector is to be given in the ratio 3:1 between Ministerial Group and Stenographers. In practice, it has resulted in giving continuously 6 slots to the Ministerial Staff and 2 slots to the Stenographers making the ratio of promotions between them at 3:1. The ratio of 3:1 is to be maintained between Ministerial Group and Stenographer Group in respect of vacancies earmarked for promotion on the basis of seniority also. Thus, in effect when promotions are made from the two groups in the ratio of 3:1 on the basis of date/year of passing and also in the ratio of 3:1 on the basis of seniority, it becomes necessary to promote 6 persons from Ministerial Group continuously and 2 persons from Stenographer Group continuously to maintain the proper ratio between them at 3:1. The ratio 6:2 has not adversely affected the seniority of the applicants in the cadre of Inspectors. "There was a clear understanding between the applicant and the respondent when the quota rule of 3:1 was implemented as 6:2 in Kerala Region". After a span of 12 years,

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the very same applicant challenges the implementation of quota rule in Kerala as illegal and irregular. The question of seniority shall not be reopened after a lapse of reasonable period.

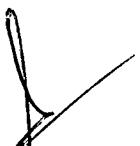
4. Applicants have filed a rejoinder denying the contentions raised in the reply statement.

5. An additional reply statement has been filed by the respondents saying that the matter being one affecting a large number of employees, a decision by the 3rd respondent can be taken only on examining all the aspects at various sections/divisions necessitating some delay which cannot be avoided. The 1st respondent has taken up the matter and no clarifications have been received till date. Respondents 1 & 2 can take a decision only after receiving the clarifications from the 3rd respondent.

6. The sole question to be decided is whether the ratio of 6:2 adopted by the respondents is justified.

7. Respondents in the reply statement have specifically admitted that the ratio to be adopted is 3:1. As per A-1 Recruitment Rules, the ratio is 3:1. Respondents say that though the ratio is admittedly 3:1 between the Ministerial Group and Stenographer Group, it has been worked out in the ratio of 6:2. We do not find any rationale in the action of the respondents in doing so. Respondents who are only to be guided by rules can act only in accordance with the rules. The action of the respondents

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should have been guided by rules and not by humour.

8. Respondents say that R-1(b) is the instruction on the subject. R-1(b) and A-2 are the same. Applicants are also relying on A-2. R-1(b) specifically says thus:

"It is clarified that the quota of 3:1 has to be maintained between the two groups in respect of the vacancies earmarked for date/year of passing of candidates by following, if necessary, separate years of passing for the two groups."

R-1(b) only helps the stand of the applicants and not the procedure adopted by the respondents.

9. Applicants have specifically alleged in the O.A. that the Department has been adopting a wrong procedure in favour of the Ministerial Cadre over the Stenographers. From a reading of the reply statement, it appears that there is considerable force in the statement of the applicants.

10. According to the respondents, "there was a clear understanding between the applicant and the respondent when the quota rule of 3:1 was implemented as 6:2 in the Kerala Region." It is not known who is "the applicant" and "the respondent". There cannot be an understanding as contended by the respondents against the quota prescribed as per A-1, the statutory rules framed under Article 309 of the Constitution of India. From the plea of the respondents that there was a clear understanding between "the applicant" and "the respondent", it seems that the respondents are ready to violate the rules prescribed on the subject. If their intention was to strictly follow the rules,

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there cannot be such an understanding. The understanding should be in accordance with the rules prescribed and not according to the fanciful imagination of the Department. It cannot be a case of ~~preference~~ ^{preference} of ~~performance~~ not by rule but by letter and affection.

11. Respondents also contend that after a span of 12 years, applicants cannot challenge the implementation of the quota rule. A-8 is the disposition list of Non-Gazetted Establishment in the respondent department as on 1.1.1997. Applicants say that this is based on the wrong ratio of 6:2 instead of the right ratio of 3:1. There is not even a whisper against this averment in the reply statement. A-8 is dated 9.6.1997. This O.A. was filed on 27.2.1998. We are unable to appreciate this technical plea raised by the Department.

12. In the additional reply statement filed by the respondents, it is stated that apart from the Kerala Charge, the Pune Charge has also adopted the ratio of 6:2 in the matter of promotion to the cadre of Inspectors of Income Tax. Though two negatives will make an affirmative, two wrongs cannot make a right.

13. Respondents say that they have sought for clarification from the 3rd respondent. When the clarification was sought is not stated in the reply statement. It is stated that the clarification has not been received. What has prevented the 3rd respondent from clarifying the position is not stated. The respondents cannot escape by saying that clarification has been sought from the 3rd respondent and he has not issued the

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clarification. It cannot be a case that respondents are not accountable to anybody. They cannot afford to forget their duties and responsibilities.

14. It is really funny to note that the respondents say that since the clarification from the 3rd respondent has not been received, this O.A. is to be dismissed. If such a plea is to be accepted, then every O.A. may have to be necessarily dismissed.

15. A-3 dated 12.7.1985 contains the revised instructions with regard to the consideration list for promotion to the Grade of Inspectors. Applicants say that respondents are bound to follow A-3. There is no dispute raised by the respondents on this aspect.

16. A-4 deals with the general principle for determining the seniority of various categories of persons employed in the Central Service. Applicants further say that A-4 is also to be followed. Respondents have no quarrel on this aspect.

17. Accordingly, we allow the O.A. declaring that the 1st respondent is bound to act in accordance with A-1 Recruitment rules read with A-2, A-3 and A-4 in the matter of promotion to the post of Income Tax Inspectors between the Ministerial Cadre and Stenographers' Cadre in the ratio of 3:1, that the promotion and seniority granted in the ratio of 6:2 is null and void and directing the respondents to review the promotion and seniority granted to Ministerial Cadre and Stenographers' Cadre from 1985

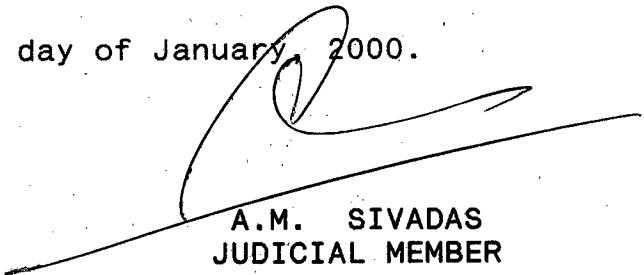
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in strict adherence to A-1 Recruitment Rules read with A-2, A-3 and A-4 after notice to all those who are likely to be affected and also to issue modified seniority list and notional promotion to Stenographers including 2nd and 3rd applicants within three months from the date of receipt of a copy of this order. No costs.

Dated this the 21st day of January, 2000.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A.M. SIVADAS
JUDICIAL MEMBER

nv/2112000

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

1. Annexure A-1: True copy of notification GSR No.768 dated 8.9.1986 issued by Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Annexure A-2: True copy of letter F. No.A-32011/2/86-AD.VII dated 26.8.1987 issued by the Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, New Delhi.
3. Annexure A-3: True copy of letter F. No.A-32011/8/84/AD.VII dated 12.7.1985 issued by the Under Secretary, Central Board of Direct Taxes, Government of India, Ministry of Finance, Department of Revenue, New Delhi.
4. Annexure A-4: True copy of Memorandum NO.9/11/55-APS dated 22.12.1959 issued by the Special Secretary to the Government of India, Ministry of Home Affairs.
5. Annexure A-8: True copy of Seniority List as on 1.1.1997 issued by the Chief Commissioner of Income Tax, Cochin through the Assistant Commissioner of Income Tax (H), Central Revenue Building, I.S. Press Road, Cochin-18, vide letter No.16/Estt/CC/97 dated 9.6.1997.
6. Annexure R-1(b): A photo copy of the instructions F.No.A-32011/2/86-Ad.Vii, dated 26.8.1987.