

Central Administrative Tribunal, Lucknow Bench, Lucknow

**Execution Application No.1574/2011 in
Original Application No. 123/2003**

13th
This the ^{13th} day of July, 2012

Hon'ble Sri M.Kanthalai, Member (J)
Hon'ble Sri Jayati Chandr, Member (A)

1. Girish Narain Pandey aged about 56 years son of late Sri B.N. Pandey, resident of Srijandhan B-19, Sector 'O' (presently working as Chief Commissioner of Income Tax, Allahabad)
2. U.K. Shukla aged about 56 years son of Sri K.K. Shukla resident of B-4, Butler Palace Colony, Lucknow. (Presently working as Chief Commissioner of Income Tax VI, Mumbai)

By Advocate: Sri V.P.Shukla

Applicants

Versus

1. Union of India through the Secretary, Ministry of Finance (Department of Revenue), New Delhi.
2. Union of India through the Secretary, Department of Personnel and Training, New Delhi.
3. Central Board of Direct Taxes, New Delhi through its Secretary,
4. Sri K.V. Chowdhary, Director General (Investigation), Delhi.
5. Smt. Anita Kapur, Director General (Administration), New Delhi.
6. Sri G. Rajeshwar Rao, Director General (Investigation), Bangalore.
7. Sri Arun Kumar Jain, Director General (Investigation) Ahmedabad.

Opposite Parties

By advocate: Sri Rajendra Singh for respondents 1 to 3
and Sri A.Moin for respondents 4 to 7

(Reserved on 10.7.2012)

ORDER

BY HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

The applicants have filed this Execution Petition under Section 27 of the Administrative Tribunal Act, 1985 against the respondents to execute and implement the order dated 10.1.2008 passed by this Tribunal in O.A. No. 123/2003 at the earliest, otherwise the petitioners will suffer irreparable loss and injury.

2. The official respondents No. 1 and 2 and private respondents have filed their separate Counter Replies opposing the claim of the

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petitioners for execution on the ground that the directions of this Tribunal dated 10.1.2008 has been implemented by issuing O.M. dated 8.2.2002. Thus there is no requirement for implementation. The private respondents have also filed M.A. for dismissal of execution application on the ground that the application is not maintainable.

3. Heard both sides.

4. The brief facts of the case are that the applicant No.2 belongs to 1977 whereas applicant No. 1 belongs to 1977 batch of Indian Revenue Service. The respondents No. 4 to 7 are junior to the applicant No.1 of 1978 batch IRS officers. It is not in dispute that the name of the applicant No.1 is at Sl. No.1 while the name of respondents No. 4 to 7 are at Sl. No. 4,17 ,45 and 49 in the notification dated 14.2.1979. But while making promotion to the post of Assistant Commissioner(now redesignated as Joint Commissioner of Income Tax), during the year 1985-86, there was supersession of inter se seniority and names of private respondents placed above the name of applicant No.2 and accordingly promotions were given. Similarly, the same seniority has been followed in the next promotion of CIT in 2001. During the year 1999, the Appointment Committee of Cabinet (ACC) vide O.M.dated 8.12.1999 of DOP&T issued certain directions that there shall be no supersession. Inter Se-seniority amongst all officers considered fit for promotion will be maintained as before. Basing on such ACC direction, the applicants have filed the OA. No.123/2003. The same was disposed of on 10.1.2008 with the following directions:-

"The officers of Indian Revenue Service, on strength of decision taken by the Appointment Committee of Cabinet on 8.12.99, where it has been decided that no supersession in inter-se-seniority could taken place amongst all officers considered fit for promotion in IRS shall have to be maintained as before. Department of Revenue should expeditiously under take amendment to the recruitment rules at par with All India

Services. Accordingly seeks 8-C of the relief, have sought direction to the respondents No.1,2 and 3 to amend the Indian Revenue Service Rules in terms of the directions of Appointment Committee of Cabinet.

As despite a representation preferred in 2001, neither a response nor a decision has been taken to amend the rules to bring it at par with All India Service Rules especially when decision of ACC has been a conscious decision has to be followed. Moreover, for want of any contrary decision reflected in the pleadings, O.A. stands disposed of with direction to the respondents No. 1 to 3 to take a final decision, if already not taken to amend the IRS Rules as per the directions of the ACC issued on 8.12.99. This shall be circulated to all the incumbents and officers of IRS after a decision is taken. On amendment of rules, the claim of the applicants shall have to be considered accordingly. No costs."

5. Thereafter, the applicants have made several representations for implementation of such directions and when there is no progress, the applicants have ^{filed} filed the present petition for execution of the direction of the Tribunal's order dated 10.1.2008.

6. It is the case of the applicants that respondents No.1 ,2 and 3 have not implemented the directions of the Tribunal's order dated 10.1.2008, thus sought for execution of order by way of filing execution petition. The respondents say that authorities have already implemented the directions of the ACC, while disposing of the O.A., this Tribunal gives direction to the respondents No. 1 to 3 to take a final decision, if already not taken to amend the IRS rules as per the direction of the ACC issued on 8.12.99. Thus, the subject matter in the O.A. was supersession in the matter of seniority for promotion in the Department.

[The directions of the Appointment Committee of Cabinet (ACC) dated 8.12.99 is in context to Departments proposal relating to the promotion of office4rs to the grade of Joint Commissioner of Income Tax and

extract of ACC direction has conveyed vide O.M. dated 8.12.99 reads as follows:-

"There shall be no supersession, Inter Se-seniority amongst all officers considered fit for promotion will be maintained as before.. Department of Revenue should expeditiously undertake amendment to Recruitment Rules to bring it on par with All India Services to avoid supersession. "

7. It is the contention of the respondents No.1 and 2 that in compliance of ACC above directions, the Central Board of Direct Taxes (CBDT) while considering the proposal for amendment in recruitment Rules of IRS (IT) had sent a comprehensive proposal, incorporating the directions of ACC. However, while considering the amendment in RRs proposals, DOP&T had advised the Department to de-link the non-supersession issue from the proposed amendments in recruitment rules and conveyed that the said direction of ACC is separately under consideration at their end. Thereafter, DOP&T vide O.M. Dated 8.2.2002 had issued revised instructions relating to no supersession in selection to be followed in relation to the promotion matter. In para 4 of the O.M. dated 8.2.2002, it was clearly stated that if office memorandum comes in conflict with the provisions of any other executive instruction (O.M.) issued by DOP&T on subject, the same shall be taken to be modified to the extent provided herein. Thus, after the issuance of the O.M. dated 8.2.2002, the department was under the pretext that DOP&T have taken into consideration ACC's direction dated 8.12.99, while issuing the revised instruction in the matter vide O.M. dated 8.2.2002. As regards DOP&T direction to make necessary amendments in the recruitment rules, they stated that the department was unable to amend the RRs, however, DOP&T's direction as conveyed vide O.M. dated 8.2.2002 are being followed by the Department thereafter in all promotion matter relating to IRS (IT) officers. It is also the case of the respondents that the department has also sought clarification from DOP&T with respect to DOP&T's O.M. dated 8.2.2002 vis-à-vis ACC direction dated 8.12.99. The DOP&T vide note

dated 26.9.2011 has clarified that ACC directions as conveyed on 8.12.99 has been examined at the highest level at their end and a decision was taken to amend the DPC guideliens to implement the directions of the ACC. The revised instructions modifying the DPC guideliens (with prospective effect) were issued vide O.M. dated 8.2.2002. They further stated that this Tribunal in its order dated 10.1.2008 has directed the official respondents to take a final decision, if already not taken to amend the IRS rules as per the directions of the ACC issued on 8.12.99. But the DOP&T , concerned nodal department for service matters duly considered the ACC direction dated 8.12.99 and implement the same on 8.2.2002. which provide that there shall be no supersession, Inter Se-seniority amongst all officers considered fit for promotion will be maintained as before.. Department of Revenue should expeditiously undertake amendment to Recruitment Rules to bring it on par with All India Services to avoid supersession. They further contended that DOP&T instruction dated 8.2.2002 are being followed by the Department of Revenue in the case of promotion of IRS officers. Thus, they denied the claim of the applicants for any amendment in recruitment as claimed by them.

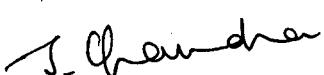
8. Admittedly, while giving direction to the official respondents to take a final decision to amend the IRS rules as per the directions of the ACC issued on 8.12.99, this Tribunal added a rider if already not taken a decision. It is the contention of the respondents that in pursuance of the ACC decision dated 8.12.99, the nodal ministry DOP&T had issued O.M. dated 8.2.2002 revised instruction relating to super session of selection to the promotion matters and thus complied the direction of ACC. As such there is no occasion to amend the recruitment rules, on the date of judgment of this Tribunal., admittedly DOP&T instruction dated 8.2.2002 are available in respect of grievance of the applicants more particularly in respect of implementation of decision of ACC dated 8.12.99 and in pursuance of such instruction dated 8.2.2002 ,

promotion policy has been followed and implementation, rectifying earlier defects as noticed by ACC.

9. By the time, i.e. on the date of order of this Tribunal dated 10.1.2008, no decision was available, it is incumbent upon the respondents to take a final decision as ordered by the Tribunal. When the respondents have already taken a decision in respect of ACC recommendations dated 8.12.99, on the date of decision of this Tribunal dated 10.1.2008, further directions to amend the order does not arise. Admittedly, there was no reference and finding in respect of DOP&T's instructions vide memo dated 8.12.99 in the judgment of this Tribunal dated 10.1.2008. Coming to the merits of the case, whether DOP&T's instructions vide Memo dated 8.2.2002 is in full compliance e of the decision of ACC dated 8.12.99 or it requires further compliance has to be decided separately but not in this petition for execution, since the scope of execution petition is very limited. In view of such circumstances, we are not inclined to go into the such details for giving any findings on merits of O.M. dated 8.2.2002 at this stage.

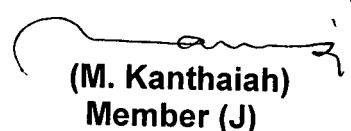
10. In the above circumstances, when it is the specific case of the respondents that as on the date of direction of this Tribunal dated 10.1.2008, DOP&T instruction vide O.M. dated 8.2.2002 are available, which is in respect of ACC's recommendation dated 8.12.99, giving any further direction to the official respondents for execution of the direction of this Tribunal's order dated 10.1.2008 on the ground of non-compliance has no merits.

11. Thus there are no justified grounds for allowing the claim of the applicants. In the result, the application for execution of direction of the Tribunal dated 10.1.2008 is dismissed.



(Jayati Chandra)
Member (A)

HLS/-



(M. Kanthaiah)
Member (J)

13-07-12