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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

CIRCUIT SITTING AT NAGPUR

~~XXXXXX~~ No.

T. A. No. 253/87

198

DATE OF DECISION 22-3-1991

Vinaychand P. Challani

Petitioner

Mr. Ramesh Darda

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondent

Mr. K. D. Kelkar

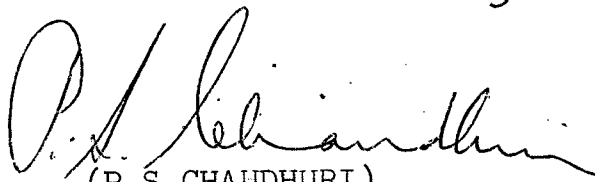
Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. A. P. Bhattacharya, Member(J)

The Hon'ble Mr. P. S. Chaudhuri, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? } Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ? }


(P. S. CHAUDHURI)
Member(A)

(9)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
CIRCUIT SITTING AT NAGPUR

Tr.No.253/87

Vinaychand
S/o.Pratapchand Challani,
Tax Assistant,
Office of the Income Tax,
Nagpur.

.. Applicant

vs.

1. Union of India
through
Secretary,
Department of Finance,
New Delhi.
2. Central Board of Direct
Taxes,
through its Secretary,
New Delhi.
3. The Commissioner of Income Tax,
Vidarbha Region,
Nagpur.
4. Mr.A.R.Vasti,
Income Tax Inspector,
Income Tax Department,
Nagpur.
5. Mr.M.I.Jaswani,
Income Tax Inspector,
Income Tax Department
Nagpur.
6. I.M.Man Chandiya
Income Tax Inspector,
Income Tax Department,
Nagpur.

.. Respondents

Coram: Hon'ble Member(J)Shri A.P.Bhattacharya

Hon'ble Member(A)Shri P.S.Chaudhuri.

Appearances:

1. Mr.Ramesh Darda
Advocate for the
Applicant.
2. Mr.K.D.Kelkar
Advocate for the
Respondents.

JUDGMENT:
{Per P.S.Chaudhuri, Member(A)}

Date: 22-3-1991

This application has come to the Tribunal
by way of transfer from the Bombay High Court in terms of
its order dtd. 21-10-1986 on Writ Petition No.2526/82
which was filed before its Nagpur Bench on 14.12.1982.
In it the applicant(the petitioner),who is working as
Tax Assistant in the office of the Income Tax Officer,

Nagpur is challenging the order dtd. 10-9-1982 and the order dated 22-2-1984 issued by the third respondent in terms of which the fourth and fifth respondents along with two others, and the sixth respondent respectively are promoted to the post of Income Tax Inspector in the pay scale of Rs.425-700 but the applicant is not so promoted.

2. The relevant facts are few. The applicant joined the Income Tax Department as a Upper Division Clerk on 3-2-1969. The scale of pay applicable to this post after the third Pay Commission(i.e. after 1973) was Rs.330-560. It is not disputed that the fourth and fifth respondents were senior to him in this grade. By a circular dated 31-3-1978 the respondents created a cadre of Tax Assistants in the Income Tax Department and issued instructions on how these posts were to be filled. As it is necessary for our purpose para 1 and the relevant portion of para 2 of this circular are reproduced below:

"I am directed to say that the Direct Taxes Enquiry Committee had recommended in para 6.45 of their report that a new cadre of Tax Assistants should be created in the Income Tax Department by upgrading 1/3rd of the cadre strength of Upper Division Clerks with a view to provide more experienced and competent ministerial staff to deal with important aspects of clerical work, particularly in the companies and investigation circles. The staff side had also raised this matter in the Departmental Council of the Ministry of Finance. After careful consideration, it has now been decided to create 4,148 posts of Tax Assistants in lieu of equal number of posts of Upper Division Clerks which would stand abolished as and when the posts of Tax Assistants are filled up in the respective charges.

2. The Cadre of Tax Assistants will be an intermediary cadre between those of UDCs and Head Clerks. The post of Tax Assistants would carry higher duties and responsibilities as compared to those entrusted to UDCs. There may be no objection to the work of Tax Assistants being supervised by Head Clerks wherever necessary. The scale of pay of the post of Tax Assistant will be Rs.380-12-440-EB-15-560-EB-20-640 and will be classified as Group 'C' (Ministerial). The posts shall be filled entirely by promotion from the cadre of Upper Division Clerks, on "selection" basis, on the recommendations of a duly constituted D.P.C. Only those U.D.Cs who have rendered a minimum service of 3 years in that grade in the Department and who have secured at least 40% marks in the following subjects in the Income Tax Inspectors' Departmental Examination will be eligible for consideration for promotion to the post of Tax Assistants:

1. Income tax Law I
2. Income tax Law II
3. Other Direct Taxes
4. Office procedure

For purpose of reckoning 40% marks, the marks obtained in Income Tax Law I and Income Tax Law II in the same examination will be taken together and it is not necessary to have secured 40% in each of the two papers. Candidates who have secured at least 80 marks (out of 200) in both the papers taken together in the same examination shall be eligible for consideration for promotion to the grade of Tax Assistants....."

It appears that a DPC for filling the posts of Tax Assistant was held on 7-7-1978 and that a DPC held on 16-4-1981 refixed this seniority. By circular dated 24-6-1981 the revised seniority fixed by the DPC held on 16-4-81 was :- Applicant Sr.No.23, 4th respondent: Sr.No.50, 5th respondent: Sr.No.55,

6th respondent at Sr.No.57. This interse seniority was maintained in the order dated 16-7-1981 by which they were confirmed in the cadre of Tax Assistant with effect from 26-6-1981. In the Income Tax department there are posts of Inspector of Income Tax in the pay scale of Rs.425-700. Recruitment rules for regulating the method of recruitment to these posts have been made by the President in exercise of the powers conferred by the proviso to Article 309 of the Constitution and these have been published in the Gazette of India dtd. 27-12-1969 and came into force from that date. In terms of these rules 33 $\frac{1}{3}$ % posts of the vacancies are to be filled by direct recruitment and 66 $\frac{2}{3}$ % by promotion. The rules pertaining to such promotion prescribed in these rules is reproduced below:

"Promotion:

Upper Division Clerks and higher ministerial grades, Stenographers (ordinary grade) and Stenographers (Selection grade), with three years service in the respective grade, who have qualified in the Departmental Examination for Income Tax Inspectors. The names of all such qualified candidates will be arranged in two separate lists. In the first list, the names of all the qualified persons will be arranged in order of seniority in the department. In the second list, the names of all the qualified persons will be arranged according to the date/year of passing the Departmental Examination, provided that the persons who pass the examination on the same date will be arranged according to their seniority in the Department. After the approval of the persons in the two lists by the Departmental Promotion Committee, the names of all the selected candidates will be embodied in two separate select lists. Vacancies in the promotion quota will be filled alternately from the two lists.

Note: For the purpose of these rules, persons confirmed in a higher grade will rank senior to persons officiating in that grade and to persons working in a lower grade."

The applicant as well as respondents No.4 and 5 appeared for and passed the Income Tax Inspectors' Departmental Examination in 1973. By the impugned order dated 10-9-1982 the fourth and

fifth respondents came to be promoted to the post of Inspector of Income Tax. Being aggrieved the applicant made a representation to the third respondent on 18-9-1982. By reply dtd. 22-10-1982 he was informed that the promotions had been made in accordance with the Central Board of Direct Taxes' letter dated 22-9-1981 which reads as under:-

"I am directed to refer to your letter F.No. E-16/62/75 dated the 27th July, 1981 on the above subject and to say that the matter regarding fixation of seniority of Tax Assistants vis-a-vis UDCs has been considered and decided that for further promotion to the higher grades, the seniority of both of them will be reckoned from the basic cadre i.e. U.D.C.

2. The promotion will, therefore, continue to be made in accordance with the Recruitment Rules and other existing administrative instructions. You may take action accordingly."

Being aggrieved the applicant filed the Writ Petition which was subsequently amended to also cover respondent No.6 and the impugned order dated 22-2-1984.

3. The respondents have opposed the application by filing their written statement. We have heard Mr.Ramesh Darda learned counsel for the applicant and Mr.K.D.Kelkar learned counsel for the respondents.

4. It was Mr.Darda's submission that the applicant as also the fourth, fifth and 6th respondent were in a grade higher than that of U.D.C. and so their

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related^{ive} seniority for further promotion should be reckoned on the basis of their seniority in this higher grade and not their erstwhile seniority in the lower grade of Upper Division Clerk.

5. Mr. Kelkar opposed this stand of the applicant on two grounds. His first submission was that the Recruitment Rules of 1969 did not specifically provide for Tax Assistants to be eligible for promotion to Inspector of Income Tax. It was his submission that this only came about by an amendment to the recruitment rules which came into force from 1-10-1985. It was his contention that, nonetheless, Tax Assistants had been considered for such promotion because when the posts of Tax Assistants had been created in 1978, these had been carved out of the cadre of UDCs and so the Tax Assistants were considered for promotion by deeming them to have retained their seniority as Upper Division Clerk. His second submission was that this view of the matter had been authorised by the Central Board of Direct Taxes by their letter dated 22-9-1981 which we have quoted earlier.

6. We find ourselves unable to go along with Mr. Kelkar's submissions. The recruitment rules of 1969 clearly indicate that not only ~~xx~~ ~~was~~ Upper Division Clerks but also, inter alia, "higher Ministerial Grades" are eligible for promotion as Inspector of Income Tax. Mr. Kelkar did faintly state that the reference to higher ministerial grades meant Stenographers. But a plain reading of the recruitment rules, which we have quoted earlier, shows that this contention cannot be sustained. We have, therefore, to determine whether "higher ministerial grades" also includes Tax Assistants. The Circular of 1978 clearly says that the "cadre of Tax Assistants will be an

intermediary cadre between those of UDCs and Head Clerks." It also says that "the posts (viz. Tax Assistants) shall be filled entirely by promotion from the cadre of UDCs" We thus have no difficulty whatsoever in holding that the cadre of Tax Assistants is a "higher ministerial grade" than Upper Division Clerks and so the holders of this posts are eligible in that very capacity to be considered for promotion as Inspector of Income Tax.

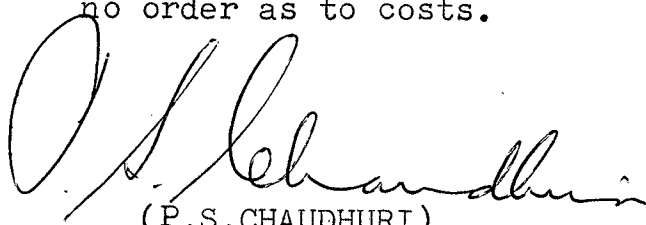
The letter dated 22-9-1981 sought to be relied on by Mr. Kelkar does not come to his rescue in this matter because administrative instructions cannot over-ride statutory rules made by the President under Constitutional provisions.


7. Coming now to the question of how the seniority of Tax Assistants is to be reckoned, the recruitment rules clearly stipulated that persons confirmed in a higher grade will rank senior to persons working in a lower grade; thus, all Tax Assistants will rank senior to all Upper Division Clerks. Such being the case there is no question of looking behind the seniority position of Tax Assistants and work on the basis of a deemed seniority position as Upper Division Clerk. This view ~~was~~ also finds support in a subsequent circular dated 26-8-1987 issued by the Central Board of Direct Taxes ^{while} ~~and~~ dealing with the introduction of a quota system for the purpose of promotion to the posts of Inspector of Income Tax, which was given to us by Mr. Darda

8. In this view of the matter, we see considerable merit in this application and are of the opinion that it deserves to be allowed.

9. We accordingly quash the impugned orders dated 10-9-1982 and 22-2-1984 in so far as these relate;

to the fourth, fifth and sixth respondents. We direct the respondents to consider the case of the petitioner for promotion to the post of Inspector of Income Tax in accordance with his seniority as Tax Assistant and if he is found suitable for promotion as Inspector of Income Tax to fix his salary after giving him notional seniority so that the salary so fixed is not lower than that of those who are immediately lower to him. In the circumstances of the case there will be no order as to costs.


(P.S. CHAUDHURI)
Member (A)
22/3/91


(A.P. BHATTACHARYA)
Member (J)
22.3.91.