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

O.A.265/87

R.C.Rewatkar,
Quarter No.6/20,
Rambagh Colony,
Medical College Chowk,
Nagpur. Applicant

vs.

The Commissioner of Income Tax,
Vidarbha,
Aayakar Bhavan,
Civil Line,
Nagpur

Bhanudas B. Wankhede,
Office of the Inspecting
Assistant Commissioner of
Income Tax,
Akola Range,
Akola. Respondents

Coram: Hon'ble Member(A)Shri P.S.Chaudhuri
Hon'ble Member(J)Shri D.K.Agrawal

Appearances:

1. Mr.G.P.Hardas
Advocate for the
Applicant.
2. Ms.N.R.Sarin
Counsel for the
Respondents.

JUDGMENT
(Per D.K.Agrawal, Member(J))

Date: 22-6-1990

This application under Section 19
of the Administrative Tribunals Act, 1985 has been
filed by the applicant seeking a direction from
respondent no.1 viz. The Commissioner of Income
Tax, Vidarbha, to promote the applicant to the
post of Lower Division Clerk. It has also been
prayed that the appointment of respondent No.2 to
the post of Lower Division Clerk be set aside.

2. Briefly the facts are that the
applicant is a class IV employee in the office
of the Income Tax Commissioner, Nagpur. He claims

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promotion to the post of Lower Division Clerk on the basis of the examination held in the year 1980, result of which was declared on 4-11-1981 and the examination held in February, 1982 the result of which was declared on 25-6-1982. The respondents have contended that there being no vacancy in the cadre of LDCs, none of the candidates declared successful, as the examination held in the year 1980 was concerned. The respondents have further pleaded that respondent No. 2 being senior to the applicant was appointed to the post of LDC on the basis of the examination held in February, 1982, the result of which was declared on 25-6-1982.

2. We have heard the learned counsel for both the parties and perused the records.

3. Upto the year 1981 the departmental competitive examination was held for promoting group D employees to Group 'C'. As a result of the decision dtd. 10th February, 1981 the departmental competitive examination was substituted by a qualifying examination. It was further decided that out of 10% quota, 5% of the vacancies in a calendar year shall be filled on the basis of seniority and remaining 5% on the basis of the qualifying examination to be held by the department.

Ans

4. We may further mention that the examination which was held in the year 1980 the result of which was declared on 4.11.1981 clearly mentions in para 2(Annexure 1 to the main application) that the candidates declared as successful in the examination will remain in the zone of consideration for promotion till the next examination. Thus it is clear that once the examination was held in February, 1982, the list of successful candidates on the basis of the examination held in the year 1980 automatically ceased to be in operation. As regards examination for the year 1982, the result of which was declared in June, 1982, it is clear from the seniority list that applicant No.2 viz. Shri Bhanudas B.Wankhede was senior to the applicant in Group D category. Therefore, the appointment of applicant No.2 was valid one. Consequently we cannot set aside the appointment of applicant No.2 nor direct the applicant to be appointed because there existed no vacancy. There was one vacancy which has been filled by the appointment of Applicant No.2.

5. Thus we do not find any irregularity in the action taken by the respondent in regard to the promotion to the category of LDC. Consequently this application is liable to be dismissed.

Dr. D. S. Patel

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6. We hereby dismiss this application
with no order as to costs.

D.K. Agarwal
22.6.80.

(D.K.AGRAWAL) (P.S.CHAUDHURI)
Member(J) Member(A)

P.S.Chaudhuri