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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.: 134 OF 1988.

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Date of Decision 13.11.95

The Association of Gazetted Officers of
the Income Tax Department, Bombay through
its President, Shri P.A. Prabhakaran.

Petitioner/s

Shri P. A. Prabhakaran,

Advocate for
the Petitioners

Versus

Union Of India & Others,

Respondent/s

Shri P. M. Pradhan,

Advocate for
the Respondents

CORAM :

Hon'ble Shri. B. S. Hegde, Member (J).

Hon'ble Shri. M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to
other Benches of the Tribunal ? X

M.R. Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A).

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(23)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO.: 134 OF 1988.

The Association of Gazetted Officers
of the Income Tax Department, Bombay
through its President, Shri P. A.
Prabhakaran. ... Applicants

Versus

1. Union Of India through
Secretary,
Department of Revenue. ... Respondents.
2. The Chairman,
Central Board of Direct Taxes,
New Delhi.
3. Director General (Investigation)
South, Bombay.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).
Hon'ble Shri M. R. Kolhatkar, Member (A).

APPEARANCE :

1. Shri P.A. Prabhakaran, Advocate proxy
for Shri M.A. Mahalle, Counsel for the applicant.
2. Shri P.M. Pradhan, Counsel for the respondents.

JUDGEMENT

DATED : 13-11-95

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

1. In this O.A. which is filed by the Association of Gazetted Officers of Income Tax Department, the D.O. letter dated 11.11.1987 on the subject of "Manpower placement plan for Survey/Supervision and Control over the ITOs Group 'B' (Survey), has been challenged, the same reads as follows :-

"Please refer to item 23 on page 13 of the Decisions of the Board on the Recommendations of the Conference of Commissioners of Income-tax which provides that A.D.&I. Senior Scale Group 'A' will supervise and control the work of I.T.Os Group 'B' (Survey) and

that they will also write the Confidential Character Rolls of these I.T.Os.

The aforesaid decision may please be brought to the notice of the concerned officers immediately."

The contention of the applicant is that there are three grades for Income Tax Officers working in the department, namely; Group 'B', Group 'A' Junior Scale and Group 'A' Senior Scale and all of them are equal as far as their duties and responsibilities are concerned in view of relevant provisions of the Manual of Office Procedure on the subject of "Income-tax Officers" extracted at exhibit 'A'.

2. It is further contended that according to the same manual, vide the extract at exhibit AI, the duty of writing of Confidential reports of ITOs. and of staff working in his own office has been entrusted to Inspecting Assistant Commissioner. According to the respondents, the manual provisions are mandatory and by means of D.O. circular in terms of the decision of the C.B.D.T. on the recommendations of the Conference of Commissioner of Income Tax, it cannot be provided that the Assistant Director Of Inspection, who are really Income-Tax Officers of Senior Scale group 'A' should thus write the Confidential Reports of the Income Tax Officers. It is contended that the circular applies only to I.T.O.s Group 'B' Officers posted in Survey Circle and there is inherent discrimination between Group 'B' Officers posted in Survey circles and other sections of the I.T. Department offending article 14 of the constitution. There is a further discrimination between Assistant Directors posted in Survey Circles itself as those who are in Group 'A' junior scale will be incompetent to exercise control and to write the Confidential reports of Group 'B' ITOs working with or under

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him. It is contended that this discrimination is violative of equality guarantee under Article 14 of the constitution and therefore the relief for is prayed to direct the respondents to withdraw the circular and to issue orders that the confidential reports of Income Tax Officer Group 'B' posted in Survey Circles for the year 1987-88 and onwards shall be written by the Deputy Director of Inspection (Survey) and not by Assistant Director Of Inspection (Survey).

3. The O.A. has been opposed by the respondents. They have stated that in pursuance of the introduction of new section being Section 133-B of the Finance Act, 1986 in the financial year 1987-88, the department decided to start intensive survey work to detect new assesseees and therefore the need arose for appointment of Group 'A' Officers of sufficient seniority to supervise the work of both Income-tax Officers and Inspectors in the survey work. Such intensive control was necessary both to ensure efficient and fruitful channelling of the Inspectors' effort and to avoid harassment to the General public. It is contended that the writing of Confidential report is a natural corollary to the main function of supervision and control. What is required is that the officer who writes the confidential report should be senior to the officer whose confidential report he writes and this senior officer should be actually supervising the work of the junior officer. Attention is also invited to Rule 3 of the CCS Rules that every senior officer supervising the work of a junior officer is responsible for the proper working and conduct of the junior officer. We note that this reference might be to Rule 3 of the Conduct Rules which says that "every Government servant holding a supervisory post shall take all possible steps to

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ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority". The respondents contend that there is no violation of Article 14 of the constitution because the classification between various groups is possible as long as the classification is reasonable. Finally the respondents pointed out that the C.B.D.T. has passed a notification no. 7818 under Section 118 of the Income Tax Act whereby the Income Tax Officers have been stated to be ^{subordinate to} Assistant Director of Inspection.


4. The respondents have also taken a preliminary objection that the O.A. has been filed by an Association but no individual aggrieved officer has been made a party. Perhaps, in view of this objection M.P. No. 667/91 has been filed on 08.08.1991 adding an officer by name, N. Kesavan Embran as applicant no. 2. There is no indication that the M.P. was decided especially because this case was earlier linked up with a larger matter relating to rota-quota rule in O.A. 511/91 and O.A. No. 500/87. All the same, we are dealing with the O.A. apart from the above referred O.A.s and propose to dispose of the matter on merits.

5. The O.A. mainly relies on the violation of "manual" provisions and on the allegation of discrimination. In our view the manual provision do not have the force of statutory rules. The authority derives from specific orders para in the manual having the force of law reference to any would not avail. So far as the charge of discrimination is concerned, according to us, the classification of Income-tax Officers working in Survey divisions and those working elsewhere is quite reasonable in view of the circumstances under which the new provision of Finance Act relating to survey was

introduced. The representation filed by the applicants to the C.B.D.T. appears to imply that the issue of the circular in question was part of the larger dispute between the promotee and the direct recruit officers of the Income-tax department. We are however not inclined to explore these aspects. We are inclined to go along with the contention of the respondents that the confidential reports which are meant to assess the performance of the officers, go along with the opportunity of supervision. The respondents have stated that the two pre-requisites for writing of the confidential report are - seniority of the officer and the actual supervision of the work. In our view, the seniority of the officer is ^{also} irrelevant and what is material is the actual ^{even} supervision. We are ^{even} aware of cases where the confidential reports of Senior Field Officers are written by Junior officers ^{in the same rank but} who work as Secretary to the Government. We are therefore unable to accept that the challenge to the Department's circular dated 11.11.1987 is well founded especially because this circular was followed by a formal notification issued on 30.03.1988. According to us, even the confidential reports within the period 11.11.1987 upto 30.03.1988, when the actual notification came into force, would not be invalid because of the doctrine of relation-back. We therefore find no substance in the O.A., which we accordingly dismiss with no order as to costs.


(M. R. KOLHATKAR)

MEMBER (A).


(B. S. HEGDE)

MEMBER (J).