

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400 614

TR.NO. 217/86

Mr. Ashim Kumar Das,
Income-Tax Inspector,
Flat No. 214, Sector 8,
C.G.S. Colony, Bhandup (East),
Bombay 400 078.

APPLICANT

v/s.

Union of India

2. Chief Commissioner of Income-Tax
(Administration) Aayakar Bhawan
Bombay 400 020 and six others

RESPONDENTS

CORAM: Hon'ble Member (A) P.Srinivasan
Hon'ble Member (J) M.B.Mujumdar

APPEARANCE :

Applicant in person

Mr.S.R.Atre (for P.M.Pradhan)
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 28.1.1988

(PER: P.Srinivasan, Member (A)

This application originated as Writ Petition No.720/84
before the High Court of Bombay.

2. The applicant is currently working as an Income Tax Officer in Bombay. He was directly recruited as an Inspector in the Income Tax Department in 1973. He belongs to one of the Scheduled Castes. Respondent No. 3 (M.C.Kamble) is also an Inspector belonging to one of the Scheduled Castes directly recruited to that post, also in 1973. When the applicant and Kamble were recruited, Kamble was junior to the applicant. Respondents 4, 5 and 6 are persons promoted from lower posts to the post of Inspector. They were promoted as Inspectors

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in 1974. Respondent 7 and 8 are also promoted inspectors who belong to one of the scheduled tribes and they were promoted in 1975 and 1976, i.e. after the applicant was recruited. Respondent No. 3 who was initially being shown as junior to the applicant was given a higher seniority over the applicant after 1980 and was promoted as Income Tax Officer in 1982 while the applicant was so promoted in 1984. Respondent 4, 5 and 6 were given positions of seniority above the applicant in the Inspector's Cadre though they were promoted as Inspectors after the applicant was appointed to that post. They were promoted to the higher post of Income Tax Officer early in 1984 while the applicant was promoted only in the later part of the year. Respondents 7 and 8 who were promoted as Inspectors 2-3 years after the applicant was directly recruited to that post were given promotion as Income Tax Officers in February 1984, again ahead of the applicant who was so promoted only in September 1984. The grievance of the applicant is that respondents 3 to 6 were wrongly given seniority above him as Inspectors and all the respondents including respondents 7 and 8 who were junior to the applicant as Inspectors were wrongly promoted as Income Tax Officers before him. In the application as originally filed, the seniority list of Inspectors dated 18.12.1979 to be quashed, directions issued to the respondents to prepare a fresh seniority list as on February 1982 and to regulate promotions to the post of Income Tax Officer in accordance with such a revised seniority list. We may clarify here that in the seniority list dated 18.12.1979 as originally issued, only respondents 4, 5 and 6 were shown as senior to the applicant, but subsequently respondent No. 3 was placed above the applicant in the list on the basis of retrospective confirmation from 1978 given to him in 1981. Respondents 7 and 8 are shown as junior to the applicant in

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the seniority list dated 18.12.1979 but notwithstanding this, they were promoted as Income Tax Officers earlier than the applicant. Therefore, in effect, the applicant is challenging not only the seniority list of Inspectors dated 18.12.1979, but also the promotion of Respondents 7 and 8 as Income Tax Officers before him though junior to him in the aforesaid seniority list. We have proceeded on this basis and counsel on both sides also addressed arguments on this basis.

3. When the matter came up for hearing on 2.11.1987, this Tribunal, at the behest of the applicant, requested Shri G.K.Masand Advocate to act as amicus curie and to help the applicant in presenting his case before us. Shri Masand agreed to this. Respondents 3 to 8 have chosen to remain absent. Heard Shri Masand on behalf of the applicant. Shri Masand made the following submissions : so far as respondent 3, Shri M.C.Kamble is concerned, he was a scheduled caste direct recruit to the post of Inspector in 1973 like the applicant and was ranked junior to the applicant at the time. In fact, in the seniority list of 1979 as originally released, Kamble was shown below the applicant. However, according to the respondent, Kamble was confirmed retrospectively w.e.f. 3.4.1978 by an order issued in 1981 because he had passed the Departmental Examination in 1977 itself. The applicant was confirmed as Inspector in 1980 since he passed the departmental examination later and on the basis of earlier confirmation Kamble became senior to the applicant and as such he was considered for promotion to the post of ITO earlier. Shri Masand challenged the proposition that the date of confirmation determines the seniority of a person working as Inspector. He also contended that confirmation could not depend on a person passing the departmental exam. In the

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order of appointment issued to the applicant it was stated that failure to pass the departmental exam would mean stoppage of increments but it nowhere stated that confirmation would depend on passing the departmental examination. He admitted that ~~though~~^{if} failure to pass the departmental examination could entail termination of service, but this did not mean that confirmation would depend on passing the examination. If there is a quota rule for confirmation as between direct recruits and promotees that was only to ensure that the requisite number of persons from each class were confirmed in accordance with the quotes. There was no corresponding rota rule of seniority applicable to confirmation. Once a person is confirmed he regains his original seniority as it existed before confirmation vis-a-vis other confirmed Inspectors who had not as on that date obtained promotion to a higher post. Therefore confirmation of Kamble retrospectively from 1978 and conferring a higher seniority on him on that basis was not justifiable.

4. Shri S.R.Atre learned counsel for the respondent sought to refute the contentions of Shri Masand. He relied on the Office Memorandum dated 22.12.1959 issued by the Ministry of Home Affairs for determining seniority of various categories of persons in the Central Services. Para 4 of this Office Memorandum provided that the relative seniority of officials should be determined by the order of merit in which they were selected for appointment, persons appointed as a result of an earlier selection being senior to those appointed as a result of a subsequent selection. On this basis the applicant was no doubt senior to Kamble. However a proviso to the same paragraph stated that when persons recruited initially on a temporary basis are subsequently confirmed in an order different from the original order of merit at the time of initial appointment, seniority should follow the order of confirmation and not the original order

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of appointments. In this case, though Kamble was junior to the applicant in the order of merit when both of them were initially appointed in 1973, he (Kamble) had passed the departmental examination in 1977 and was therefore eligible for confirmation in 1978. The authorities accepted Kamble's claim and confirmed him with retrospective effect from 1978 and gave him seniority over the applicant who was confirmed from a later date. In the absence of seniority rules for inspectors promulgated under Article 309 of the Constitution such matters could be regulated by executive orders. Office Memorandum dated 22.12.1959 was one such order which inter alia governed seniority of Inspectors in the Income Tax Department in the absence of specific rules made in that regard under Article 309. According to the manual of the Income Tax Department a person is eligible to be confirmed if he complete the period of probation satisfactorily and passes the departmental examination. It is in accordance with the manual that Kamble was confirmed on passing the departmental examination and after completion of the period of probation. Again this was regulated by executive orders. Such an order cannot be said to be unconstitutional or discriminatory. Till a person passes the departmental examination, his continuance in service is itself uncertain and so there was no question of confirming him. In view of this the rule enforced by executive order ^{providing for} confirmation following the passing of departmental examination was perfectly in order. Kamble was rightly confirmed as Inspector before the applicant ^{and} as a consequence rightly accorded a position of seniority above the applicant who was confirmed later.

5. We have considered the matter very carefully. We do not find anything wrong in the executive order laying down the date of confirmation as the basis for regulating

seniority. As pointed out earlier, the said principle was laid down for all Government Departments by the Office Memorandum dated 22.12.1959 issued by the Ministry of Home Affairs. There could be a case where the Government may delay confirmation indefinitely and not follow any rule for giving confirmations and in such ^a case it may not be right to determine seniority by the date of confirmation because as pointed out by the Supreme Court in Patwardhan's Case A.I.R. 1977 S.C. 205, seniority cannot be left to the whims and fancies of the Government which may choose to confirm its officials at will. In the present case we find that Inspectors are being systematically confirmed on completing probation satisfactorily and passing the departmental examination which to us seems to be a reasonable criterion for doing so. Confirmation here follows a regular pattern. In these circumstances we cannot say that it is unreasonable to determine seniority according to the date of confirmation. We are also satisfied that the executive order making confirmation depend, *inter alia*, on passing the departmental examination is reasonable because till a person passes the departmental examination his continuance in service is uncertain. In view of this we are satisfied that the higher seniority accorded to the Kamble and earlier promotion given to him as Income Tax Officer was proper and legal. We reject applicant's objection in this regard.

6. Coming to Respondents 4, 5 and 6, namely, P.D.Chavan, Y.G.Zimare and V.G.Katre, Shri Masand submitted that they were promoted as Inspectors after the applicant was appointed to that post, and so they could not be senior to the applicant in the Inspectors' Cadre and given promotion on that basis. They were confirmed as Inspectors by the same Departmental Promotion Committee as the applicant and so it cannot even be said that they were confirmed earlier. .. 7

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That being so there was no justification ^{for} treating them as senior to the applicant and promoting them as Income Tax Officers earlier on this basis.

7. Shri Atre on behalf of the respondents submitted that confirmations in posts of Inspectors of persons directly recruited and others promoted to those posts were made according to a quota system, the quotas being two promotees : one direct recruit. While doing so, the inter se seniority of persons from the two ^{1/2 sources} services so confirmed was regulated by rotating the vacancies ~~as~~ ^{1/2} between them in the ratio of their respective quotas, viz., two promotees followed by one direct recruit followed by two promotees and so on. Respondents 4, 5 and 6 being promotees, were given slots available for promotion and in the process they became senior to the applicant though confirmed by the same DPC. Shri Atre relied on a circular letter dated 7.3.1969 issued by the Central Board of Direct Taxes in this regard. It was stated in this letter that confirmation of Inspectors against the existing and future permanent vacancies would be regulated, so far as promotees and direct recruits appointed after 1.4.1962 are concerned in the quota of 2 : 1 *The names, the letter says, "should be rotated in accordance with these quotas". This letter clearly indicated that there was not only a quota system of recruitment but also a rota rule of seniority for confirmation. According to the rota system of seniority, respondents 4, 5 and 6 were placed above the applicant though confirmed by the same DPC. They were given further promotion as ITO on the basis of this seniority.

8. We have considered the rival contentions carefully. We are inclined to agree that there was not only a quota system for confirmation as between direct recruits and .. 8

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promotees but also a rota system of seniority as the
abstract given above from the letter dated 7.3.1969
of the Central Board of Direct Taxes. Having said so
much, we are unable to see how this rota system of
seniority has been worked as between the applicant and the
respondents Nos. 4, 5 and 6. With the assistance of
Counsel for the respondents we perused the records of the
DPC meeting held on 17th and 19th May 1986. In the DPC
held on 17th and 19th May 1986 confirmations were to be
made in 72 posts. According to the quota system 48 posts
had to go to promotees and 24 to direct recruits. 24
direct recruits were found fit for promotion, including
the applicant. The names of the 2 persons senior to the
applicant were however kept in a sealed cover. 48 promotees
were found fit for confirmation. The applicant was the
last but one of the direct recruits to be confirmed on this
occasion. That means he took the 23rd vacancy available
to direct recruits. Of the two persons senior to the
applicant whose names were kept in sealed cover, one Shri
Uikey was eventually given confirmation from a later date
i.e. from 14.8.1981 according to the applicant and from
1977 according to the respondents. Whether his confirma-
tion was in 1977 or 1981 he could not claim a vacancy
for confirmation that arose in 1980. Therefore leaving
out Shri Uikey, the applicant would become eligible to
take the 22nd vacancy available to direct recruits in
1980. More over it was admitted that another direct
recruit who was initially confirmed by the DPC held in
1980, S.L.Tekwani was wrongly confirmed then and the
respondents changed the date of his confirmation to 14.8.1981.
Eliminating Tekwani, the applicant became the 21st direct
recruit to be confirmed in 1980. According to the quota-rota
rule he could be made junior to 42 promotees. As we see
from the list of confirmed officers, Y.G.Zimare is the ..9

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43rd promotee to be confirmed and he has to be junior to the applicant. Thus, even according to the rota system it would seem to us that respondents 5 and 6 have been wrongly put above the applicant in the seniority list. We may here repeat that we have carried out the above exercise with the help of counsel for the respondents and the record produced by him. We would therefore direct the respondents to correct the seniority of inspectors by placing the applicant above respondents 5 and 6. The seniority of respondent 4 above the applicant will, however, remain.

9. Coming to respondents 7 and 8 they were all junior to the applicant in the Inspectors grade. The applicant's grievance is that they were promoted as Income Tax Officers before him. It was contended by the respondents that these respondents were given slots reserved for scheduled tribes and therefore they were promoted as Income Tax Officers before the applicant. In the meeting of the DPC held on 28.5.1983 a panel of 30 inspectors were drawn up for promotion as Income Tax Officers. Three candidates belonging to scheduled tribes were selected, respondents 7 and 8 being among them. Though there were 30 vacancies, the DPC had to go upto serial number 100 to get three scheduled tribe candidates. The requisite number of scheduled castes candidates were found within serial number 90. We find nothing wrong in the selection of respondents 7 and 8 in vacancies reserved for scheduled tribes. However, as we have earlier remarked, that the applicant's seniority had been wrongly shown vis-avis Zimare and Katre (respondents 4 and 5) who, we find, are among the candidates selected for promotion by the DPC of 28.5.1983. Consequent on our direction above that the applicant should be placed above Zimare in the seniority list, his case for promotion in the

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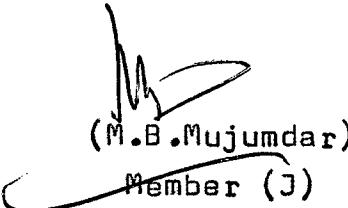
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DPC of 28.5.1983 should now be reconsidered. Therefore we uphold the promotion of respondents 7 and 8 in the DPC held on 28.5.1983 but direct respondents 1 and 2 to consider the case of the applicant in that DPC before Y.G.Zimare and if he is found fit of promotion to give him all consequent benefits flowing therefrom. In view of what we have stated above we pass the following order :

1. The applicant's challenge to the higher seniority given to Respondent No. 3, Kamble over him is rejected.
2. The applicant will be placed in the seniority list of Inspectors above Y.G.Zimare and V.G.Katre, respondents 5 and 6. His challenge to the placement of respondent No. 4 over him is rejected.
3. The challenge to the promotion of respondents 7 and 8 as a result of the DPC meeting held on 28.5.1981 is rejected.
4. Respondents 1 and 2 will however consider the case of applicant for promotion in the DPC held on 23.5.1983 in ^{his} revised seniority above Y.G.Zimare in the Inspectors' Cadre and if found fit give him all consequential benefits.
5. The directions given above should be implemented within 3 months from the date of receipt of ^{receipt of} this order by respondents 1 and 2.

In the result, the application is allowed in part. Parties to bear their own costs.


(P.Srinivasan)
Member (A)


(M.B.Mujumdar)
Member (J)