

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 276/86 & 282/86 198
XXXXXXDATE OF DECISION ~~22~~ 22-11-91P D SHIVASANKARAN (276/86)
V. KEAVAN (282/86) PetitionerMr. B. Memon with
Mr. R.P.V. Menon

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & 4 ors. Respondent

Mr. P.M. Pradhan

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U C SRIVASTAVA, VICE CHAIRMAN

The Hon'ble Mr. A B Gorthi, Member (A)

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

(12)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, "GULESTAN" BUILDING NO.6
PRESOT ROAD, BOMBAY-400001

O.A. No. 276/86
and
O.A. No. 282/86

P. B. Shivasankaran
46/1795 C G S Quarters
Sector VII, S M Plot
Antop Hill
Bombay 400037

APPLICANT IN
O.A. No. 276/86

V. Kesavan
46/1820 C G S Quarters
Sector VII, S M Plot
Antop Hill
Bombay 400037

APPLICANT IN
O.A. No. 282/86

v/s.

1. Union of India
through Secretary
Ministry of Finance
(Dept. of ~~xxxxxx~~/Revenue)
Central Board of Direct Taxes
North Block, New Delhi-1
2. The Chairman
Central Board of Direct Taxes
North Block
New Delhi 110001
3. Chief Commissioner (Admn.)
& Chief Commissioner of Income Tax
Bombay City-I
3rd floor; Aayakar Bhavan
Maharshi Karve Road
Bombay 400020
4. S I Hingorani
Office of IAC (Judicial-I)
High Court Section
Income Tax Dept.
Aayakar Bhavan
Room no. 306; 3rd floor;
M K Road; Bombay-20
5. R. MurliDharan Nair
Office of DDI (Investigation)
4th floor; Piramal Chambers
Lalbaug
Bombay 400012

RESPONDENTS IN
O.A 276/86 & 282/86

Coram: Hon. Shri Justice U C Srivastava, V.C.
Hon. Shri A B Gorthi, Member (A.)

APPEARANCE:

Mr. B. Menon with
Mr. K F V Menon
Advocates for the
applicants

Mr. P M Pradhan
Counsel
for the respondents

(13)

JUDGMENT

(J C Srivastava, Vice Chairman)

DATED:

As a common question of law and facts

arises in these two cases and hence the same are being disposed of by a common judgment. By means of these applications the applicants are claiming 13-07-1986, 3-9-1986 that the orders dated 1-10-1985 and Government notification dated 8 September 1986 be declared to be bad in law, ineffective, inoperative and null and void. By way of amendment a further relief has been prayed that the respondent nos. 1, 2 and 3 be directed to promote Smt. Annamma Sunny with effect from 30th July 1986 in lieu and in place of Mr. S P Hingorani and Shri Govinaankutty Menon with effect from 3rd September 1986 in lieu and in place of Shri R. Muralidharan Nair. The applicants entered the service of Income Tax department as LDCs and after passing departmental examination for stenography they were promoted in the scale which was revised to Rs.330-560. Advance increments were also granted to them as they also cleared the departmental test and became eligible for the departmental examination for Income tax inspectors. In the department there are recruitment rules for Income tax Inspectors - 1/3rd by Scenographers and 2/3rd by way of promotion from various eligible cadres in the department. The educational qualification essential is a degree ^{or} equivalent from a recognised university and these posts are subject to reservation of SC/ST candidates. The employees who pass in the test, would have their names in two lists, ⁱⁿ the first list the persons who are qualified are arranged in the order of their seniority in the department and ⁱⁿ the second list the names of all the qualified persons are arranged according to the year of passing the departmental examination. Thus the names of the employees would

appear in both the lists i.e., in the list of seniority according to the seniority and in the second list according to the date of passing of the examination. Whenever vacancies arose, to fill in the posts a Departmental Promotion Committee has to be constituted to approve the candidates and the approved candidates are thereafter arranged in the seniority list and the year of passing list. Thus as the seniority criteria was there and as such those who were senior even though they ~~had~~ passed the examination in a later attempt were promoted because of their seniority in the department in preference to the juniors who could pass the examination in the first attempt. Thus for both Clerical and Stenographers caores the examination was open for the post of Inspector. Subsequently in the year 1960 the Central Board of Direct Taxes decided that for purpose of promotion to the post of Inspector persons who were qualified in the earlier examination for the post of Income Tax Inspector will not be treated as senior to those who qualify in the subsequent examination. Accordingly the list of eligible persons for promotion for the post of Inspector was to be arranged in the order of date of/ year of passing of the examination subject to the condition that the candidates passing in the same examination will maintain their inter-se seniority irrespective of the qualify of their performance in the examination. There are further modifications of the said letter regarding these two lists but that is not material here.

In the year 1969 there were about 25 stenographers in the office of Assistant Commissioners in the Bombay region and about 600 LDCs who were also performing stenographic duties for which a special pay was being paid. On 1.8.69 the then LDCs with special pay were reclassified as Stenographers and

the special pay was discontinued. The stenographers had an option on passing the Departmental examination for Ministerial staff to work as stenographer or to work as UDC, and this option was withdrawn in the year 1970. In 1978 new cadre of Tax Assistant in the scale of Rs.380-640 was created by upgrading 1/3rd of the cadre strength of UDC throughout the creation of country, which resulted in 4148 posts of Tax Assistants and abolition of equal number of UDC posts. In Bombay region 680 posts of Tax Assistants were created. Prior to 12.7.85 the criteria for preparing the seniority list and the date/year of passing list was confirmation in the feeder cadre, and unconfirmed persons of higher grade would have to take place along with other persons in the lower grades of UDC and Stenographer. After the creation of the post of Tax Assistant coupled with the operation of the criteria of confirmation in the grade for reckoning, seniority two lists were prepared which resulted in injustice being done to the senior officials who were unconfirmed. It was stated that upto June 1986, 34 employees from the Ministerial cadre got promotion while only 4 stenographers were promoted and two resigned. The creation of new post of Tax assistant resulted in the Ministerial cadre standing en masse senior to the stenographers irrespective of the fact that many of them reached the pay scale of Rs.330-560 much later than stenographers who were in that scale. As there was some anomaly the Central Board of Direct Taxes ~~xx~~ has been decided to follow the General Principles of seniority meaning thereby that the persons working in the higher grades are to be treated as senior to those working in the lower grades vide its order dated 12.7.1985. The principle of Basic Cadre Seniority was not accepted by the Central Board of

Direct taxes, and a quota system was introduced, in both the lists by order dated 1st October 1985. It was also decided by the Board to fix up a quota for the Ministerial cadres (Supervisors Gr-I & II, Head Clerks, Tax Assistants and UDC) and Stenographers cadres (Steno Gr.I Rs.550-900; Gr.II 425-700 & Gr.III Rs.330-560), in the ratio of 3:1 i.e., 3 vacancies for Ministerial group and 1 for stenographer group for filling up the entire promotion quota in the cadre of Inspector of Income-tax. This has led the applicants to approach this Tribunal against this quota system. According to the applicants as a result of the quota system in the rules, ~~that~~ earlier those from his group who could have got more posts will no longer get the same as according to the quota system the other posts are to be filled in from other cadres notwithstanding the fact that they have not been so meritorious.

The respondents have justified this action in its reply. The respondents have stated that the recruitment rules of 1969 no longer exist as they have been amended from 8.9.1986 with the issuance of the notification, ~~inxxxxms~~ of which the applicants have made representation. So far, the quota system is concerned, it has been given ~~recognition~~ by the statutory rules. Even if some person belonging to certain cadre may suffer in a particular case, according ~~xx~~ to the respondents, it cannot be a ground for invalidating ~~xx~~ a matter of amendment to the recruitment rules. As these rules cater ^{for} the interest of larger group rather than the individuals, interest of few/smaller group at one particular stage and the rules have been framed taking into consideration all the facts existing throughout the country. They also contend that there is no classification, and the classification, if any, is a reasonable classification.

having nexus to the objects sought to be achieved as contained in the letter dated 1st October 1985.

So far as the ministerial cadre and stenographers cadre are concerned, they have throughout been the cadres of different type and were feeder cadres to the post of inspectors of Income Tax.

On behalf of applicants the validity and introduction of the quota to both the cadres, it is contended as bad and violative of Articles 14 and 16 of the Constitution of India. Learned counsel for the applicant contended that these rules create unreasonable classification and gives ~~waifage~~ ^{weightage} to one particular cadre. But it has not been stated that if it gives ~~waifage~~ ^{weightage} to a particular cadre in a state whether the ~~same waifage~~ ^{weightage} is given to the same cadre in other states also because the position may vary from state to state. In support of his contention learned counsel made a reference to the case of Mohd. Shujat Ali V. Union of India A.I.R. 1974 SC 1631, wherein the court observed as under:

"To permit discrimination based on educational attainments not obligated by the nature of the duties of the higher post is to stifle the social thrust of the equality clause. A rule of promotion which while conceding that non-graduate Supervisors are also fit to be promoted as Assistant Engineers, reserves a higher quota of vacancies for promotion for graduate Supervisors as against non-graduate Supervisors would clearly be calculated to destroy the guarantee of equal opportunity. But even so, we do not think we can be persuaded to strike down the Andhra Pradesh Rules in so far as they make differentiation between graduate and non-graduate Supervisors. This differentiation is not something brought about for the first time by the Andhra Pradesh Rules."

The court also observed -

".. the two categories of Supervisors were thus never fused into one class and no question of unconstitutional discrimination could arise by reason of differential treatment being given to them."

The case is not very ~~correctly~~ ^{directly} on the point. 2

The counsel drew our attention to the case of

N. ABDUL BASHEER & ORS. V. K K KARUNAKARAN & ORS.

1989(1) SCALE 1473, wherein the dispute was inter se seniority, ratio, quota. The writ petition was filed by non-graduate Excise Inspectors alleging that the amendment to Special Rule 2 of the aforesaid Rules is violative of Articles 14 and 16 of the Constitution inasmuch as an invidious discrimination has been made between graduates and non-graduates by prescribing a ratio between them in the matter of promotion from the post of Excise Preventive Officer to that of Second Grade Excise Inspectors. The ~~writ petition~~ was dismissed and it was held that the prescription of ratio dividing the quota of promotion between graduate Preventive Officers and non-graduate Preventive Officers is invalid on the ground that it violates Articles 14 and 16 of the Constitution.

In the case of Mervyn Continho & Others

V. Collector of customs, Bombay & Others, AIR 1967, SC 52 the court accepted the validity of rotational system where ^{and} to the cadre was from two sources and held that the system is ^{not} violative of principles of Equality enshrined in Article 16(1) of the Constitution.

In the case of Govind Dattatray Kelkar & Ors.

V. Chief Controller of Imports and Exports & Ors., AIR 1967, SC 839 the Constitution Bench followed the cases of Banarsidas v. State of Uttar Pradesh, 1956 SCR 357; and All India Station Masters' and Assistant Station Masters' Association, Delhi v. General Manager, Central Railways, 1960-2 SCR 311; & General Manager, Southern Railway v. Rangachari, 1962-2 SCR 586, held that the recruitment to posts from different sources relate to what ratio between sources would be adequate depends upon facts of each case and requirements and needs of particular post and unless the ratio is so

unreasonable as to amount to discrimination, court cannot strike it down or suggest different one. In this connection the court observed as follows:

"The relevant law on the subject is well settled and does not require further elucidation. Under Article 16 of the constitution, there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State or to promotion from one office to a higher office thereunder. Article 16 of the Constitution is only an incident of the application of the concept of equality enshrined in Article 14 thereof."

The learned counsel for the respondents stated that the change in policy is on all India basis and not on state wise basis. The quota system which was fixed was fixed after taking into consideration the position in the country and this is not restricted to a particular state. By fixing the quota system the respondents have done justice by following the laid down rules and the same is reasonable and cannot be said to be unreasonable.

This indicates that earlier both the cadres were taken in the matter of unification and in order to maintain efficiency and in order that both the cadres may get adequate representation the ratio is fixed and same cannot be said to be unreasonable so as to amount to discrimination. After all the other category was also entitled for promotion and it was considered for certain reason the other category is not yet having adequate representation which may lead to frustration or inefficiency.

if a quota of lion-share is not given to the category. We do not find any unfair or discriminatory action has been taken. It is always permissible to amend the rules and fix the quota for making any recruitment from amongst a particular set of employees which are divided into 2 or 3 or more categories.

Accordingly the cases relied on by the learned counsel are distinguishable and are inapplicable and the ratio which has been fixed cannot be said to be without any authority of law, arbitrary or violative of Articles 14 and 16 of the Constitution of India. In this view we do not find any merit in the application which is accordingly dismissed with no order as to costs.


(A B GORTHI)

MEMBER (A)


(U C SRIVASTAVA)

VICE CHAIRMAN

22. 11. 91