

(15)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 383/89

Transfer Application No:

DATE OF DECISION: 12-4-94

Shri S. M. Manohar Petitioner

Shri M. A. Mahalle Advocate for the Petitioners

Versus

Union of India & Others Respondent

Shri P. M. Pradhan Advocate for the Respondent(s)

CORAM :

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

The Hon'ble ~~Smt.~~ Smt. Lakshmi Swaminathan, Member (J)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?

M.R.Kolhatkar

(M. R. Kolhatkar)  
Member (A)

18-  
12/94

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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

O.A. No. 383/89

Shri S. M. Manohar

.... Applicant

Vs.

1. Central Board of Direct Taxes  
Through its Secretary,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.
2. Union Public Service Commission  
through its secretary,  
New Delhi.
3. Chief Commissioner of Income Tax(Admn)  
Aayakar Bhavan, M.K.Marg,  
Bombay
4. Chief Commissioner of Income Tax(Tech.)  
Aayakar Bhavan, M. K. Marg,  
Bombay.
5. Commissioner of Income Tax-  
Bombay City- III,  
Aayakar Bhavan,  
Bombay.

.... Respondents  
Plus 264 Private Respondents = Total 269 Respondents.

CORAM : Hon'ble Shri M. R. Kolhatkar, Member (A)  
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance :

Shri M. A. Mahalle, counsel  
for the Applicant.

Shri P. M. Pradhan, counsel  
for the Respondents.

JUDGMENT

Date : 12-4-94

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

The Applicant joined Income - Tax Department  
on 24.1.1968 as Inspector of Income - Tax. ~~(His)~~ grievances  
are three : Firstly, by the order dated 11th May, 1982, a  
confirmation order in respect of Income - Tax Officers  
Group B was issued vide Annexure 'A-2' (Page 33-35) in  
which his name did not figure. He represented ~~against~~ against  
the same on 2.6.1982 vide Annexure 'A-3 (i)' (Page 36)  
to which there is an interim reply (Annexure A-3 (ii))  
(Page 38) but no order of confirmation is issued till

today. The second grievance is that on 5.1.1988 vide Annexure 'A' (Page 18) an order promoting Income - Tax Officers Group B to Income Tax Officers Group 'A' Jr. Scale Jr. scale (new known as Assistant Commissioner) was issued but the name of Applicant did not figure therein. Applicant represented against the order on 10.2.1988 (Annexure 'A-7', Page 64) but no reply was received. Thirdly, Applicant was superseded for promotion from Income - Tax Officers Group 'B' to cadre of Assistant Commissioners of Income Tax in 1989 also vide order dated 23.2.1989 (Annexure 'A-1') (Page 24-32).

2. The prayers of the Applicant are to direct 1 to 5 respondents to confirm the Applicant in Group 'B' cadre w.e.f. 1.4.1982 and to promote Applicant to the cadre of Assistant Commissioners w.e.f. 5.1.1988, to grant him due seniority and arrears of pay and allowances with interest at market rate.

3. According to the Applicant, non-confirmation and non-promotion are not justified because the Applicant had held posts carrying special pay (Chief Auditor) or requiring calibre of investigation (Income - Tax Officer special investigation Branch). He had also been allowed to cross E. B. w.e.f. 1.6.1984. (normal date) No adverse CR's have been communicated to him. The Applicant alleges malicious intentions on the part of Respondents and has filed in support belated inspection notes sent by Deputy Commissioner Income - Tax in 1985 in respect of work

of the Applicant during financial year 1979-80 to which he gave detailed and according to him, satisfactory reply vide A-5 (i) (Page 41-51) and A-5 (ii) (Page 52-62).

4. In their reply, Respondents have taken the stand that promotion to Assistant Commissioner of Income - Tax is on the basis of selection. In the DPC, applicant was assessed as good and as there were candidates who were graded as outstanding or very good, applicant could not be considered for promotion.

5. It is not in dispute that the DPC's were held in 1987 (leading to order dated 5.1.1988) and February 1989 (leading to order dated 22.2.1989). The essential point on which the case turns is : what were the rules governing promotion at the relevant time and whether the DPC followed the correct rules. According to the Applicant, the relevant rules are rules dated 12.5.1988 called Indian Revenue Service Rules 1988. A perusal of rules shows that promotion to Jr. scale of I.R.S. takes place 50% by promotion on the basis of selection. Applicant's contention is that selection means seniority - cum - merit and on this basis since he was not found unfit, he deserves to be promoted. Alternatively, he would rely on Judgment of C.A.T. Ahmedabad Bench in Khandelwal's case (1991 (2) SLJ 100 CAT) in which it was held that

change of rules to selection method took place only on 12.5.1988 and since DPG met in 1987 when he was first superseded, the relevant rules were those in the Manual of Office Procedure (Administrative). Para 2~~2~~5 of this Manual says that Income Tax Officer Group 'B' officers are promoted to Group 'A' on the basis of "seniority - cum - merit". This was the very argument accepted in Khandelwal's case. Lastly, the Applicant states that Respondents have not clarified as to what exactly they mean by the words "same principles of selection" They are fighting shy to produce the Annual confidential Reports of Applicants. He relies on the decision in the case of C. K. Gajanan Vs. Union of India (1991) 15 A.T.C. 586 C.A.T. wherein it is held that since the grading of officers is done away with, the DPG minutes should disclose procedure followed for grading and no such procedure was followed by DPG. Applicant also relies on Jugal Kishore Goyal's judgment of CAT Jubalpur in OA 291/88 in which it is held that if good is not good enough for promotion & if it is not communicated, it should be ignored.

6. According to Respondents, Khandelwal's judgment is not good law. They have referred to following judgements which have interpreted and upheld "selection" as method of promotion in the relevant cadre of Income tax Department.

- i) Union of India Vs. Majji Janganmaya (AIR 1977 SC 757)

ii) M. K. Meerani Vs. Union of India (OA No. 43/88 decided by Principal Bench on 19.10.1993)

iii) R. R. Gautam Vs. Union of India (OA 2571/92 decided by Principal Bench on 20.1.1994)

In particular, they have urged that the last judgment has settled the matter conclusively and in terms overruled Khandelwal's judgment. We are inclined to accept this contention.

7. We quote below relevant extracts from this judgment which should be read bearing in mind that the Principal Bench is concerned in Gautam's case with promotion to the higher post of Commissioner and the thrust of their argument is that Reorganisation Rules 1944 quoted by Department having settled the position and the same having been recognized by Hon'ble Supreme Court in respect of Assistant Commissioners' posts, of the rule of selection in respect of higher posts cannot be doubted.

8. In Para 11 it is stated.

"As the provisions of the Re-organisation Rules (1944) regarding promotion to the cadre of Assistant Commissioner (by selection) was identical with the provisions regulating promotion to the cadre of Commissioner, it follows that the law laid down by the Supreme Court in Janganm<sup>ayya</sup>'s case governs equally promotion to the cadre of Commissioners. This binding decision of the Supreme Court in Janganm<sup>ayya</sup>'s case was not noticed by the Tribunal when it decided Khandelwal's case and Gautam's case. The said two decisions must, therefore, be regarded as having been rendered per incuriam".

9. We notice that the Applicant had filed an

MP (MP No. 831/90) for production of documents viz. A CR's and DPC proceedings. The respondents claimed privilege but agreed that they would be produced at the time of Final hearing vide orders dated 12.2.1991. Since we are of the view that production and perusal of documents is not necessary for adjudication, we are not expressing our views on the issue of privilege.

10. So far as the second relief claimed by the Applicant is concerned, in view of our discussion above, we hold that Applicant is not entitled to any relief in the matter of his supersession either in 1988 or in 1989 because the modality of promotion was selection & DPC's decision to supersede him on the basis of its assessment of the Applicant's record cannot be faulted. Various other judgments relied upon by Applicant have no relevance to the matter at issue.

11. So far as the first relief re: confirmation is concerned, Applicant is challenging non-confirmation well beyond the period of limitation and it is not shown that his non - confirmation had a direct bearing on his supersession. It is not even clear whether he has since been confirmed. Respondents do not appear to have dealt with this point in their written statement. At the argument stage counsel for Respondents urged that the relief is time - barred. We are, however, inclined to take an equitable view in the matter.

12. We, therefore dispose of the Application by passing the following order.

O R D E R

13. Application dismissed as being devoid of merit ~~except~~ that the Respondents are directed to communicate their decision re: confirmation of the Applicant in the appropriate cadre within 3 months of the receipt of this order. No order as to costs.

Lakshmi Swaminathan  
(Lakshmi Swaminathan)  
Member (J)

M R Kolhatkar  
(M. R. Kolhatkar)  
Member (A)