

CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI
Camp at Nagpur.

Dated this Friday the 7th day of May, 2010.

O.A.No.14/1999.

Shri T.V. Haridasan

- Applicant

(By Advocate Shri M.M. Sudame)

Versus

Union of India & 18 others.

- Respondents

(By Advocate Shri G.C. Chaubey)

Coram:

Hon'ble Shri Jog Singh

- Member (J)

Hon'ble Shri Sudhakar Mishra

- Member (A)

(a) To be referred to the Reporter or not? ✓ M/S

(b) Library.


(Jog Singh)
Member (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, MUMBAI,
CAMP AT NAGPUR.

O.A.No.14/1999

DATED THIS Friday THE 7th DAY OF May, 2010.

CORAM : HON'BLE SHRI JOG SINGH, MEMBER (J)
HON'BLE SHRI SUDHAKAR MISHRA, MEMBER (A).

Shri T.V. Haridasan,
working as Inspector of
Income-tax in the office
of the Commissioner of
Income-tax, Vidarbha,
Nagpur.

R/o. 7D, Tapovan Complex,
Somalwada, Nagpur-440 005.

.. Applicant.

(By Advocate Shri M.M. Sudame).

Versus

1. Union of India, through
its Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi-110 001.
2. Department of Personnel and
Training, through its
Secretary, South Block,
New Delhi - 110 001.
3. Central Board of Direct Taxes,
through its Secretary,
North Block,
New Delhi - 110 001.
4. The Chief Commissioner of Incometax,
Aayakar Bhawan, 12, Sadhu Vaswani
Road, Pune.
5. The Commissioner of Incometax,
Vidarbha, Aayakar Bhawan,
Civil Lines, Nagpur-440 001.
6. Shri M.K. Mishra, Income Tax Officer,
MECL Building, Seminary Hills,
Nagpur.
7. Shri H.R. Nanoti,
Income Tax Officer,
Mukund Apartment,
Nandpura Road,
Khamgaon.

8. Shri M.K. Gulkotwar,
Income Tax Officer,
MECL Building,
Seminary Hills,
Nagpur.
9. Shri H.B. Meshram,
Income Tax Officer,
Aayakar Bhawan,
Civil Lines,
Nagpur.
10. Shri D.P. Srivastava,
Income Tax Officer (Audit),
Saraf Chambers, Sadar,
Nagpur.
11. Shri R.S. Wakodikar,
Income Tax Officer,
Pugalia Bhawan, Nagpur Road,
Civil Lines,
Chandrapur.
12. Shri S.G. Moon,
Income Tax Officer,
Aayakar Bhawan, Ambapeth,
Amaravati.
13. Shri Pankaj Deshmukh,
Income Tax Officer,
Saraf Chambers, Sadar,
Nagpur.
14. Mrs. Rupa Dhande,
Income Tax Officer,
Aayakar Bhawan,
Murtijapur Road,
Akola.
15. Shri V.P. Kamble,
Income Tax Officer,
Saraf Chamber, Civil Lines,
Nagpur.
16. Shri C. Aravindan,
Income Tax Officer,
Saraf Chambers, Sadar,
Nagpur.
17. Shri R.R. Patre,
Aayakar Bhawan, Ambapeth,
Amravati.
18. Shri C.K. Deo,
Income Tax Officer,
MECL Building, Seminary Hills,
Nagpur.



19. Shri Sharif Ahmed, ITI,
Aayakar Bhawan, Civil Lines,
Nagpur. .. Respondents.

(Official Respondents by Advocate
Shri G.C. Chaubey).

O R D E R
Per : Shri Jog Singh, Member (J).

This O.A. was originally disposed of as per order dated 14.07.2004 of this Tribunal. The respondents had carried the matter before the Hon'ble Bombay High Court, Nagpur Bench by filing Writ Petition No.5862/2004. The said Writ Petition was disposed of by the Hon'ble High Court as per its order dated 22.11.2005 by setting aside the Tribunal's order dated 14.07.2004 and remanding the matter back to the Tribunal for fresh decision in accordance with the directions given by the Hon'ble High Court and in accordance with law.

2. There is a short point at issue in this matter. The applicant works as an Inspector of Income-tax, a cadre to which he was promoted as per order dated 04.09.1998 issued by the respondents. Prior to that he was working as Stenographer Gr.II. The applicant accepted the promotion but represented that the promotion in his case be given effect from 10.02.1995 in accordance with the judgment of the Constitution Bench of the Hon'ble Supreme Court in the case of R.K. Sabharwal and others Vs. State of Punjab and others [(1995)2 SCC 745]. While that representation dated 07.09.1998 was pending the applicant filed this O.A on 21.12.1998. The relief sought by the applicant through this OA. is practically the same; i.e., he be granted his promotion with effect from 10.02.1995 alongwith



consequential benefits.

2.1 At this stage it may be stated that pursuant to the aforesaid decision of the Hon'ble Supreme Court the Department of Personnel & Training (herein after DOP&T) of the Government of India issued Office Memorandum dated 02.07.1997 laying down guidelines for implementation of the Hon'ble Supreme Court's judgment in Sabharwal's case. Those guidelines were issued to all Ministries and all Departments of Government of India. It was directed therein that the instructions in the OM be implemented from the date of its issue; i.e. 02.07.1997.

3. In the earlier round the applicant had submitted that Their Lordships of the Hon'ble Supreme Court had stated in the judgment in Sabharwal's case that their decision will have prospective effect. Citing that and also citing two decisions of Co-ordinate Benches of this Tribunal the applicant had argued before the Tribunal that he was entitled to have his promotion antedated to 10.02.1995; i.e., the date of the judgment in Sabharwal's case. The Applicant had further submitted that if such a direction is given it would not upset any earlier action by the respondents. The Tribunal had accepted the submissions and had directed that the applicant be given the benefit of the aforesaid DOP&T OM with effect from 10.02.1995. At the same time, however, the Tribunal had directed that such benefit for the period from 10.02.1995 to 02.07.1997 was to be on notional basis.

3.1 Before the Hon'ble High Court the respondents had submitted that between the period 10.02.1995 and 04.02.1998

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i.e. the period between the judgment in Sabharwal's case and the applicant's promotion to the Inspectors cadre about 28 persons were promoted. If the applicant was to be given seniority with effect from 10.02.1995 the persons promoted earlier would become junior to him. The respondents had further submitted that even if the decision in Sabharwal's case is implemented with particular reference to the applicant, then he would be entitled to protection only in the year 1998 and not earlier. These two aspects having not been considered by the Tribunal, the Hon'ble High Court have remanded the matter back for fresh decision in accordance with law.

3.2 The applicant has in the meantime has impleaded those as respondents who would be affected in case it is held that the applicant is entitled to have his promotion antedated to 10.02.1995. None of the private respondents have, however, filed any reply.

4. The respondents in their reply dated 12.09.2002 have stated that although they had not implemented the decision in Sabharwal's case at the time of filing of this O.A., they have done so before filing of the reply. They further say that the promotion to the post of Inspector of Income-tax are made by preparing post-based rosters from the two feeder cadres of Ministerial Group and Stenographers Group, considering seniority as well as date/year of passing, in the ratio of 3:1. This needs some clarification and the same is given as under.

5. Inspectors of Income-tax are recruited by direct recruitment and also by way of promotion from the said two

feeder cadres. The ratio of representation of these two groups in the promoted cadre is 3:1 in the favour of the Ministerial Group (i.e. the Assistants' Group). For being promoted as Inspector one needs to pass a particular examination. Seniority alone is not enough. That is why the some what complicated rules. This much clarification would suffice for the present purpose.

6. Before proceeding further it would be worthwhile to cull out the relevant portion of the Hon'ble Apex Court's decision in Sabharwal's case. The petitioners and private respondents in that case were members of the Punjab Service of Engineers (Class I) in the Irrigation Department of the State of Punjab. While the petitioners belonged to 'general' category, the respondents were members of SC category. The petitioners' grievance was that the roster indicating reserve points for SC/ST and BC categories in the matter of promotion were not properly maintained and operated. The reservation policy was challenged mainly on the following two points:-

"(1) The object of reservation is to provide adequate representation to the Scheduled Castes/Tribes and Backward Classes in services and as such any mechanism provided to achieve that end must have nexus to the object sought to be achieved. The precise argument is that for working out the percentage of reservation the promotees/appointees belonging to the Scheduled Castes and Backward Classes whether appointed against the general category posts or against the reserve posts are to be counted. In other words if more than 14% of the Scheduled Caste candidates are appointed/promoted in a cadre on their own merit/seniority by competing with the general category candidates then the purpose of reservation in the said cadre having been achieved, the Government instructions providing reservations would become

inoperative.

(2) Once the posts earmarked for the Scheduled Castes/Tribes and Backward Classes on the roster are filled the reservation is complete. Roster cannot operate any further and it should be stopped. Any post falling vacant, in a cadre thereafter, is to be filled from the category - reserve or general - due to retirement etc. of whose member the post fell vacant."

The relevant portions of the Apex Court decision are reproduced hereunder:-

"5..... The reservations provided under the impugned Government instruction are to be operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Caste/Scheduled Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation.....The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste

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persons holding the posts at roster points 1,7,15 retire then these slots are to be filled from amongst the persons belonging to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation."

(emphasis supplied)

The Hon'ble Supreme Court have further held that operation of post-based roster would be based on the policy of reservation, notwithstanding that some of the members of Backward Class might have been inducted in the General Category on the basis of merit. Finally the Hon'ble Supreme Court directed that the interpretation given by them to the working of roster and their findings on this point shall be operative prospectively.

7. As already stated, the DOP&T had issued the OM dated 02.07.1997 laying down guidelines for implementation of the judgment in Sabharwal's case. Although in that OM it was directed that the instructions contained therein were to take effect from the date of issue, we find that adequate care was taken for effective compliance with the Hon'ble Supreme Court's decision in Sabharwal's case. The relevant paragraphs 5 to 9 of the said OM are reproduced hereunder:-

"5. At the stage of initial operation of a roster, it will be necessary to adjust the existing appointments in the roster. This will also help in identifying the excesses/shortages, if any, in the respective categories in the cadre. This may be done starting from the earliest appointment and making an appropriate remark -"utilised by SC/ST/OBC/Gen.", as the case may be, against each point in the rosters as explained in the explanatory notes appended to the model rosters. In making these adjustments, appointments of candidates belonging to SCs/STs/OBCs which were made on



merit (and not due to reservation) are not to be counted towards reservation so far as direct recruitment is concerned. In other words, they are to be treated as general category appointments.

6. Excess, if any, would be adjusted through further appointments and the existing appointments would not be disturbed.

7. All Ministries/Departments are requested to initiate immediate action to prepare rosters and operate them according to these guidelines.

8. The existing orders on the subject are deemed to have been amended to the extent herein.

9. These orders shall take effect from the date of their issue. However, where selections have already been finalised they need not be disturbed and the necessary adjustments in such cases may be made in future. In other cases, recruitment may be withheld till the revised rosters are brought into operation and recruitment effected in accordance with these instructions."

8. Before us, as already stated, the applicant claims that effect to the decision in Sabharwal's case has not been given in operating the roster in the promoted cadre of Inspector of Income-tax in the Commissionerate of Income-tax of Vidarbha Region. The respondents have counter averred that atleast by 12.09.2002 they have given effect and claim that as per that exercise the applicant is not to be benefited. But both the sides have not presented before us the necessary arithmetic and the relevant seniority lists of the eligible candidates from the two feeder cadres relevant for promotion as Inspector of Income-tax.

8.1 Although we had specifically asked that post-based roster and the connected official records be produced before us alongwith suitable explanatory notes to be given



by the learned counsels, the gentlemen have not obliged us. This matter has been pending since 1998. The applicant has been pursuing it for the last 12 years before the Tribunal and has also pursued it before the Hon'ble High Court. The respondents have been resisting the applicant's pursuit. But both appear to be putting forth their claims and counter claims on the basis of their impressions; rather than on solid facts by way of relevant lists of feeder cadre arranged by way of roster and consequential arithmetic. Under this constraint we are not in a position to give a specific finding in this case. But, however, the matter having engaged our attention we would like to direct as under.

9. In Sabharwal's case the Hon'ble Supreme Court have directed that their decision be given prospective effect. Simply understood it means that the decision in Sabharwal's case besides applying to that very case, it would apply to all pending matters before all authorities/forums and to all such matters which will be coming up in future. Wherever there is/was an existing cadre as on 10.02.1995, it would become a pending subject (matter) for being reviewed in accordance with the judgment in Sabharwal's case. But, of course, the cardinal principle of prospective application is that closed matters are not to be reopened. Keeping in view this understanding of law, we hereby direct as under.

(i) The respondents shall review the position as on 10.02.1995 as to operation of post-based roster for promotion to the grade of Inspector in the Vidarbha Income-

tax Commissionerate, from both the channels of feeder cadre.

(ii) Whether the promoted cadre was full or not, it is to be verified as to whether there was any excess or shortage in the representation of any of the 'general' or 'reserve' categories, considering operation of the roster.

(iii) According to the finding as above suitable review be made for shifting the dates of promotion given from 10.02.1995 onwards to the 'General' or 'reserve' category candidates as the case may be, if so needed, till a point is raised when the cadre is full so as to render the post based roster inoperative.

(iv) Beyond the point of time as at (iii) above vacancies arising in the promotee quota of recruitment as Inspector, will filled up from among the respective feeder channel by picking up only such category candidates to which the vacant post is originally related in the roster.

(v) If, however, the cadre is not found full at any point of time then the exercise as in (iii) would continue.

10. The specific directions given herein above are similar to what has been directed in the DOP&T's OM dated 02.07.1997, though couched in general terms; obviously because, it was aimed at all the Ministries and Departments of Government of India.

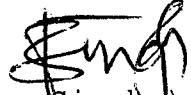
10.1 If after carrying out the exercise as directed the applicant is benefited, then it is his good luck. But if his lot becomes worse, then so be it. Because, the law as declared in Sabharwal's case is the law of the land which has to be honoured and implemented by all concerned. In that view of the matter we have given a general direction

to the respondents and not a specific direction to carry out an exercise for finding as to whether there is any merit in this O.A.

11. The O.A. stands disposed of in terms of the above direction. No order as to costs.


(Sudhakar Mihsra)

Member (A)


(Jog Singh)

Member (J).

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