

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 728/2000

Date of Decision: 24.10.2003

D.M. Misalkar.

Applicant

Shri P.A. Erabhakaran. Advocate for Applicant(s)

Versus

Union of India & Ors.

Respondents

Shri V.G. Rego.

Advocate for Respondents

CORAM: HON'BLE SHRI S. BISWAS
HON'BLE SHRI MUZAFFAR HUSAIN

MEMBER (A)
MEMBER (J)

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

S.Biswas

(S.BISWAS)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 728/2000

THIS THE 22nd DAY OF OCTOBER, 2003

CORAM: HON'BLE SHRI S. BISWAS. .. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. .. MEMBER (J)

Shri D.M. Misalkar,
R/o B/303 Om Shivdham,
Opp. Laxmi Colony,
near Ashsishs Cinema,
Chembur, Mumbai-400 074. .. Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. The Chairman
Central Board of Direct Taxes,
Ministry of Finance,
Dept. of Revenue,
Nortttth Block, New delhi-110 01.
representting the Union of India.
2. TThe Chief Commissioner of
Income-Tax, Pune,
Aayakar Bhavan,
12, Sadhu Vaswani Marg,
Pune-411 001.
3. The Commissioner of Income-Tax
TThane, Income-TTax Office,
Qureshi Mansion,
Naupada, Thane-400 602. Respondents

By Advocate Shri V.G. Rege.

O R D E R
Hon'ble Shri S. Biswas. Member (A)

By the présent OA the applicant has sought a direction to the respondents that his seniority position as reflected in the seniority list published in August, 1992 be restored and and subsequent benefits thereafter by way of promotion be worked out and paid. In seeking this relief, the applicant has impugned the communication dated 31.3.97 in which certain

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clarification regarding batch wise seniority has been indicated.

2. Necessary facts leading to this OA are that the applicant joined as a direct recruit Inspector in the office of Chief Commissioner of Incometax, Goa with effect from 14.10.1988. He thereafter sought transfer to Pune Commissionarate, which was granted vide order dated 08.7.1990 subject to terms and conditions as stated in this order. The pre condition is that "The Services rendered by him in Karnataka Charge will not count towards calculation of the minimum service or eligibility, if any, prescribed for promotion/appointment to any higher post in that charge. He will not be entitled to promotion/ confirmation in Karnataka Charge after he joins duty in Pune Charge". Thereafter, the applicant joined on 18.9.1990 as Inspector in Pune. With effect from 01.9.1991 his position in the seniority was reflected vide order dated 26.8.1992 at Sl. No.257. He was seemingly satisfied by this seniority list. But the same was changed by a revised seniority list on 27.4.1993 published by the respondents. To this the applicant submitted a representation dated 27.4.1993 enclosing a list of certain direct recruits, who joined in 1991 stating that these persons are his own batch who joined later than he joined at Pune on 18.9.1990 and therefore his seniority cannot be disturbed by them as per the order dated 08.7.1990 where it has been clearly

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stated that he would be at the bottom of all permanent/temporary Inspectors, but those who join after him will be his juniors. This pre condition has been already violated by the authorities. A new seniority list had been published on 29.3.93 where his seniority has been disturbed. The applicant further contended that he qualified in the departmental examination and has become eligible for promotion. The applicant had to start with impleading 18 persons as private respondents, who were placed above him, but he later on amended his application by deleting the names of the private respondents and the application has now been pressed on the limited ground that the respondents have not acted according to the rules enunciated in the order dated 08.7.1990 by which he was permitted to join at Pune on transfer. He made several representations including one dated 21.7.1993 which is not enclosed to the OA. All his applications were turned down by the respondent authorities. He also mentioned about one Mr. S.M. Rangdal, whose seniority was corrected by a special order, though the applicant was not granted similar benefit. In this connection, the learned counsel for applicant has also placed before us a judgment reported in 1990 (13) ATC 283 in the case of D.R. Sengupta Vs. Union of India & Others, where it has been held that the applicant could not be assigned seniority below those employees who had not yet joined on the date of applicant's joining the new establishment as per Railway Establishment Manual para 312.

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3. Heard the rival counsel and have gone through the pleadings. The respondents have contended that his transfer was made after the applicant posted as direct recruit in Goa Commissionarate vide order dated 29.5.1990 but he was transferred from Karnataka to Pune via order dated 08.7.90 communicated under letter dated 08th July, 1990. The condition of transfer by surrendering seniority and facilities like TA incorporated in the amended order dated 14.5.1990 is placed before us. In terms of this order inter charge transfer can be entertained only if the incumbent agrees to surrender his seniority of the present charge. There are pre conditions like he would be surrendering his seniority at the old station and would be placed at the bottom of the seniority at the new station. This is not granted as matter of right subject to that the Head of Departments in the respective charges agree having vacancy to accommodate him. The crucial requirement in this case is mentioned at page 49 of the OA, the relevant portion is reproduced below:

"However, he will not rank senior to any official who belongs to a batch selected on merit whose interse seniority is not regulated by date of joining."

The respondent authorities have admitted that certain initial mistake was committed when the first seniority list of which the applicant has taken shelter in as much as names of direct recruits who were recruited in the same batch as that of applicant were not given their due

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seniority in the said list of 26.8.1992. Therefore, their seniority required revision, which has been carried out and the applicant has been suitably informed of the change in response to his representation. The point therefore is whether due to such special transfer granted under the provision of order dated 14.5.1990 the applicant is eligible for higher seniority vis-a-vis his batch seniors. It is surprising that the applicant himself deleted the names of his batch mates who were shown senior to him after they have been impleaded in the OA. Therefore, nothing survives in this OA, once he has deleted the private respondents as parties to this proceeding. Learned counsel for the respondents has further brought to our notice that since they noticed that there were certain apparent error in the seniority list published in 1992 giving the applicant higher position, the same was required to be corrected after hearing the representations from the affected direct recruits and the order dated 14.5.1990 squarely governs this regulation. They have also admitted that there was a representation in respect of candidates whose date of joining was shown as 19.9.1990 but actually it had to be 04.9.1990. As per the record the seniority list was required to be corrected. Therefore, nothing illegal has been done in this respect.

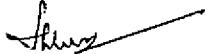
6. We have also perused the order dated 15th February, 2000 by which one Mr. S.M. Rangdal was also

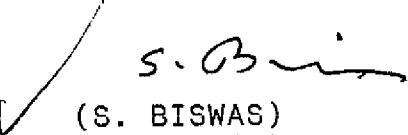
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given inter charge transfer. We find no relevance of it to the present case as he has been brought on inter charge transfer on a much later date.

7. In view of the foregoing, we find the applicant has failed to make any case and nothing illegal has been done in assigning seniority to him after his batch seniors. Even Shri J.M. Shaik joined on 04.9.1990, i.e. before him not on 19.9.1990 as the letter was an error.

8. For the reasons discussed above, we find no merit in the application and the same is dismissed without any order as to costs.


(M. HUSAIN)
MEMBER (J)


(S. BISWAS)
MEMBER (A)

Gajan