

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(4)

O.A. NO: 180/91

199

T.A. NO: -----

DATE OF DECISION 10-1-1992

Gajanan Marotrao Asutkar

Petitioner

Mr. M.A. Mahalle

Advocate for the Petitioners

Versus

Union of India and others

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 ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

U.C.

MD
mbm*

(U.C. SRIVASTAVA)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(5)

O.A.180/91

Gajanan Marotrao Asutkar
64, Vidarbha Housing Colony,
Ramnagar, Chandrapur,
Dist. Chandrapur(Maharashtra). .. Applicant

vs.

1. Union of India
through
The Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. Chief Commissioner of
Income Tax,
Pune.

3. Commissioner of Income
Tax-I,
Pune.

4. Commissioner of Income Tax,
Vidarbha,
Nagpur,
Aayakar Bhavan,
Telangkhedi Road,
Nagpur.

.. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri A.B.Gorthi, Member(A)

Appearances:

1. Mr.M.A.Mahalle
Advocate for the
Applicant.

2. Mr.P.M.Pradhan
Counsel for the
Respondents.

ORAL JUDGMENT:
(Per U.C.Srivastava,Vice Chairman)

Date: 10-1-1992

This application is directed against apprehension of the applicant that the respondents have not considered the name of the applicant for the promotion to the cadre of Inspector of Income Tax by wrongly interpreting the guidelines on the point. The applicant who was appointed as Upper Division Clerk in the charge of Commissioner of Income Tax, Pune applied for transfer to the charge of Commissioner of Income Tax, Nagpur but his application was not entertained

on the ground that he has not put in three years of service. He was confirmed in Pune charge as U.D.C. w.e.f. 7-9-1973 and passed the departmental examination for promotion to the post of Inspector of Income Tax in the year 1975. Again in 1976 he applied for a transfer to Nagpur charge. Vide order dtd. 29-12-76 the applicant's services were placed at the disposal of Commissioner of Income Tax, Vidarbha and Marathwada, Nagpur Charge, Nagpur. The applicant was relieved from Pune Charge on 30-4-1977 and joined the office of the Inspecting Assistant Commissioner of Income Tax, Nagpur on 2-5-1977 and ^{that career} in ~~1987~~ he was promoted as Tax Assistant by the Commissioner of Income Tax, Vidarbha Nagpur.

2. The applicant's apprehension is that the respondents will be holding DPC very soon and they may not consider the applicant in view of the circular dtd. 12-12-69 and further clarification which has been issued by them on 17-2-87 as the department in its own leve has taken a particular interpretation.

3. In the circular of 1969 reference to which has been made by the applicant the subject "Transfer of non-gazetted staff from one charge to another within the same department under the CBDT" it is provided in para 'g' and 'h' as below:

"(g) The seniority of a person transferred under these instructions shall be reckoned from the date of his/her joining the new charge on transfer.

(h) An U.D.C. or other member of the staff who has passed the Inspectors' grade examination (Departmental) would be placed in the "Examination-wise list" for purposes of promotion as Inspector below all the persons who have passed the said examination

in the new charge upto the date of his transfer."

4. Another circular was issued in the year 1987, in which a reference has been made to 1969 circular, which provided that "for the purpose of including in the examination-wise list also the effect of operation of para 2(b) will be that the official transferred to the new charge will ~~rank~~ rank below all the persons who have passed the examination in the new charge upto the date of his transfer."

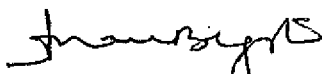
5. Learned counsel for the applicant contended that so far as this circular is concerned it has mis interpreted the earlier circular and the earlier circular according to him was confined only to temporary employees although in the circular nowhere it has been mentioned that it is for temporary employees and not for confirmed employees. The language may indicate that it is for the confirmed employees.


6. The respondents have opposed the application on the ground that no DPC is meeting at present and merely on apprehension the application cannot be entertained and the Tribunal cannot grant any effective relief and the applicant's plea that similar relief has been granted to one S.K. Malviya who was similarly placed was considered by the DPC and promotion was given to him can even now be applied in case the contention raised by the applicant is correct.

7. As we are not at this stage called upon to interpret the ~~aggravated~~ ^{in question} circular as our ~~interpretation~~ ^{interpretation} may ~~either~~ either hold good or go against the applicant but this application can be disposed of

(8)

on the short point that it is still open for the applicant who banks upon the case of Malviya who was similarly placed like him and yet was promoted the promotion which the applicant claims notwithstanding the fact that he was also transferred employee it is still open for the applicant to approach the department whenever DPC meets. As no DPC is going to meet at present and the applicant cannot be granted any effective relief we do not propose to interfere with the circular or to pass any order. The applicant will be free to approach the Department for seeking further clarification making reference to the Malviya's case and tell them that no discrimination can be practised by the department. The department may consider the matter and issue another circular ^{but} as indicated above no effective relief can be granted ^{merely because} ~~and it is not a~~ ~~case~~ the applicant apprehends something on the basis of some circular issued five years ago, the application, ~~at this stage~~ with the above observation, is dismissed. There will be no order as to costs.


(A.B. GROTHI)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman