

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 554/91
Transfer Application No.

Date of Decision : 24-3-95

G. N. Mankar

Petitioner

Shri. M.A. Mahalle

Advocate for the
Petitioners

Versus

Chief C.I.T, Pune & 2 Ors.

Respondents

Shri. K.D. Kelkar

Advocate for the
respondents

C O R A M :

The Hon'ble Shri B.S.Hegde, Member (J)

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

(1) To be referred to the Reporter or not ? ✓

(2) Whether it needs to be circulated to
other Benches of the Tribunal? X

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. 554/91

G. N. Mankar ... Applicant

Vs.

1. Chief Commissioner of
Income-tax, Pune
2. Commissioner of Income-
tax, Nagpur
3. Shri.D.B. Raut,
Inspector
O/o. the Dy. Director of
Inspection, Nagpur ... Respondents

CORAM : 1. Hon'ble Shri. B.S.Hegde, Member (J)
2. Hon'ble Shri. M.R.Kolhatkar, Member (A)

Appearances

1. Shri. M.A.Mahalle, Counsel
for the applicant.
2. Shri. K.D.Kelkar, Counsel
for the respondents.

J U D G M E N T

DATED : 24-3-95

X Per Shri. M.R. Kolhatkar, Member (A) X

In this O.A the applicant claims relief of grant of proper seniority in the cadre of Upper Division Clerk in Income-tax Department on the basis of date of confirmation in that cadre ignoring the length of service and in particular, challenges the order dated 10/04/1991 of the Commissioner of Income-tax, Vidarbha, Nagpur rejecting his representation and fixing his seniority at Sl.No. 39. Consequently, the applicant also challenges the order of the Department dated 19-7-1990 promoting the Respondent No. 3 Shri. D.B. Raut (to) officiate as Income-tax Inspector on the basis of his seniority, again on the ground that the applicant is senior to Shri.Raut on

the basis of his seniority as U.D.C related to date of confirmation.

2. The applicant is a directly recruited Upper Division Clerk appointed as such in 1970. Respondent No. 3 Shri. D.B. Raut, with whom the applicant wants to compare his case, was appointed in 1968 and it is, therefore not disputed that Respondent No. 3 has a longer length of service as Upper Division Clerk. The applicant however, contends that he passed the Departmental Confirmation Examination for UDC of which result was declared on 19.1.73^{much earlier} and was confirmed in the post with effect from 14/9/73. On the other hand, Respondent No. 3 passed the departmental confirmation examination later, namely 19.12.1973. Orders of his confirmation were issued on 19.5.77 but the same were made ^{to operate} retrospectively ^{viz.} with effect from 14.9.1973.

3. The applicant ^{further} contends that he was promoted as Tax Assistant with effect from 7.7.78. It is not disputed that the cadre of Tax Assistant was created by upgrading 1/3rd of the cadre strength of U.D.C with a view to provide more experienced and competent ministerial staff to deal with important clerical work. Recruitment to the post of Tax Assistant is entirely by promotion from the cadre of U.D.C. on 'selection basis', on the recommendations of a duly constituted D.P.C. Only U.D.Cs who have rendered a minimum service of 3 years in that grade in the Department and who have secured at least 40% marks in the paper of four subjects in the Income-tax Inspectors' Departmental Examination will be eligible for promotion to the post of Tax Assistant. On the other hand, Respondent No. 3 was promoted as Tax Assistant only on 22.2.84 i.e. more than 5 years after the promotion of the

applicant as T.A.

4. The applicant therefore contends that although by ~~virtue~~ of earlier confirmation he is senior as U.D.C and also senior as T.A, still Respondent No. 3 was promoted as Head Clerk with effect from 23.7.84. The applicant further contends that he passed Inspectors' Examination in 1979 and Respondent No. 3 passed the same in '86 but the respondent No. 3 was promoted as Inspector with effect from 19.7.90, an order which he has challenged as part of this O.A. The applicant has since been promoted as Head Clerk on 22.4.1991 i.e. almost 7 years after the Respondent No. 3 was promoted.

5. The applicant relies on the case of Vinay Chand Pratapchand Chalani V. Union of India & Ors., (T.A. 253/87) decided by this Bench on 22-3-1991. In that judgment, the Tribunal held that all Tax Assistants ^{to be} are ranked senior to U.D.Cs for the purpose of their promotion. In other words, since the applicant is promoted as T.A on 7.7.78 whereas the Respondent No. 3 was promoted as T.A. on 22.2.84, the applicant ipso facto is to be considered as senior to Respondent No.3.

6. So far as the confirmation as the determining date for seniority is concerned, the applicant relies on the Supreme Court judgment in Union of India v. M.Ravi Varma & Ors. (AIR 1972 SC-670).

7. The respondents have opposed the O.A. According to them, so far as the question of seniority of the applicant as U.D.C vis-a-vis Respondent No. 3 is concerned, Respondent No. 3 is senior to the applicant because he was appointed as UDC in 1968 whereas the applicant was appointed as UDC in 1970. The date of confirmation of applicant and Respondent No. 3 remain the same, namely 14.9.1973. Respondent No. 3 who was

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appointed in 1968 became senior to the applicant. The applicant does not deny that Respondent No. 3 was confirmed with retrospective effect from 14.9.1973 but according to the applicant, Respondent No. 3 could not have revived the years of service as U.D.C rendered by him, which was lost by him, as far as confirmation is concerned because of his late passing of departmental examination.

8. In our view, if the applicant was aggrieved by the grant of retrospective date of confirmation, namely 14.9.1973, even though he has passed departmental confirmation examination for UDC after a gap of 11 months, he ought to have challenged the same at that time. We have, therefore to proceed on the basis of date of confirmation of both the applicant and Respondent No. 3 being identical. Therefore M.Ravi Varma's case does not in our view help the applicant.

9. So far as counting of seniority of applicant for the purpose of promotion as head clerk on the strength of his being promoted as T.A earlier than Respondent No. 3 is concerned, Vinayachand Pratapchand Chalani's case decided by this Tribunal on 22-3-1991 is no longer good law in view of Supreme Court decision in Union of India & Ors. Vs. Syed Mohammed Raza Kazmi & Ors., (1992) 21 ATC - 830). In this case, the Hon'ble Supreme Court while dealing with S.L.P against the judgment of CAT, Allahabad Bench in Syed Mohd.Raza Kazmi & Ors., giving certain directions to the department ^{as to} the cadre of Tax Assistants, held that the claim of T.As for being treated en bloc as a cadre senior to the UDCs was not sustainable as the policy of the department in the matter of promotion was neither an arbitrary nor

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discriminatory . Therefore, interference of the Tribunal or Court is not called-for. We do not therefore consider that the claim of the applicant to be considered as senior to Respondent No. 3 for the purpose of consideration as Head-clerk on the strength of being^a senior Tax Assistant is sustainable.

10. We therefore come to the challenge to the Respondent No. 3's promotion as Income-tax Inspector.

~~It is not disputed~~ that Respondent No. 3 was appointed on the basis of seniority as Head Clerk. To the extent applicant's challenge to the earlier appointment of Respondent No. 3 as Head Clerk has to fail, pro tanto, the challenge of the applicant to the further promotion of the Respondent No. 3 as Income-tax Inspector by length of seniority as Head Clerk must also fail.

11. We therefore consider that there is no merit in the O.A which is accordingly dismissed. There would be no orders as to costs.

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)

B.S. Hegde

(B.S.HEGDE)
MEMBER (J)

dt 24-3-95
Order/Judgement despatched
to applicant respondent (s)
on 18/4/95

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17-4-95

letter issued to
Applicant on 9/6/95
2/16

R.PNO 61/95
by circulation

NB
10.7.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Review Petition No.61/95
in
O.A. No. 554/91

Ghanshyam Nagoji Mankar .. Review Petitioner

-VS-

Union of India & Ors. .. Respondents

Coram: Hon'ble Shri B.S.Hegde, Member(J)

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

Tribunal's Order on Review
Petition by circulation
(Per M.R.Kolhatkar, Member(A))

Date: 24-7-95

This is a review petition requesting for review of our judgment dated 24-3-95 rejecting the relief claimed by the applicant for grant of proper seniority in the cadre of Upper Division Clerk in the Income Tax department. According to the applicant certain vital points relating to fitment of the applicant in the seniority list by way of alterationⁱⁿ between direct recruits and promotees have not been discussed by the Tribunal and if the same were noted and discussed, the Tribunal may be inclined to reconsider its earlier view.

2. We are not satisfied that the applicant has made out any case in relation to Rules under Order 47 of the CPC so as to warrant review of our judgment. In effect, the applicant has sought rehearing of the matter.

3. We are, therefore, satisfied that there is no merit in the review petition which we hereby reject. We do so by circulation as permitted under rules.

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

B.S. Hegde
(B.S. HEGDE)
Member(J)