

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO: 959/9400

DATE OF DECISION: 27/4/2000

*27th April 2000*

Shri Iyengar Sreenivasaraghavan Applicant.

Shri P.A.Prabhakaran

-----Advocate for  
Applicant.

Versus

Union of India & 3 Ors.

-----Respondents.

Shri V.D.Vadhavkar for

-----Advocate for  
Respondents.

Shri M.I.Sethna

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.  
Hon'ble Shri B.N.Bahadur, Member(A)

1. To be referred to the Reporter or not? *Yes.*
2. Whether it needs to be circulated to other Benches of the Tribunal? *No.*
3. Library. *Yes.*

*Bmb*  
(B.N.BAHADUR)  
MEMBER(A)

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abp.

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION : 959/94  
DATED THE 27th DAY OF APRIL, 2000.

*(Twenty Seventh April 2000)*

CORAM: HON'BLE SHRI JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN  
HON'BLE SHRI B.N.BAHADUR, MEMBER(A)

Iyengar Sreenivasaraghavan S.,  
Resident of  
002/A-6/Sector-II,  
Prathamesh Shantinagar Co-op Hsg. Soc.  
Mira Road (East) - 401 107.

... Applicant.

By Advocate Shri P.A.Prabhakaran

V/s.

1. Chief Commissioner of Income Tax,  
Room No.373, 3rd Floor,  
Avakar Bhavan, M.K.Road,  
Bombay - 400 020.
2. Commissioner of Income-Tax,  
City-I, Bombay.  
Avakar Bhavan, M.K.Road,  
Bombay - 400 020.
3. Dy.Commissioner of Income-Tax,  
(Administration-I, Bombay).  
Room No.220, 2nd Floor,  
Avakar Bhavan, Bombay - 400 020.
4. Inspectors of Income-Tax as per  
list marked as Annexure-'I'  
Page-39 to 41 being those who are  
in Bombay City under the Respondent  
No.1 comprising of those who are  
qualified the Income Tax Officers  
examination as on 01/08/1994 and  
others who were placed below the  
applicant by Staff Selection Commission  
ranking but shown as senior to the  
applicant by the respondents 1,2 and 3... Respondents.

By Advocate Shri V.D.Vadhavkar for  
Shri M.I.Sethna.

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Per Shri B.N.Bahadur, Member(A)

The applicant in this case seeks the relief, from this Tribunal, for the refixation of his seniority for the purpose of confirmation and promotion. He also seeks a direction to the respondents to accord to him all consequential and incidental benefits resulting from such refixation of seniority. The applicant also seeks for a direction to respondents to ensure that no harm is done to him on account of the present seniority position and in the case of his promotion to ITO Group 'B'.

2. The applicant avers that he was selected as direct recruit Income Tax Inspector and ranked 21st with one Shri Narayan Iyer placed above him and Shri V.Krishnaswamy below him. However, in the seniority list published in 1992 (Annexure-3), the applicant is placed at Sr.No.66. Applicant contends that he should have been correctly placed at Sr.No.15.

3. The applicants goes on to contend that in the list of Inspectors qualified for promotion, published on 25/4/94 (Annexure-2), the applicant's name is again wrongly placed at Sr.No.77, whereas he contends that he should have been placed at Sr.No.22.

4. The ground on which the applicant bases his grievance is that he has not been given seniority according to his ranking at the time of selection by Staff Selection Commission. It is an admitted fact that applicant was notified of his selection vide

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letter dated 29/7/1988 but eventually joined service as Inspector on 3/8/1989. In his application, the applicant has given detailed reasons of developments leading to this position, the main ground being that his father was unwell, and he subsequently expired. Another important ground taken by him is that in the letter dated 29/7/1988, through which applicant was intimated regarding his selection, it has been stated that he should report for duty only after a further communication from that office to join the post. It is in these circumstances, and with such grievances, that the applicant is before us, seeking the reliefs as described above.

5. The official respondents in this case have filed a reply denying that any genuine cause exists in the case, and also state that the applicant has not produced any evidence/record on some of the averments made. The respondents point out that in the offer of appointment issued vide letter dated 29/7/1988 (referred to above by applicant also) it has been clearly stated that applicant should collect a letter for medical examination within seven days of the receipt of the said O.M. This is condition number 5 incorporated in the said O.M. The respondent states that he has failed to comply with this condition and collected the letter only on 23/12/1988.

6. In regard to the letter dated 15/3/1989 (wrongly typed as 15/4/1989, admittedly), it is stated that the applicant was asked to join duty by 6/4/1989. Official respondents aver that there is no record of assertions made by applicant about his

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frequent visits to office between December 1988 and August 1989 and that the first request on record, seeking extension in time for joining the post has been made by the applicant on 11/4/1989.

7. Respondents state that representations made by the applicant seeking refixation of seniority have been considered and rejected by the Government. The further portion of the written statement contains parawise replies.

8. It is seen that a large number of officials (Inspectors) have been added as (private) respondents. One of them Shri R.P.Singh has sent a letter in 26th December, 1994 making a few comments therein, and requesting the Tribunal to bear these facts and circumstances in mind while taking a decision. There are also a rejoinder and sur-rejoinder on record all of which have been taken into consideration. We also heard Shri Prabhakaran, Learned Counsel for Applicant and Shri M.I.Sethna, Learned Counsel for Respondents.

9. The Learned Counsel for the Applicant first took us over the facts of the case, to make a point that the applicant did not join in time primarily because he was tied down with the problems relating to the illness of his father, who had been diagnosed as suffering from Cancer and later by the situation arising out of his father's sad death in April, 1989.

✓ 10. His other plea was that the letter dated 29/7/1988 intimating him of his selection clearly asked him to report for duty only after receipt of a fresh communication. He therefore contends that since no fresh communication was received he did not go to report to the authorities or to collect the medical authority

  
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letter (as required in condition No.5 of the same letter.)

11. The Learned Counsel for the Applicant drew out attention to the extract filed by him at page-38 of paperbook which purports to be Government instructions dated 6/6/78. These refer to the enabling clause which empowers Government for the grant of extension for joining the new appointment, and also states that if such joining is allowed for nine months, then seniority would not be effected. This was made as one of the planks of argument by Counsel for Applicant. He argued that even after the letter dated 15/3/1989 was received asking him to join before 6th April 1989, he had made application for extension in time, copies of which he appends as Exhibits A-3 and A-4.

12. Arguing the case on behalf of the Respondents, their Learned Counsel drew attention, mainly to the same letters as cited by the applicant. First he stressed on condition No.5 of the O.M. dated 29/7/1988. He contended that the applicant was clearly required to collect the authority letter from the office within one week and that he did not come to do so till December 1988. Learned Counsel argued that the nine months period referred to by Applicant for the protection of seniority should be calculated from the date of letter at Exhibit A-1, i.e. w.e.f. 29/7/1988.

13..... Learned counsel for the respondents went over the relevant dates in the case, to make the assertion that, the application was severely hit by limitation and suffered from

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delay and laches. He took support from the case of R.C.Sharma V/s. U.S.Kamal cited at 2000 SCC L&S 53 to make the point that since there was no application for condonation of delay, the case cannot be heard and disposed of on merits.

14. Agreeing that the fact of applicant's father's illness and subsequent death were genuine circumstances, the Learned Counsel for Respondents asserted that the fact that the applicant did not visit the office of the respondents, even to collect the form for eight months altogether, cannot be justified. Infact, Counsel for Respondent surmised that the applicant was probably debating whether the job he had in Mumbai with Mazgaon Dock was worth leaving for a change. Counsel pleaded for dismissal of the Application.

15. Let us first recapitulate the important dates/events in this case. The letter intimating applicant of his selection as Inspector is dated 29/7/1988. The important parts of this letter are that it contains both points referred to by the two sides viz. that applicant should join only after receipt of a fresh communication from Respondent's office and also that the appointment is subject to the production of Medical Certificate of Fitness. The latter part is contained as condition No.5 which reads as under:-

"His/Her appointment is subject to the production of a Medical certificate of fitness from the competent Medical Authority. Letter for the purpose is enclosed/may be obtained from this office within a week from the receipt of this letter."

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Thereafter, the applicant contacted the office of the respondents on 23/12/1988 to collect the documents for Medical and a letter intimating applicant was issued by the Department asking applicant to join by 6/4/1989.

16. Much as the circumstances relating to the health and subsequent unfortunate demise of the applicant's father are genuine, it is difficult to believe that the applicant could not contact the office of the respondents or write to them for such a long period. Similarly, the ground taken by the applicant that he was waiting for a further communication, as exhorted in respondents letter dated 29/7/1988, can hardly be believed when the period sought to be explained is not of days but several months. The point made that even in condition 5 it was not clearly indicated whether medical authority is enclosed or not, is also not a strong enough reason, and it would <sup>Be</sup> seem that it is an argument put forth to explain why applicant did not visit the office of the respondents for such a long period. No letter was sent either, as per records available, by applicant in reasonable time. Vague references are made to "several visits" by applicant to respondent's office.

17. Under normal circumstances, what we would reasonably believe is that any young person who was being offered employment as Inspector by the Union Government would not sit at home especially when he is staying in Mumbai, and when the Respondent's office is in Mumbai. Only because some documents have, say, not been enclosed he would rush to the office of respondents, make enquiries, or send letters. The inaction on the part of the applicant for months, under the circumstances described above, is clearly something that cannot be

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taken to be natural conduct, and it would be reasonable to conclude that all contentions raised are mere afterthoughts, which are being put forth to obtain seniority at a belated stage. The rules relevant to the issue as contained in the extract copy Annexed by Applicant at page-38 of his application cannot help him under these circumstances.

18. On the aspect of belatedness also, it must be noted, that the applicant's grievance pertains to the year 1989. He admittedly joined service on 8/8/89 and made his representation as per his own contention on 13/11/1992. Even if these dates are taken to be the correct dates, for cause of action to start, there is the flaw of delay and laches on Applicant's part. However, we are not going into details of this aspect since, as discussed above, we have come to the conclusion that even on merits no case has been made out for interference by the Tribunal.

19. In view of above discussions, this application is hereby dismissed with no orders as to costs.

*B.N. Bahadur*

(B.N. BAHADUR)  
MEMBER (A)

27-04-2000

*R.G. Vaidyanatha*

(R.G. VAIDYANATHA)  
VICE CHAIRMAN

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