

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI
ORIGINAL APPLICATION NO.978/1977

Date of Decision: 21.06.2002

Shri I.J. John.

Applicant(s)

Shri P.A. Prabhakaran.

Advocate for applicants

Versus

Union of India & others

Respondents

Shri M.I. Sethna.

Advocate for Respondents

CORAM: HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. 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 ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI
ORIGINAL APPLICATION NO. 978/1997

THIS, THE 21ST DAY OF JUNE, 2002

CORAM: HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)
HON'BLE SHRI SHANKER RAJU. MEMBER (J)

T.J. John, 46/1798 I.T. Qrs.
Sector VII,
Antop Hill,
Mumbai-400 037.

.. Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. The Union of India, through
the Chairman, Central
Board of Direct Taxes,
Ministry of Finance,
North Block, New Delhi-110 001.
2. The Chief Commissioner of
Income-tax, Mumbai, 3rd Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400 020.
3. The Commissioner of Income-tax,
Mumbai City-I, 3rd Floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400 020.

.. Respondents

By Advocate Shri M.I. Sethna.

O R D E R
Hon'ble Smt. Shanta Shastri. Member (A)

This OA has been made against order of Respondent No.2 rejecting the applicant's representation for seeking promotion against the physically handicapped quota under the Stenographers' quota vide order dated 21st November, 1996.

2. The applicant is working in the Income-tax Department. He joined as a Stenographer ordinary grade

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in January, 1979 and was promoted to Stenographer Grade II on 30.11.1993. He qualified in the departmental examination for Inspector of Income-tax in 1995 and became eligible for promotion as Inspector of Income-tax. The applicant belongs to physically handicapped category as he is orthopedically handicapped. For the purpose of promotion to the Inspectors cadre, quota has been fixed between the ministerial staff comprising of UDC, Tax Assistants, Head Clerk and Supervisor and the Stenographers in the ratio of 3:1 as per notification dated 08.9.1986 Exhibit A1. It is the contention of the applicant that in terms of DOP&T OM dated 20.11.1989 reservation is provided for three categories of physically handicapped namely visually handicapped, hearing handicapped and the orthopedically handicapped at 1% each. If appropriate physically handicapped persons are not available in the feeder grade, then an interse exchange is permissible subject to condition that reservation so exchanged is carried forward to the next three recruitment years, afterwards the reservation lapses. According to the applicant, the respondents have granted promotion to the physically handicapped persons. However, promotions have been granted only to ministerial staff from 1993 onwards, not a single physically handicapped candidate from the Stenographers grade has been appointed till date. The applicant is the only physically (orthopedically) handicapped stenographer who is

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qualified. The applicant had represented to promote and appoint him as Inspector against the physically handicapped quota on 19.01.1996 followed by reminder on 04.10.1996. He also appealed to the Chairman of the Central Board of Direct Taxes. There has been no reply to the appeal. According to the applicant by the order of 1986 at least one vacancy existed for physically handicapped stenographer and the applicant being the only qualified stenographer as per eligibility list of 1986 he should have been promoted. The applicant has therefore sought to declare the DPC held on or about 09.6.1996 for promotion and appointment to the cadre of Inspector of Income-tax as null and void and subsequent DPC also, wherein similar omission of not considering any physically handicapped candidate against the stenographer cadre be declared as null and void and the applicant be reconsidered holding a review DPC of 09.6.1996 and to accord him all the consequential benefits.

3. The respondents submit that although the applicant was eligible for promotion, he could not be promoted as there were officials senior to him in both the categories i.e. passing of the examination and seniority list, available. The respondents submit that there is no separate roster for physically handicapped persons as in the case of SC/ST. However, in accordance with orders dated 24.4.1992 the appointing authority has

to ensure that one reservation for the physically handicapped is given effect to in a block of 33 appointees. It is not necessary that physically handicapped person is promoted only after promoting 33 persons. Subject to availability of vacancy in the identified post and taking into account the eligibility of officials for promotion, a physically handicapped person is considered for promotion. The respondents further submit that the OM dated 20.11.1989 referred to by the applicant does not say that the quota for physically handicapped has to be maintained separately for stenographers and ministerial staff in matter of promotion. According to the respondents, no doubt applicant is the only physically handicapped candidate in the cadre of stenographer who has become eligible after clearing the departmental examination in the year 1995 and his name is reflected accordingly in the eligibility list at Sl. No.3, it was circulated to all Heads of Income-tax offices and he would get his promotion as and when his turn comes as per the rule. The person who was last promoted i.e. Shri H.L. Badhani on 31.7.1997 is much senior to the applicant. He had cleared his Inspectors' examination in 1986. The respondents submit further that from 1996 when the applicant became eligible 66 officials were promoted. Out of which⁴ two are from the physically handicapped category. Though the applicant has contended that not a single physically handicapped person was promoted,

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according to the respondents in all nine physically handicapped persons have been promoted against a total of 334 officials promoted. Even in the list of officials promoted on the basis of DPC held on 09.6.1996 one physically handicapped namely Shri Prakash Tendulkar has been promoted.

4. The respondents have not denied that a physically handicapped person from the ministerial cadre has been selected for promotion. The respondents have confirmed that at least three persons promoted against physically handicapped quota are orthopedically handicapped. Therefore, it is not correct on the part of the applicant to say that not a single orthopedically handicapped person has been promoted. The respondents once again reiterated that there is no separate quota for physically handicapped in the stenographer quota. It is in the combined cadre of ministerial staff and stenographer that physically handicapped quota is to be counted and since Respondent No.3 is senior to the applicant and had passed his Inspectors' examination earlier, he has been selected, though he is from the ministerial staff cadre. According to the respondents, they are justified in giving the promotion to Respondent No.3. The respondents submit that the applicant has been promoted finally under the physically handicapped quota in 1998, but the applicant wants it from 1996.

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5. We have heard both the parties and have perused the relevant records. It is clear that the respondents observed the instructions in regard to providing reservation for physically handicapped persons. Accordingly, they have selected physically handicapped candidate from amongst the ministerial staff and stenographers. The only question to be seen now is whether there has to be a separate reservation for physically handicapped persons under the stenographer quota or is it to be under the combined quota of ministerial staff and stenographer. The applicant has drawn our attention to the notification dated 08th September, 1986 amending the Income-tax Department (Inspector) Recruitment Rules, 1969. Under the amendment, an explanatory memorandum has been given which reads as follows:-

" Following representation from staff side the Government had issued instructions on 01st October, 1985 prescribing quota for the ministerial cadre and stenographer cadre in the ratio of 3:1 for filling up of vacancy in the grade of Income-tax Inspector earmarked for promotion. Since this instructions are already been followed and the amendment of the rules is to regularise the position formally, no one will be adversely affected as a result of retrospective effect been given to his notification."

6. It will be seen from this explanatory memorandum that there has to be a promotion quota for the ministerial cadre and the stenographic cadre in the

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ratio of 3:1. However, it does not mention that there will be an independent quota for physically handicapped in the same ratio between ministerial cadre and stenographers. As such the contention of the applicant that in view of the aforesaid explanatory memorandum a separate quota had to be reserved for the physically handicapped from amongst the stenographers does not appear to be correct. Further, even assuming that there was to be a quota in a cadre of seven stenographers, if 3% is to be taken for the physically handicapped category staff, the quota would work out to 0.21 which is not even one post and therefore there could not have been any reservation for the physically handicapped under stenographer quota.

7. In view of the categorical statement made by the respondents that there cannot be a separate quota for the physically handicapped under the stenographer category apart from the ministerial cadre and even assuming for a moment that there has to be a quota under the stenographers cadre, we do not find that the respondents have in any way violated instructions in regard to the reservation for the physically handicapped particularly in regard to the orthopedically handicapped persons. The respondents have acted fairly and have promoted the applicant in 1998 when his turn came. We therefore do not find any good reason to interfere with the recommendations of the DPC meeting held on 09.6.1996.

8. In the result, the OA fails and is dismissed without any order as to costs..

S. Raju

(SHANKER RAJU)
MEMBER (J)

Shanta S

(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan