

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH
JAIPUR.

T.A.No.3/92
T.A.No.4/92

Dt. of order: 10.1.1994

Mohan Lal Sharma : Applicant/plaintiff

Vs.

Union of India & Ors. : Respondents

O.A.No.1090/92

J.P.Gupta : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.M.K.Shah : Counsel for Mr.M.L.Sharma

Mr.Rajendra Soni : Counsel for Mr.J.P.Gupta

Mr.N.K.Jain : Counsel for Govt. respondents.

CORAM:

Hon'ble Mr.Justice D.L.Mehta, Vice Chairman

Hon'ble Mr.B.N.Dhoundiyal, Member(Adm.).

PER HON'BLE MR.JUSTICE D.L.MEHTA, VICE CHAIRMAN.

With the consent of all the parties T.A.No.3 & 4 of 1992, M.L.Sharma Vs. UOI & Ors and O.A.No.1090/92 J.P. Gupta Vs. UOI & Ors, were taken for hearing together.

2. Mr.M.L.Sharma, filed a civil suit in the court of the learned Munsif, Jaipur City, Jaipur, and prayed therein that the revised seniority dated 29.11.84 should not be implemented and the earlier seniority should be implemented and promotions should be given in accordance with the earlier seniority list. Alongwith the main suit application for grant of temporary injunction under Order 39 Rule 1 & 2 CPC was also filed and the learned Munsif Court granted the temporary injunction on 10.12.84 and directed the parties to maintain the status quo.

3. Mr.G.P.Gupta, filed the O.A.No.1090/92 and challenged Anxx.A-2, the order dated 1.7.85 on the ground that he is the senior officer and his case has not been rightly considered according to law. In the order dated 1.7.85, it has also been mentioned that

these promotions are purely provisional and temporary and liable to be reviewed. Promotions of Mr. M.L.Sharma, is made in compliance with the direction issued by the learned Munsif, Jaipur City, Jaipur. Thus from the perusal of Anxx.A-2 in the O.A. filed in the case of J.P.Gupta Vs. UOI, it is clear that the authorities have committed an error in interpreting the temporary injunction granted in favour of Mr. M.L.Sharma, who is the plaintiff in the T.A. No. 3&4/92. The directions maintaining status quo means that the position which exists on the date of passing of the order should be maintained and it cannot be equated with the stay of the operation of the order. In fact this order was an adverse order against Shri M.L.Sharma, as the authorities have no jurisdiction to consider the earlier seniority list and they had to act upon only the seniority list which was issued on 29.11.84 and which was communicated vide letter dated 6.12.84. Thus the authorities had committed a mistake in interpreting the order passed by the Civil Court.

4. As far as M.L.Sharma's case is concerned, it will not be out of place to mention here that the seniority list cannot be changed without giving him an opportunity of hearing if it has become final. Even in the cases of the provisional seniority, the objections have to be invited and the objections have to be considered and necessary orders have to be passed on the objections so received.

5. Other persons have already been promoted during the intervening period and their seniority cannot be disturbed unless they are party before the Tribunal. Parties have agreed that the disputes may be limited only in respect of M.L.Sharma and J.P.Gupta, in the matter of promotion in the cadre of Income Tax Inspector and the subsequent promotion as Income Tax Officer.

6. We have heard the learned counsel for the parties. Shri N.K.Jain, appearing on behalf of the department is having objection only on the ground that the name of J.P.Gupta, was considered by the DPC and he was not found suitable by the DPC on 20.12.84. May it be so but the mistake has been committed by the DPC that in the DPC meeting Shri M.L.Sharma was considered as senior which ~~the~~ is against the order passed by the Civil Court maintaining the status quo.

7. In the facts and circumstances, we consider it proper that parties should appear before the Central Board of Direct Taxes, Govt. of India, New Delhi on 1.3.1994. Both the parties should appear before the Board and the Board shall hear the parties afresh and decide the matter of dispute to seniority in respect of M.L.Sharma and J.P.Gupta, in the light of the judgments of the Hon'ble Supreme Court. At the time of decision of the seniority the question of confirmation can also be decided.

8. In the light of the observations earlier made, the Review DPC shall also meet in case it was found that M.L.Sharma is junior to J.P.Jain and shall decide the question of promotion afresh and in case J.P.Gupta is found suitable on the basis of seniority cum merit or M.L.Sharma is found suitable on the basis of seniority cum merit, necessary orders should be passed according to law in favour of either of the parties. This should be completed within a period of 4 months from today and necessary relief if required to be given to the parties should also be given within a period of 4 months. The T.A.No.3 & 4/92 and O.A.No.1090/92 are disposed by this common order.