

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH AT HYDERABAD

Tues [✓] DAY THE twentieth DAY OF June
ONE THOUSAND NINE HUNDRED AND EIGHTY NINE

: PRESENT :

THE HONOURABLE MR. B. N. DAYA SIMHA : VICE-CHAIRMAN
AND

THE HONOURABLE MR. D. SURYA RAO : MEMBER (JUDL)
AND

THE HONOURABLE MR. D. K. SHAKRAVARTY : MEMBER (ADMN)
AND

THE HONOURABLE MR. J. N. RAGSIMHA MURTHY : MEMBER (JUDL)

ORIGINAL APPLICATION 250 OF 1987

BETWEEN:-

B. Pitchaiah

...Applicant

AND

(Vide E.B for 11 Respondents)

... Respondents

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ORIGINAL APPLICATION NO. 250 of 1987

(ORDERS OF THE TRIBUNAL DELIVERED BYHON'BLE V.C.SHRI B.N.JAYASIMHA

The applicant herein who is a Supervisor Grade-II in the Office of the Commissioner of Income Tax, Andhra Pradesh, Hyderabad (2nd respondent), is questioning the order of promotion of Respondents 3 to 11 who are juniors to ^{him} ~~them~~ in the cadre of UDC, Head Clerk and ~~also~~ Supervisor Grade-II.

2. The case of the applicant is that he was directly recruited as U.D.C. on 7.1.1970 and promoted as Tax Assistant on 8.1.1979 along with respondents 3, 4, 5 and 10. On 17.12.1980 he was promoted as Head Clerk. On 18.3.1983 he was promoted as Supervisor Grade-II. It is his case that respondents 3 to 11 are juniors to him in the category of UDC. He states that respondents 3, 4, 5 and 10 were promoted along with him on the same day as Tax Assistants. R-7 was later promoted as Head Clerk. Respondents 5, 6, 7 and 11 were promoted as Supervisors later than the applicant. Respondents 3, 8, 9 and 10 were not promoted as Supervisors being far junior to the applicant. The applicant contends that on 4.6.1984 the 3rd respondent was promoted as Inspector of Income Tax. Respondents 3, 4, 5 were promoted as Inspectors of Income Tax on 4.6.1984, 20.1.1985 and 17.4.1985 respectively whereas other respondents were promoted on 6.12.1986. The applicant, therefore, contends that the

promotion given to respondents 3 to 11 who were juniors to him is illegal and contrary to rules. In the DPC held in 1984 the applicant was not considered at all on the ground that he was not confirmed in the cadre of the Tax Assistant and that he had not worked for two years as Tax Assistant. He states that R-7 was also not confirmed as Tax Assistant but he was promoted as Inspector of Income Tax later on. The applicant further contends that he should be promoted as Inspector of Income Tax with effect from 4.6.1984 on which date the 3rd respondent who is junior to him was promoted as Inspector of Income Tax.

3. On behalf of the respondents, a counter has been filed stating that the applicant did not come up for consideration in 1984 as he was not confirmed in the cadre of Tax Assistant and had not completed two years of service in that cadre. It is stated that respondents 3 and 4 were confirmed as Tax Assistants with effect from 22.8.1981. It is contended that respondents 4, 5, 3 and 10 were promoted to the post of the Tax Assistants in preference to the applicant which is a selection post. When the DPC was held on 3.8.1978, respondents Shri M.V.R.Bhaskara Rao, K. Jayachandra Rao, V. Raja Rao and Smt. Janaki Srikrishna along with the applicant were considered by the DPC and a panel of 201 names was prepared. The respondents referred to above were graded as 'very good' and the applicant was graded as 'good' only. In view of this, their names figured above the name of the applicant in the said panel. On 7.8.78 K.Jayachandra Rao

was promoted as Tax Assistant and Shri V.Raja Rao, M.V.R. Bhaskara Rao and Smt. Janaki Srikrishna were promoted as Tax Assistants on 8.1.1979. In so far as 1984 DPC for promotion to the post of Inspector of Income Tax is concerned, it is stated that the applicant had not completed two years term of service as Tax Assistant to be confirmed in that cadre. It is contended that Shri K.Jayachandra Rao and M.V.R.Bhaskara Rao were confirmed as Tax Assistants with effect from 22.8.1981 and as per Circular Letter dated 1.7.1982 persons having confirmation in a higher ministerial post rank senior to persons having confirmation in a lower ministerial post irrespective of their officiating position. As a result of these instructions, the officiating Head Clerks having confirmation as UDCs were ranked juniors to the confirmed Tax Assistants waiting for promotion as Head Clerks. The applicant was, therefore, not considered for promotion to the post of Inspector of Income Tax in the year 1984 as he was confirmed in UDC's cadre only. It is for these reasons, the respondents resist the claim of the applicant.

4. We have heard the learned counsel for the applicant and Shri M. Suryanarayana Murthy, Standing Counsel for Income Tax Department.

5. In so far as the applicant's name in the seniority list over the respondents 4, 5, 3 and 10 is concerned in as much as he was graded lower than the said respondents, he cannot get seniority over them in the cadre of the Tax Assistants.

~~As regards his being considered for the post of the Inspector~~

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As regards the applicant being considered for the post of Income-Tax in the year 1984, the respondents's contention is that he could not get confirmation as Tax Assistant as he had completed one year and eleven months service in the cadre of Tax Assistant.

As per Circular F.No.A.32011/7/82 Ad.VII dated 1st July, 1982, persons having confirmation in a higher ministerial post, rank senior to persons having confirmation in a lower ministerial post irrespective of their officiating position. As a result of these instructions, the officiating Head Clerks having confirmation as Upper Division Clerks were ranked juniors to the confirmed Tax Assistants waiting for promotion as Head Clerks. The applicant was, therefore, not considered for promotion to the post of Inspector of Income-Tax in the year 1984 as he was confirmed in the UDC cadre only. The respondents themselves say that as per Circular F.No.A.32011/8/84, Ad.VII dt.12-7-1985 of CBDT, the Ministry amended the practice of giving weightage to confirmed persons in lower post in preference to unconfirmed persons in higher cadre and that according to general principles of seniority, persons working in higher grades are to be treated as senior to those working in the lower grade.

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The Ministry however stipulated that this would apply w.e.f. the date of the said letter and the past cases

contd..

To

1. The Secretary, Central Board of Direct Taxes, Central Secretariat, North Block, New Delhi
2. Commissioner of Income Tax, Andhra Pradesh, Ayakar Bhawan, 8th Floor, Bawali Bagh, Hyderabad.
3. one copy to Mr. Deuba Mohan Rao, Advocate, 69/3 RT, Vijayanagar Colony, Hyderabad.
4. one copy to Mr. Suryanarayana Murthy, SC for Income Tax, CAT, Hyderabad.
5. one spare copy

1.8 A.M.
10th

Ans 27/6/69
Received on 27.6.69
P.T. 11.30

cannot be reviewed. Obviously, the Department has corrected the earlier anomaly by issue of the amended letter dated 12-7-1985. We are unable to accept the action of the respondents in not giving to the applicant the benefit of amended letter dt.12-7-1985 and denying him the consideration for promotion in the year 1984.

6. We are, therefore, of the view that the applicant should have been considered for the post of Inspector of Income-Tax notwithstanding the fact of his not completing two years of a term of service as Tax Assistant and not being confirmed in that cadre. We accordingly direct the respondents to constitute the DPC to consider the case of the applicant for promotion to the post of Income-Tax Inspector as on 25-7-1983 on which date the meeting of the last DPC was held wherein the cases of other eligible candidates for promotion were considered. In the event of the DPC finding him fit for promotion, the applicant should be given the seniority according to his position in the said panel. The application is accordingly allowed and there will be no order as to costs.

(Dictated in open court)

B.N.Jayashimha
(B.N.JAYASIMHA)
Vice-Chairman.

D.Surya Rao
(D.SURYA RAO)
Member (J)

Dt. 20th June, 1989.

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S. Venkateswaran
Deputy Registrar (S)
10/2/89