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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH  
AT HYDERABAD

OA.314/91

date of decision : 17-2-94

Between

P.D.M. Prasad

: Applicant

and

1. The Chief Commissioner  
of Income tax, Andhra Pradesh  
Aayakar Bhavan  
Bashirbagh, Hyderabad

2. The Govt. of India, rep. by  
its Secretary  
Department of Personnel  
M/o Home Affairs, South Block  
New Delhi

3. The Central Board of Direct Taxes  
rep. by its Chairman  
North Block, New Delhi : Respondents

Counsel for the applicant : M/s Duba Mohan Rao &  
G.V.R.S. Vara Prasad  
Advocates

Counsel for the respondents : Mr. N.V. Ramana Reddy

CORAM :

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. R. RANGARAJAN, MEMBER (ADMINISTRATION)

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O.A.No.314/91.

Date of Judgement : 17.2.94

J u d g e m e n t

X As per Hon'ble Shri Justice V.Neeladri Rao, Vice-Chairman.X

This O.A. was filed on 27.3.91 praying for declaration that the general principles of seniority contained in the Dept. of Personnel O.M.No.9/11/55-RPS dt. 22.12.1959 in so far as it relates to the fixation of seniority <sup>is</sup> as illegal, arbitrary and to quash the same and to consequently direct R1 to refix the seniority of the Applicant in the cadre of U.D.C. without reference to the date of confirmation with all consequential benefits.

2. The Applicant joined service in the Incometax Department as L.D.C. with special pay on 7.7.64. He was appointed as Stenographer w.e.f. 11.7.66. He was confirmed as L.D.C. w.e.f. 29.8.68. He, along with several other Stenographers, was converted as U.D.C. and posted as such w.e.f. 10.12.69. When the juniors to the Applicant in the cadre of U.D.C. were confirmed w.e.f. 26.7.64 while the Applicant was confirmed as U.D.C. on 17.2.76 the seniority list was revised as per O.M. dt. 22.12.1959. The seniority list of U.D.Cs was circulated on 29.4.78 wherein the Applicant was shown as junior to <sup>that</sup> whose who had become U.D.Cs after his entry into the cadre of U.D.C. It is stated that then the Applicant made a representation on 9.5.78 (Annexure IX) to the Commissioner of Incometax, Andhra Pradesh, Hyderabad requesting for restoration of his seniority and to place him immediately after Shri K.Kanaka Rao. The further case of the Applicant is that vide memo dt. 10.2.89 he was informed by the

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Dy. Commissioner of Incometax that the Chief Commissioner of Incometax remarked on the Applicant's petition that the appeal has come after about 15 years and the same was rejected as there was no justification for the grievance. It is also stated for the Applicant that when he made a representation on 31.10.89 wherein he specifically stated about the pendency of his representation dt. 9.5.78 the Applicant was informed vide memo dt. 26.2.90 that the rules do not provide for mercy petition. Then the Applicant again made a representation submitting that it was not a case of mercy petition and that his representation of 1978 was not disposed of. Then, vide order dt. 7.8.90 (Annexure I) the Applicant was informed that the seniority of the Applicant was according to the order of confirmation in the cadre of U.D.C. as per the general principles of seniority and as such there is no case for mercy petition. Then this O.A. was filed.

3. We have held in O.A.No.381/92 as per order dt. 28.7.93 that the O.M. dt. 22.12.1959 to the extent it provided for linking seniority with confirmation is violative of Articles 14 and 16 of the Constitution. In coming to the conclusion, we relied upon the judgement of the Supreme Court in AIR 1990 (2) SC 1607 wherein the principle enunciated in AIR 1977 SC 2051 to the effect that linking seniority with confirmation was arbitrary, was reiterated. The O.M. dt. <sup>4-11-92</sup> ~~4-3-88~~ was issued delinking the seniority from confirmation but it was specifically mentioned therein that it is prospective. It is stated that in view of the O.M. dt. 4.11.92 the earlier seniority was not disturbed and the same was followed in the seniority list that was prepared later.

4. In O.A.No.381/92 we have granted the relief prayed for in view of the finding <sup>that</sup> ~~in~~ O.M. dt. 22.12.1959 in regard to the provision whereby the seniority on the basis of confirmation

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To

1. The Chief Commissioner of Income Tax,  
Andhra Pradesh, Aayakar Bhavan, Bashirbagh, Hyderabad.
2. The Secretary, Govt. of India,  
Dept. of Personnel, Ministry of Home Affairs,  
South Block, New Delhi.
3. The Chairman, Central Board of Direct Taxes,  
North Block, New Delhi.
4. One copy to Mr. Duba Mohan Rao, Advocate, CAT, Hyd.
5. One copy to Mr. N. V. Ramana, Addl. CG Secy, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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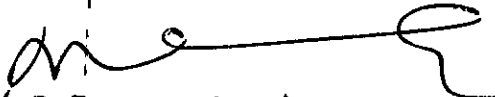
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is violative of Articles 14 and 16 of the Constitution eventhough the O.M. dt. 4.11.92 states that it is prospective.// Of course, the Applicant stated again in the later representation that he had submitted representation dt. 8.5.78 challenging the fixation of seniority on the basis of date of confirmation but <sup>if we felt</sup> when the Applicant had submitted such a representation it is not explained as to why he had not approached the court when the said representation was not disposed of within the reasonable time, that is, one year. For the said laches <sup>even if it was made</sup> the said representation dt. 9.5.78 cannot be looked into.

5. In the reply filed for the Respondents it was stated that Shri S. Krishnamurthy was promoted as Head Clerk on 11.9.89. As it is a case of promotion of the junior as Head Clerk even after the Applicant submitted his representation 10.2.89, the Applicant (who was promoted during the pendency of this O.A.) had to be given notional promotion as on 11.9.89, the date on which his junior was promoted as Head Clerk and the monetary benefit <sup>has to be</sup> is limited for the period from 27.3.90 i.e., from one year prior to this O.A.

6. In the result, the Applicant has to be given notional promotion as Head Clerk w.e.f. 11.9.89 and he has to be given the monetary benefit from 27.3.90.

7. The O.A. is ordered accordingly. No costs.


  
( R. Rangarajan )  
Member(A).

  
( V. Neeladri Rao )  
Vice-Chairman.

Dated: 17<sup>th</sup> Feb., 1994.

(Dictated in open court)

br.

  
Deputy Registrar (J)

