

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.262/93

Dt. of order: 20.2.1995

Kuldeep Ram Sabharwal : Applicant

Vs.

Union of India & Ors. : Respondents

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

CORAM:

Hon'ble Mr.Gopal Krishna, Member(Judl.)

Hon'ble Mr.G.P.Sharma, Member(Adm.)

PER HON'BLE MR.G.P.SHARMA, MEMBER(ADM.).

Applicant Kuldeep Ram Sabharwal has in this application under Sec.19 of the Administrative Tribunals Act, 1985, prayed that he may be treated as senior to respondents Nos.3 to 15 in the seniority list of Inspectors published in 1991 and his name may be placed above respondent No.3. He has further prayed that as and when DPC for promotion to the posts of Income Tax Officers is held, the respondents should treat the name of the applicant as having been placed above respondent No.3 in the seniority list of Inspectors. Still another prayer is that the respondents may be directed to keep one post of Income Tax Officer reserved, till the decision on this application.

2. The facts as stated by the applicant are that he was appointed as UDC in the Income Tax Department on 31.5.1968 and after passing the departmental examination for Inspectors in 1972 he also passed the Income Tax Officer's examination in the year '88. As stated by him during the arguments, that he got promotion as Inspector of Income Tax on 30.6.'89. According to the applicant several officials who had joined the department as Stenographer were granted promotion as Inspectors earlier than the applicant although they had all passed the examination of Inspectors later than the applicant. These officials are respondents Nos.3 to 15. According to the applicant, the Income Tax Department (Inspector) Recruitment (Amendment) Rules, 1986, by which the Income Tax Department (Inspector) Recruitment Rules, 1969 were amended were declared as void as these offended Articles 14 and 16 of the Constitution. According to the applicant, respondents Nos.3 to 15

get promotion earlier than the applicant solely on account of operation of the rules as amended w.e.f. 1986. Since the amendments have since been struck down as void, the original rule is restored and the applicant is entitled to have his seniority based on the year of passing of the Inspector's Examination. Therefore, he is entitled to promotion earlier than respondents Nos.3 to 15. Even if the promotions already granted are not to be up-set, notional seniority should be granted to him above respondents Nos.3 to 15 on the ground of his having passed the departmental examination earlier than these officials.

3. The respondents Nos.1 and 2 (Govt. respondents) in the reply have stated that only one amendment to the rule, column 11 of the Schedule to the rules, has been struck down by the New Delhi Bench of the Tribunal and it is not that the entire rules have been struck down. Further, the Tribunal has stated in its order that the impugned rule has been declared as void prospectively from the date of the decision. This order was passed on 27.11.'92. Therefore, the applicant cannot get any benefit of the judgment of the Tribunal.

4. We have heard the applicant and the learned counsel for respondents Nos.1 and 2. No reply has been filed on behalf of respondents Nos.3 to 15 nor has anybody appeared on their behalf.

5. The applicant stated during the arguments that his alternative plea is that he should be deemed to have been granted promotion earlier on the basis of his length of service. He submitted that it is unjust and inequitable to deny him at least notional promotion when he had passed the departmental examination for Inspectors earlier. He, therefore, prayed that at least notionally he should be fixed in the grade of Inspector at a place higher than respondents Nos.3 to 15. The learned counsel for the respondents stated that since the rules have been declared as void prospectively from the date of the decision of the Tribunal namely 27.11.92, officials who had already promoted on the basis of the rules before rendering of the decision cannot be granted any benefit.

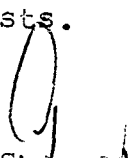
6. We have perused order dated 27.11.92 passed by the New Delhi Bench of the Tribunal in O.A.No.846,86 on which the applicant has relied. Paras 8 and 9 of the order of the Tribunal are under:


"8. Having regard to the fact that these rules have been in force for quite sometime, though there is an interim order to the effect that the promotions made during the pendency of these proceedings shall be subject to the final decision, with a view to avoid undue upsetting of the promotions at this stage, we consider it just and proper to declare the impugned rule as void prospectively from the date of the decision. Consequently, it follows that no further promotion can be made hereafter on the basis of the impugned rule and it would be open to the rule-making authority to replace the rule which has been struck down by us, by a valid rule.

9. For the reasons stated above, this petition is allowed and column No.11 of the Annexure P-2 of the Income Tax Department (Inspector) Recruitment Rules, 1969, as amended by the Income Tax Department Recruitment (Amendment) Rules, 1986 is hereby declared as void as offending Article 14 and 16 of the Constitution. The respondents are restrained from giving effect to the same from this date. It is open to the rule-making authority to make appropriate rules in accordance with law. No costs."

Since the applicant was granted promotion in 1989 and the relevant rule has been struck down as being void prospectively vide order dated 27.11.92, the applicant cannot be granted benefit of the judgment of the Tribunal. Grant of even notional promotion to the applicant from a date earlier than that on which respondents Nos. 3 to 15 were granted as promotion as Inspectors would amount to ranking him higher in seniority than respondents Nos.3 to 15 and this is also not permissible in view of para 8 of the decision of the Tribunal. Where rules have been framed and these are being followed, all promotions have to be in accordance with these rules and not on the basis of general principles of equity and fair play. It is not the applicant's case that if the rule amended w.e.f. 1986 is applied, there was any irregularities with regard to grant of his promotion. His case is on the otherhand that since the rule has been struck down as being void, his seniority cannot be fixed on the basis of promotion granted in terms of the said rule declared as void.

7. In the circumstances, we dismiss this O.A. with no order as to costs.

  
(O.P.Sharma)  
Member(A).

  
(Gopal Krishna)  
Member(J).