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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIFUR.

OA No. 350/93

: Date of order : 28-7-1994

Pawan Kumar Sharma & Others: Applicants

v/s

Union of India & Others : Respondents

Sh. S.K. Jain : Counsel for the applicants

Sh. N.K. Jain : Counsel for the respondents

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

Hon'ble Mr. O.P. Sharma, Member (Administrative)

PER HON'BLE MR. O.P. SHARMA, MEMBER (ADMINISTRATIVE)

In this application u/s 19 of the Administrative Tribunals Act, 1985, the applicants S/Shri Pawan Kumar Sharma, Amar Singh Nehra and Anil Kumar Sharma have prayed that the order (Annexure A-1) dated 7.6.93 by which the representation of applicants nos. 1 & 3 claiming higher seniority was rejected may be quashed and the applicants may be granted seniority as per the OM dated 22.12.59 (Annexure A-2), with all consequential benefits.

2. The applicants' case is that all of them are Inspectors in the Income Tax Department, Rajasthan. They are all direct recruits to the post of Income Tax Inspector. They were recruited on the basis of notification for vacancies issued by Staff Selection Commission on 22.6.85, written examination held on 22.12.85, interviews held in September, 1986 and the result declared on 9.11.86. Applicant no. 1 was appointed on 23.6.87, applicant no. 2 on 6.7.87 and applicant no. 3 on 14.8.87.

3. The OM dated 22.12.59 (Annexure A-2) governed the seniority of Inspectors appointed through promotions and direct recruitment. As per this OM, the ratio between direct recruits and promotees was 1:2, i.e., after every two promotees one direct

recruitment was to be adjusted. This CM continued to governed the seniority of the incumbents till 1.3.86 when the seniority rules contained in this CM were amended by a subsequent CM dated 7.2.86 (Annexure A-3) which was effective from 1.3.86. The applicants' case is that posts against which they were recruited fell vacant in 1985, the vacancies are required to be determined every year, action to fill up vacancies is also to be taken every year and since vacancies were notified in June, 1985, the applicants were entitled to the benefit of the rule incorporated in the CM dated 22.12.59 for the purpose of their seniority. The new CM (Annexure A-3) provides that if recruitment action has already been taken before 1.3.86, seniority would be determined under the old CM (Annexure A-2) dated 22.12.59. "Recruitment Action" would mean the issue of notification of vacancies and this action starts from the date the vacancies are determined by the Competent Authority. Therefore, the recruitment action in this case started in 1985, i.e., before 1.3.86. However, the rules incorporated in CM dated 22.12.59 were not followed in fixing the seniority of the applicants. Representation by the applicants for assignment of correct seniority was rejected by respondent no. 3, namely, Chief Commissioner, Income Tax Department, Jaipur, on the ground of judgement of the Tribunal delivered on 17.12.92 in OA no. 229/92 (M.L. Mahur & Ors. Vs. Union of India) filed by promotee Inspectors) wherein the Tribunal interpreted the expression "recruitment action" as appointments made. Though the applicants were the affected parties in the said OA, yet they were not made parties to the application by Shri Mahur & Others. Three other persons (all direct recruits) were however private respondents in that application. The Tribunal had held/its above judgement that the private respondents in the said OA (No. 229/92) were not the parties affected by the amended rules contained in CM dated 7.2.86 (Annexure A-3) as their appointment was against the

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vacancies of 1983 and the list of selected candidates was also received in October, 1984. The above judgement was given without hearing the applicants and, therefore, it did not bind them. Therefore, the action of the respondents in rejecting the representation of the applicants on the ground of applicability of the ratio of this judgement was wrong and illegal.

4. The respondents in their reply have stated that the contents of the OM dated 22.12.59 are not applicable to the cases of the applicants in view of the interpretation given by the Tribunal in the case of M.L. Mahur & Others. The OM dated 22.12.59 is applicable to those persons who were appointed upto 1.3.86. OM dated 7.2.86 came into force from 1.3.86. Therefore, seniority of persons appointed after 1.3.86 has been determined on the basis of OM dated 7.2.86. In the OA filed by Shri M.L. Mahur, some private respondents were also impleaded whose interests were similar to those of present applicants. Issue of advertisement for vacancies or holding the examination does not give any right to any person.

5. We have heard the learned counsel for the parites and have gone through the records.

6. During the course of arguments, the learned counsel for the applicants cited a number of rulings to show how seniority is to be determined between direct recruits on the one hand and the promotees on the other where a quota for direct recruits and promotees have been prescribed. In our view, however, these rulings will have no bearing on this case and, therefore, these are not cited and considered here. The reason is that the issue involved in this case is whether the rules in OM dated 22.12.59 should govern the seniority of the applicants viz-a-viz the promotees or whether the rules in OM dated 7.2.86 should govern their seniority. It is not the grievance of the applicants that although the rules in OM dated 7.2.86 have been applied, their seniority has not been correctly determined in pursuance of these rules. Their plea is that the rules in OM dated 7.2.86 (Annexure A-3) are not at all applicable to them and that the rules in

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CM dated 22.12.59 are applicable. The only question, therefore, to be decided now is which of these two CMs would be applicable to the cases of the applicants, for the purpose of determining their seniority.

7. This controversy has been settled by the judgement of this Bench of the Tribunal in OA no. 229/92 (M.L. Mahur & Others Vs. Union of India & Others) delivered on 17.12.92 to which a reference has been made by the applicants. The facts in the said case were identical to those of the present case with the difference that the applicants in that application were appointed as Inspectors on promotion and the respondents therein were direct recruits. After an elaborate discussion of the entire issue involved, the Tribunal in para 7 of their judgement referred to above interpreted the expression "recruitment action" referred to in the CM dated 7.2.86 to mean the appointment of the incumbent on completion of the process of recruitment. This judgement of the Tribunal decides a principle and interprets the expression "recruitment action" occurring in CM dated 7.2.86. Thus this judgement has to be treated as a judgement in rem and has, therefore, to be followed by us. Even though the applicants were not parties to the OA in which the judgement was delivered yet there were other direct recruit Inspectors who were respondents in the said OA and their point of view was also taken into account by the Tribunal. Even on merit we are not persuaded that this judgement does not lay down the correct law.

8. There is another consideration to be borne in mind. If we were to unsettled the position settled by the judgement dated 17.12.92, the interests of those persons who were parties to the application either as applicants or as respondents would again be affected in one way or the other. Therefore, we cannot unsettle the settled position without hearing those persons. This is one more reason for not departing from the ratio of the judgement dated 17.12.92.

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9. The three applicants in this application were all direct recruits and appointed in 1987 i.e. after 1.3.86, the date from which OM dated 7.2.86 came into force. Their seniority is, therefore, to be governed by the rules contained in OM dated 7.2.86. As already stated above, there is no dispute that if they are to be governed by the rules in OM dated 7.2.86, their seniority has been correctly determined.

10. In the circumstances, we find no merit in this OA. It is accordingly dismissed with no order as to costs.

(O.P. Sharma)
Member (A)

(D.L. Mehta)
Vice-Chairman