

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 18th day of April 2005

ORIGINAL APPLICATION NO. 469/2002

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. A.K. BHANDARI, ADMINISTRATIVE MEMBER

Shri T C Sethi son of Shri Nemi Chand Sethi, aged 52 years working as Inspector, I T, in the office of the Addl Commissioner, Income Tax Range-I, Ajmer, r/o 506, Sada Badi Mohilla, Nashirabad.

....Applicant

By Advocate: Mr. P V Calla.

VERSUS

- 1 Union of India through Secretary to the Government, Government of India, Ministry of Finance, Department of Revenue, New Delhi.
- 2 The Chief Commissioner, Income Tax, Rajasthan, Central Revenue Building, Jan Path, Bhagwan Das Road, Jaipur.
- 3 The Commissioner, Income Tax Ajmer-Jaipur Road, Ajmer.
- 4 Shri Kalu Ram Sharma, Income Tax Inspector, O/o the Chief Commissioner, Income Tax, Jaipur, Near Revenue Building, Jan Path, Bhagwan Das Road, Jaipur.
5. Shri Kirori Lal Meena, Income Tax Inspector, O/o the Chief Commissioner, Income Tax, Jaipur, Near Revenue Building, Jan Path, Bhagwan Das Road, Jaipur.

....Respondents.

By Advocate : Mr. Gaurav Jain (Respondents nos. 1 to 3)
None present (Respondent No. 4 and 5)

ORDER

Per MR. J.K. KAUSHIK, JUDICIAL MEMBER

Shri P K Sethi has filed this OA u/s 19 of the

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Administrative Tribunal's Act, 1985, wherein the applicant has, inter-alia, prayed for quashing the order or revised seniority list of Inspector of 23.9.2002 by way of modification to the extant of assignment of correct seniority list and for further direction for consideration of her case for promotion to the post of Income Tax Officer with all consequential benefits.

2 We have heard the learned counsel for both the parties and have very carefully perused the pleadings and the records of this case.

3 The factual matrix of this case, as is considered necessary for resolving the controversy involved herein, is that the applicant came to be initially appointed to the post of LDC and enjoyed his further promotions to the post of UDC and Tax Asst on dated 14.8.70 and in the year 1990, respectively. He got an opportunity to undertake the departmental competitive examination for the post of Inspector under promotee quota which he successfully passed in the year 1976 on fulfilling other eligibility conditions as per the rules in vogue. He enjoyed his promotion to the post of Inspector of Income Tax on dated 13.8.93 at Ajmer. It has been further averred that respondents have issued a seniority list of Inspector in the year 1995, wherein the applicant was placed at Sl No. 212 with dated of appointment as 17.8.93 and the names of private respondents were placed at Sl. No. 213 and 261, with dated of appointment as 22.6.94 and 18.5.94, respectively. Another provisional

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seniority came to be issued in the year 1998 wherein the name of the applicant was shown at Sl. No. 141 and that of the private respondents No. 4 and 5, at Sl. Nos. 133 and 185, respectively. There was further revision of seniority vide impugned seniority list and finally the name of the applicant was shown at Sl. no. 162 and the name of the private respondents at Sl. Nos. ¹¹⁷ ~~117~~ and 142, respectively. Certain other detail's have been averred. The applicant moved a ~~representation~~ ^{to him} protesting against the assignment of seniority to ~~him~~. Finding no response, this OA has been filed on diverse grounds, mentioned in Para No. 5 & its sub paras. The respondents have contested the case and filed a detailed and exhaustive reply to the OA countering the facts and grounds raised in the OA.

4 At the outset, learned counsel for the applicant invited our attention to one of the judgements which came to be passed by the co-ordinate Bench of the Tribunal at Jodhpur in OA Nos. 270/2002 & Others, R.K. Bothra and three others vs. Union of India & Others. He contended that the controversy involved in the instant case has already been resolved in the said judgement and the same does not remain res-integra inasmuch as the whole issue has been adjudicated upon in detail and set at rest. Therefore, this OA may be decided on the similar lines.

5 Per contra, learned counsel for the respondents has submitted that in similar matter, the respondents have filed DB Civil Writ Petition No. 787/2004 and 788/2004 before the Hon'ble

High Court of Rajasthan at Jodhpur, wherein their Lordships of the Hon'ble High court vide order dated 20.2.2004 have been pleased to stay the operation of the order of the Tribunal dated 08.09.2003 passed in R.K. Bothra (supra) until further orders and in this view of the matter it can be safely construed the matter is pending and sub-judice before the Hon'ble High court.

6 We have considered the rival contentions put forth by both the parties as far as the controversy involved in this case is concerned the same is fully resolved. We also find that the respondents side, there is no serious dispute as far as the the factual aspect of the matter is concerned. However it is submitted that the respondents certainly have some reservation as far as the legal proposition is concerned inasmuch as they have challenged the very judgement being relied upon by the applicant, before the Hon'ble High court and the whole controversy shall be settled after the Hon'ble High court decides the matter. Since the matter has already been adjudicated by the Tribunal at Jodhpur, there is hardly any adjudication required at this end. However we shall take care of the version of the respondents also so as to impart the substantial justice and also to protect their rights for the time being. We have no hesitation in deciding this case on similar lines as has been done by the co-ordinate Bench of Jodhpur in R.K. Bothra and three others (supra).

7. We are refraining from making fresh discussions in this order

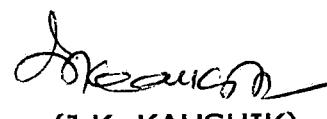
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and are placing a copy of aforesaid judgement and the contents of same shall be read as a apart of this order. However, we would hasten to add that as matter of principle no one can be assigned seniority from a date when one was not even in service. If the action of the official respondents was to be endorsed, such result would be inevitable. However, the Hon'ble Tribunal has in an unequivocally held in R K Bothra's case supra that one could be assigned seniority only from the date of one's joining and we are in full agreement with the same.

8. In the result, this OA is allowed. The seniority list dated 23.9.2002, showing the position of the applicant and the private respondents is hereby quashed. The official respondents shall revise the seniority of the applicant above the private respondents in the light of the law laid down in R.K. Bothra & three others (supra). It is further directed that on revising the seniority, if the applicant is found suitable for promotion, he should be promoted from the date his immediate junior was so promoted with all consequential benefits. This order shall be complied with within a period of three months from the date of communication of this order. However, it is made clear that this decision shall be subject to the result of the Writ Petition(s) supra pending adjudication before the Hon'ble High Court of Rajasthan at Jodhpur. No costs.


(A.K. BHANDARI)

ADMIN MEMBER


(J.K. KAUSHIK)

JUDICIAL MEMBER