

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 133 of 2001

Bilaspur, this the 8th day of July, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

R.K. Baral,
Income Tax Officer,
Ward 2 Bhilai,
Aykar Bhawan, New Civic Centre,
Bhilai, District Durg Chhattisgarh

APPLICANT

(By Advocate - Shri Manoj Sharma)

VERSUS

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi.
2. The Chief Commissioner of Income
Tax, Aykar Bhawan, Hoshangabad Road.
Bhopal
3. The Commissioner of Income Tax,
Raipur, Central Revenue Building,
Civil Lines, Raipur 492 001.

RESPONDENTS

(By Advocate - Shri B.da.Silva Sr. Advocate along with
Shri S.Akhtar)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this OA, the applicant has sought the
following main relief :-

"(ii) to quash and set aside the impugned
reversion(A-1) and impugned Communication(A-2).

(iii) to direct the respondent authorities,
as a consequence of quashment of impugned orders,
to treat the applicant as ITO(B) since 2.2.94
till date.

(iv) to grant all the consequential benefits
thereof treating the applicant as holding the post
of I.T.O. Group B w.e.f. 2.2.94 till date with
all consequential benefits of pay, perk and status
and arrears thereof.



2. The brief facts of the case are that the applicant was working as Inspector in the Income-tax Department from April, 1989. As per rule, he was eligible for next higher promotion to the post of Income-tax Officer (Group-B), on the basis of evaluation of service record and qualifying the departmental examination. The three conditions for promotion to the post of Income-tax Officer are - (i) passing of the departmental examination with minimum pass percentage; (ii) completion of three years as Income-tax Inspector; and (iii) satisfactory record as adjudged by the DPC. The applicant has cleared the departmental examination in the year 1992 by securing 61.1% marks. He was recommended by the DPC for promotion to the post of Income-tax Officer in the meeting held on 23.6.1993 and he was promoted as such vide order dated 31.1.1994. However, vide order dated 19.12.1994 he was reverted back to the post of Inspector i.e. on 20.12.1994 and thereafter on the very next day/he was again promoted to the post of Income-tax Officer. Aggrieved by this, the applicant has filed this OA claiming the afore-mentioned reliefs.

3. Heard the learned counsel of both the parties.

4. The learned counsel for the applicant has advanced several grounds. He has stated that the applicant was senior enough in the consideration zone and was eligible to be considered against the general vacancies. Moreover, the applicant has also passed the departmental test with the same standard as required for general candidates. He has advanced ^a number of other grounds viz. that the applicant should not have been reverted to the post of Inspector vide order dated 19.12.1994 and again promoted on 20.12.1994, since the applicant has already passed the test as a general candidate and was within the zone of consideration. In addition to this, he has taken several other grounds to buttress his argument that the applicant who was promoted w.e.f. 31.1.1994 should not have been reverted ^{from the post of ITO and 2} ~~and as~~ ITO he should have been continued ^{as} ~~as~~ ^{such.}

Inter alia, he has also relied on the decision of the Hon'ble Supreme Court in the case of R.K.Sabharwal Vs. State of Punjab, (1995)2 SCC 745 = 1995 SCC (L&S)548 wherein it has been held that the reserve category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts, their number cannot be added and taken into consideration for working out the percentage of reservation. Moreover, the cut off date for reverting scheduled caste candidates, who were promoted in excess of their quota was fixed as per the date of the decision in R.K.Sabharwal (supra) i.e. 10.2.1995. Therefore, even if a candidate was promoted under reservation quota against the reserved vacancies in excess of their quota could not have been reverted in December, 1994, i.e. even before the cut off date.

5. On the other hand, the learned counsel for the respondents has stated that the applicant was reverted on ^{interim} 19.12.1994 in pursuance of the direction given by this Tribunal in the case of S.R.Ambedkar and others Vs. Union of India and others,ⁱⁿ O.A.No.384 of 1994. He has also submitted that these facts have also been discussed in detail while deciding the O.A.384/1994 & two other OAs 44 & 625/1995 vide common order dated 5.1.1996, reported in (1996)34 ATC 188. In the said order, the Tribunal has justified the reversion of the applicant Gitesh Kumar and two others in OA 44/1995. So, the Tribunal has justified the action of the respondents in reverting the applicants vide order dated 19.12.1994. The learned counsel has contended that it was not only the present applicant but other persons namely Gitesh Kumar and I.B.Khandel were also reverted. Gitesh Kumar has filed OA 44/1995 and the Tribunal vide order dated 5.1.1996, as stated above, has justified the action of the Government in reverting those who were in excess of their quota. The said order of the Tribunal was challenged before the Hon'ble Supreme Court and their lordships have upheld the order of the Tribunal. Therefore, this order dated 5.1.1996 has attained the finality. All the

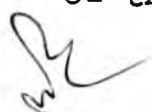
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arguments advanced by the learned counsel for the applicant, have been considered by the Tribunal in great detail in the aforesaid order dated 5.1.1996 and have been rejected. Therefore, this Bench cannot go into the same argument^{again.} The same grounds^{had} been taken by Shri Gitesh Kumar and I.B.Khandel , who were the officers reverted by the same order along with the present applicant, have also been adjudicated by the Tribunal. The learned counsel has drawn our attention to para 17 & 25 of the order of the Tribunal in the case of S.R.Ambedkar (supra) (copy placed on record as Annexure-A-6).

6. We have carefully considered the contentions advanced by the learned counsel of parties. We find substance in the arguments advanced by the learned counsel for the respondents. The applicant has been promoted to the post of Income-tax Officer vide order dated 31.1.1994 and was reverted vide order dated 19.12.1994 along with one Gitesh Kumar. The said Gitesh Kumar had challenged his order of reversion dated 19.12.94 before the Tribunal in OA 44/1995 and the Tribunal vide its common order dated 5.1.1996 passed in OAs 384/94, 44/95 and 626/95 has justified the reversion of said Gitesh Kumar. It is also an admitted position that the applicant was reverted in pursuance of the interim direction passed by the Tribunal in OA 384/94. It is also not in dispute that the action taken by the respondents reverting the applicant was justified by the Tribunal, as stated above, in its final order dated 5.1.1996. In the last para of the said order, the Tribunal has held as under-

"38. The applicant was reverted vide order dated 19.12.1994. The department had earlier committed the mistake in not adjusting SC candidates getting promotions according to their seniority against the reserved vacancies in the roster. This mistake was corrected by holding review DPC. As a result of the review DPC meeting held on 16.12.1994 the applicant Gitesh Kumar and two others were reverted. Now the applicant has been promoted on 28.3.1995. Since the reversion was effected to rectify the mistake it cannot be faulted with and no relief can be granted to the applicant."

7. Moreover, this case is barred by limitation. The order of the Tribunal dated 5.1.1996 has attained finality by travelling



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upto the Hon'ble Supreme Court. The applicant has not filed any OA within the permissible time limit. The ground taken by the applicant that he was informed about the grounds only in the year 2000 cannot be accepted and cannot extend the period of limitation. The order/which has been challenged by the applicant, has already been considered by the Tribunal in the aforesaid order dated 5.1.1996 as well as by the Hon'ble Supreme Court. The applicant was sleeping over his rights for all these years, Therefore, we do not find any ground to interfere with the orders passed by the respondents.

In the result, the O.A. is devoid of any merits and is accordingly dismissed. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

rkv.

पृष्ठान्त से ओ/नं. जयपुर, दि.
प्रतिनिधि अर्ज दिला :-

- (1) सचिव, उच्च न्यायालय एवं एडमिनिस्ट्रेशन, जयपुर
- (2) आदेश श्री/श्रीमती/शु. के कांस्टेबल Manoj Sharma
- (3) प्रत्यक्षी श्री/श्रीमती/शु. के कांस्टेबल T. Damber
- (4) वांछित, कोर्ट, जयपुर न्यायाधीश
सूचना एवं आवश्यक कार्यवाही हेतु

19-7-04
उप रजिस्ट्रार

Issued
on 20.7.04
JS