

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

....

Dated, this 23rd day of March Two Thousand Four

P R E S E N T

The Hon'ble Shri.M.P.Singh, Vice Chairman

and

The Hon'ble Shri.G.Shanthappa, Judicial Member

O.A.NO.810/1996

Applicant : G.C.Nandanwar,
aged about 45 years,
S/O Shri.Eknath Nandanwar,
Inspector of Income Tax,
Katni, Jabalpur (MP)

Vs.

Respondents : 1. Union of India through the
Secretary, Ministry of Finance,
Department of Revenue,
Government of India,
North Block New Delhi

2. The Chief Commissioner of Income Tax,
Aaykar Bhawan,
Hoshangabad Road, Bhopal, MP

3. Commissioner of Income Tax,
Aaykar Bhawan,
Hoshangabad Road, Bhopal, MP

4. Shri.N.K.Verma,
Inspector of Income Tax (Audit)
in the office of addl. Commr. of
Income Tax, Range I, Raipur (MP)

5. Shri.M.G.Soni,
Inspector of Income Tax (Audit)
in the office of Addl. Commr. of
Income Tax (Audit), Jabalpur (MP)

6. Shri.N.P.Dwivedi,
Inspector of Income Tax in the
office of Addl. Commr. of Income Tax
Range I, Jabalpur (MP)

Advocate for applicant Shri.Manoj Sharma

Advocate for R 1 to 3 Shri.B.Da.Silva

Advocate for R 4 Smt.S.Menon

ORDER

By Hon'ble Shri.G.Shantappa, Judicial Member :

The above O.A. is filed seeking the relief to quash the Impugned Order dated 20th November, 1996 passed by the 2nd respondent vide Annexure 4 i.e. Chief Commissioner of Income Tax, Bhopal and the Commissioner of Income Tax, Bhopal and further relief to promote the applicant with effect from the date on his immediate junior has been promoted and placing the applicant above all such junior persons in the promoted cadre of Income Tax Officer (Group B).

2. The brief facts of the case are: The applicant joined the Income Tax Department as direct recruit Income Tax Inspector on 7.2.1980 at Jabalpur. The respondents 4,5, and 6 joined on the post of Inspector of Income Tax on 2.8.1980, 14.1.1985 and 6.11.1986 respectively. It is an admitted fact that all the respondents 4,5 and 6 are juniors to the applicant.

3. The respondent department, to promote the Income Tax Officers to the post of Income Tax Officer (Group B) i.e. the next higher post is made 100% by way of



promotion out of eligible Inspectors of Income Tax.

The criteria for the eligibility are (i) 3 years service

on the post of Inspector of Income Tax plus passing

of departmental examination of Income Tax Officer (Group B)

in the ACR
(ii) Bench mark- 'Good' and (iii) incumbents considered

for promotion to the post of Income Tax Officer (Group B)

are promoted on the basis ^{of} seniority cum fitness.

The controversy with regard to reservation in promotion

to the post of Income Tax Officer (Group B) arose wherein

petitions were filed by reserved category candidates

as well as general candidates before this Hon'ble Tribunal.

The said petitions were disposed off by a common judgement

passed in S.R.Ambedkar & two others vs. Union of India &

others by order dated 5.1.1996 in O.A.No.626/95. This

of
Tribunal upheld the claims ^{of} general category candidates,

while upholding that applicant no.1, S.R.Ambedkar, is not

entitled to promotion with effect from the date as claimed

by him but as regards the other two applicants belonging

to reserve category, this Tribunal has observed that they

will have to await their turn for promotion according



to their seniority. The Tribunal in substance declined the relief to the reserve category candidates with regard to their accelerated promotion by giving them benefit of reservation, nevertheless the claim of such reserve category candidates to promotions according to their seniority has been upheld. The applicant is one such eligible candidates belonging to reserve category who has a right to be promoted in accordance and by virtue of his seniority, in the cadre of Inspectors of Income Tax of Madhya Pradesh region, on the ground that there is no question of accelerated promotion/seniority in his case.

4. While promoting the Income Tax Officers to the post of Income Tax Officer (Group B), the official respondents have to follow the roster meant for reserve category candidates. The contention of the applicant, that, there is no bar for filling up vacancies in general category even in favour of candidates belonging to the reserved category, if the said reserved category candidate is entitled to the same on the basis of the general seniority.



In this respect, the Hon'ble Supreme Court has decided in the case of Akhil Bharatiya Soshit Karmachari Sangh Vs. Union of India and others, R.K.Sabarwal's case and Virpal Singh Chauhan and others. In view of the judgement rendered by this Tribunal and judgement of the Hon'ble Supreme Court, the applicant has got legitimate right for promotion to the post of Income Tax Officer (Group B). Hence, he is entitled for the relief.

5. Per contra, the respondents have filed reply denying the averments made in the O.A. and also their specific contention is that the applicant belongs to Scheduled Tribe Category whose services were confirmed on 28.12.1990. The respondents 4, 5 and 6 are juniors to the applicant. The official respondents have notified the Recruitment Rules, called, Ministry of Finance, Department of Revenue, Income Tax Officer Group B posts, Recruitment Rules, 1994. In the said rules, the eligibility criteria are (i) 3 years service on the post of Inspector of Income Tax plus passing of Departmental examination for Income Tax Officer (Group B) (ii) In the ACRs - Bench Mark ^{should be} ~~of~~ 'Good' _{ex.}

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and (iii) incumbents considered for promotion to the post of Income Tax Officer (Group B) are promoted on the basis of seniority cum fitness. The services of the applicant that, he entered into the services on 7.2.1980, he has not passed the departmental examination within three years, he has passed the departmental examination in the year 1988 availing the relaxation/ concession in marks ^{under} ~~to~~ SC/ST obtaining 46% as against 50% required for the general category candidates to qualify. The issue in this case regarding whether the case of the applicant can be considered for the promotion to the post of Income Tax Officer (Group B) in the general category? This issue has been decided by this Tribunal in O.A.No.626/95 (S.R.Ambedkar & 2 others Vs. Union of India & 2 others). The relevant para (30) of the judgement speaks about the consideration of reserved category to the general category. The said case also relates to the Income Tax Department and also to the promotion to the post of Income Tax Officer (Group B). As on date of D^{PC} Proceedings, for promotion to the post of Income Tax Officer (Group B), the

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applicant was not qualified. Hence his case was not considered. The applicant has relied on the judgement of the Hon'ble Supreme Court in Akhil Bharatiya Soshit Karmachari Sangh Vs. Union of India and others. The said case is not applicable to the fact of the case. In the said judgement, the eligibility criteria for promotion as Income Tax Officer (Group B) (i) passing departmental examination for Income Tax Officer (ii) to serve as Income Tax Officer for three years and (iii) DPC Bench Mark ^{should be} 'Good'. Since the applicant _{cp} has availed the benefit of reservation at the time of taking departmental examination, he cannot claim for promotion under general category. Para 32 of the judgement in O.A.No.384/94 (Girish Agrawal and another vs. Union of India and 5 others) dt.5.1.1996, the Hon'ble Tribunal held that all the roster points are occupied and there is no vacancy for reserved category candidates. Presently, there is an excess of two reserved category candidates considering the cadre strength of Income Tax Officer (Group B) in M.P.Region i.e. 106.

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6. The applicant's name was included in the list of eligible candidates placed before the DPC meeting held on 13.11.1996 and his/^{name} figured at S.No.2 as the names were placed as per inter-se-seniority of Inspectors who had passed the departmental examination and were coming in the zone of consideration. Since there is an excess of two reserved category, the case of the applicant did not considered. That can be adjusted only for future reserved vacancies not under the general category. The respondents further submitted that the judgement of this Tribunal in O.A.No.626/95 has been challenged before the Hon'ble Supreme Court. The said SLP is pending for adjudication. Hence, the matter is subjudice. Therefore, the application is eligible to be dismissed.

7. After hearing the advocates for the applicant as well as the respondents and perusal of the pleadings and documents, we proceed to decide the case.



8. The admitted facts are: the applicant belongs to Scheduled Tribe category, he is the senior to the respondents 4, 5 and 6. The applicant and the private respondents have appeared for the departmental examination for promotion to the post of Income Tax Officer (Group B) as per the rules. When the applicant has taken the benefit for appearing on examination under the reserve category, he cannot opt for promotion under the general category. The eligibility criteria under the said rules for promotion to the post of Income Tax Officer (Group B) are (i) 3 years of service as Income Tax Officer and to pass departmental examination under the reserve quota; ^{in The ACR} (ii) ~~Bench~~ Mark should be Good and ~~and~~ (iii) the incumbents considered for promotion to the post of Income Tax Officer (Group B) are promoted on the basis of seniority cum fitness, ~~In due course~~ such inspectors who possess the requisite qualification are considered and promoted to the post of Income Tax Officer (Grade B).

9. The said controversy with regard to the reservation for promotion to the post of Income Tax Officer was arose. The same has been decided in O.A.No.626/95

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dated 5.1.1996. It is relevant to mention that the decision taken by this Tribunal in the said case are to fill the reserve category candidates as well as the general category candidates. The applicant has contended that the department has misunderstood and mis-intrepreted the judgement of the Tribunal depriving eligible candidates for reserved category whose turn for promotion in accordance with their seniority ~~has~~ ^{is} ~~come~~. The right of the applicant ^{is} to be promoted in accordance and by vitue of his seniority in the cadre of Income Tax Officer of Madhya Pradesh Region has been curtailed, ^{and} ~~the~~ respondents 4, 5 and 6 are promoted. In the seniority list, the applicant is at sl.no.21 and the respondents 4,5 and 6 are at sl.no.28, 38 and 48 respectively. The mode of category in the entry, ~~of~~ the applicant was direct recruit ^{under} ~~for~~ Scheduled Tribe, the mode of category in the entry of Respondent 4 was under rehabilitation scheme in general category and the respondents 5 and 6 were entered in the service as promotee under general category. All the services of the applicant and the respondents are

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from different categories. Admittedly, the respondents 4, 5 and 6 are belongs to the general category. The respondents have contended that there is no vacancy available in the roster point for reserve candidate. But there are promotions in the reserve category against general category candidates in ~~reserve~~ roster point. The respondents have also relied on the judgement of this Tribunal in OIA.No.384/94 (Girish Agarwal). All roster points are occupied and there is no vacancy for reserved category candidates, presently there is an excess of two reserved category candidates considering the cadre strength of Income Tax Officer (Group B) in Madhya Pradesh. To show that two reserved category candidates strength of Income Tax Officer (Group B) in Madhya Pradesh Region i.e. 106 as per statistics given below:

	<u>SC</u>	<u>ST</u>	<u>Total</u>
(A) Permissible reservation of SC and ST (i.e. 15% and 7.5%) respectively	16	8	24
(B) Present working strength of reserved candidates	23	3	26

Thus there is an excess of two reserved category candidates.

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In accordance with the para 4 of the judgement
in Akhil Bharatiya Soshit Karamachari Sangh, Vs.
Union of India (JT 1996 (8) S.C. 274 which speaks
about the adjusting the roster representation. The
relevant portion are:

'The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post, the same has to be filled from amongst the category to which the post belonged in the roster but in the event of non-availability of a reserve candidate at the roster point it would be open to the State Government to carry forward the point in a just and fair manner. Having indicated the law as above it was categorically held that the principle should operate only prospectively. In further elaborating the point of computation of the percentage of reservation this court further held

While deciding the case, the Hon'ble Supreme Court
has also referred the judgement of the R.K.Sabharwal
and others reported in JT 1995 (2) SC 351 and also the
judgement of the Virpal Singh Chauhan and others
reported in JT 1995 (7) SC 231. In the said judgements,
the roster meant for reserved category candidates,
there is absolutely no bar for filling up the vacancies
in the general category.

10. Hence, the action taken by the department is
void abinitio by which applicant is sought to be



deprived of his due and legitimate right of promotion to the post of Income Tax Officer (Grade B). The applicant has relinquished the eligibility qualifications.

We carefully examined the rule position and also the judgement of the Hon'ble Suopreme Court. The case of the applicant is squarely covered in the case of S.R.Ambedkar and others (O.A.No.626/1995) which is reported in 1996 (34) ATC 188 in which the Tribunal has examined the issue regarding relaxation in qualifying marks provided for the purpose of filling up of reserved posts - Once the SCs/STs candidates appeared in the examination as reserved category candidates, they could not be treated as unreserved candidates even if they secured pass percentage prescribed for general category candidates - such reserved candidates could not therefore, be excluded from total number of existing reserved candidates - Hence, further held on facts, the reserved quotas were already full in the present case and therefore, further reservation could not be applied -

Excess promotion of a reserved candidate directed to be adjusted against a future reserved point.



In the present case also, according to the statement made by the respondents, there is an excess representation of reserved candidates. Hence, the facts of the case in O.A.No.626/95 and the facts in the present case are similar. Accordingly, we decide the case of the applicant on par with the order passed in the O.A.No. 626/95. Since the present case is covered by the order of this Tribunal as referred ^{above} and the same is pending before the Hon'ble Supreme Court, whatever the judgement ^{Hon'ble} comes out from the Supreme Court, the same is applicable to the applicant.

11. In view of the observations made above, we dispose the O.A. relying on the judgement in O.A.No.626/95 decided by this Tribunal. The relevant para of the said judgement is:

'Another important point needs consideration. The respondents have pleaded that a large number of SC candidates including the three SC applicants in this case have availed of the concession of reservation at the time of their promotion to the feeder cadre of Income Tax Inspectors by superseding their seniors belonging to OC (extract of para 10 reproduced in para 15 of this judgement). In the judgement of the Apex Court in the case of Virpal Sing Chouhan, it has been held that even if a Scheduled Caste/Scheduled Tribe candidate is promoted earlier by virtue of rule of reservation/roster than his senior general candidate regains his seniority over such earlier promoted Scheduled Caste/Scheduled Tribe Candidate.



The earlier promotion of the Scheduled Caste/ Scheduled Tribe candidate in such a situation does not confer upon him seniority over the general candidate even though the general candidate is promoted later to that category. Therefore, the respondent department may have to recast the inter se seniority of the Income Tax Inspectors by following the decision of the Apex Court in the case of Virpal Singh Chauhan for future promotions.'

31. In the conspectus of the facts and circumstances discussed in extenso in the body of the judgement, we hold that the claim of the SC applicants that their seniors in the reserved category should be deemed to have been promoted as a result of open competition in appointment/promotion, cannot be upheld. Hence the reserved points adjusted by the respondent department cannot be directed to be released.

12. We hold that the applicant is not entitled to be promoted as claimed for ^{as} the reserved point cannot be ^{one} adjusted against the unreserved ⁱⁿ the roster point. The ^{candidates} relief claimed is that, the quota of reserved cannot exceed the prescribed quota. Any vacancy filled in excess will have to be adjusted against the future vacancies in the reserved category and not in general category. Since the SLP is pending before the Hon'ble Supreme Court, the respondents are directed to apply the ratio of the Judgement of Hon'ble Supreme Court in the said appeal to the case of the applicant. Accordingly, the O.A. is disposed of with the above observations. No order as to costs.

(G. Shanthappa)
Member (J)

(M.P. Singh)
Vice Chairman

पृष्ठंकन सं जो/व्या.....जबलपुर, दि.....
पत्तिलिपि अद्योपि तः--

- (1) सचिव, उच्च न्यायालय द्वार एकोनिका, जबलपुर
- (2) आदेशक सी/सी/सी/सी के कार्यालय M. Shrivastava
- (3) प्रत्यक्षी सी/सी/सी/सी के कार्यालय B. dan/ua
- (4) जिला न्यायालय, जबलपुर जिला S. Menon

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