

07/04/2014

OA No. 119/2010

Mr. Shobhit Tiwari, Counsel for applicants.
Mr. Gaurav Jain, Counsel for respondents.

Heard learned Counsel for the parties.

Order is reserved.

—
[M. Nagarajan]
Member (J)

Anil Kumar
[Anil Kumar]
Member (A)

Date - 11-4-2014

Order pronounced today in the
Open Court by the aforesaid Bench.

AMO
11/4/14
For C.O.

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.**

**Draft order in OA No. 119/2010 (Balveer Singh
Tanwar & Another vs. Union of India & Others) is
submitted herewith for consideration.**

Anil Kumar
(Anil Kumar)
Member (A)

Hon'ble Member (J)

I agree
H. D. -

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION No. 119/2010

ORDER RESERVED ON 07.04.2014

DATE OF ORDER : 11.04.2014

CORAM :

**HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER**

1. Balveer Singh Tanwar son of Shri Prabhu Singh Tanwar, aged about 45 years, resident of Aaykar Nagar, Opposite RICO, Agarwal Farm House, Jaipur. Presently working as Inspector under the Chief Commissioner of Income Tax at Jaipur.
2. Anoop Kumar Gupta son of shri Hazari Lal Gupta, 46 years, resident of 31, Manu Marg, Alwar. Presently posted as Inspector at Alwar under the Chief Commissioner of Income Tax, Jaipur.

... Applicant

(By Advocate: Mr. Shobhit Tiwari)

Versus

1. Union of India through Revenue Secretary, North Block, Central Secretariat, New Delhi.
2. Chief Commissioner of Income Tax, Central Revenue Building, Bhagwan Das Road, Jaipur.
3. Director General, Directorate of Income Tax, 5th Floor, Mayur Bhawan, New Delhi.
4. Chairman, Central Board of Direct Taxes, North Block, Central Secretariat, New Delhi.
5. Shri Suresh Kumar Gulia, Income Tax Officer, Ward 1(1), Jodhpur through Commissioner of Income Tax, Jodhpur 01, Aaykar Bhawan, Opposite Lal Maidan, Paota 'C' Road, Jodhpur (Rajasthan).
6. Shri Bajrang Lal Gupta, Tax Recovery Officer, Sawaimadhopur, through Joint Commissioner of Income Tax, Range Sawai Madhopur, Near Prakash Talkies, Sawaimadhopur (Rajasthan).

... Respondents

(By Advocate: Mr. Gaurav Jain)

ORDER

PER HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

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The applicants have filed this OA praying for the following reliefs:-

- "(A) That this Hon'ble Tribunal may graciously be pleased to quash and set aside the rules published vide notification dated 01.01.2005 and 24.03.2005 (Annexure A/1 & A/2) in respect of promotion to the post of Income Tax Officer where seniority has been given privilege and priority amongst those who have a requisite qualification and fulfill the eligibility criteria even if senior qualify the departmental test subsequent to his junior in feeder cadre
- (B) That this Hon'ble Tribunal may also be pleased to direct the respondents to include the name of the petitioners in the panel of selected incumbents, which is based on DPC conducted on 27.05.2009.
- (C) Any other relief, which may be deemed fit and proper as per the facts and circumstances, be given in favour of the petitioners."

2. The facts of the case in brief are that the applicants had qualified the examination for the post of Inspector in the year 1992 but they were posted as Inspector with effect from 28.10.2005. The seniority list of the Inspectors was issued on 10/16.02.2009 in which the applicants' name appeared at sr. no. 132 and 159 respectively (Annexure A/5).

3. That the applicants qualified the departmental examination for the post of Income Tax Officer in Group 'B' in the year 1994 and 1995 respectively (Annexure A/6 and A/7).

4. That vide Ministry of Finance letter dated 04.06.2001, it has been stated that for the purpose of promotion to the post of Income Tax Officer, incumbent has to had three years minimum service to his credit as Inspector (Feeder Cadre) and should have qualified the Income Tax Officer Examination for consideration for promotion to the post of Income Tax Officer (Annexure A/8).

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5. The learned counsel for the applicants submitted that the grievance of the applicants is that they had qualified the departmental examination for the post of Income Tax officer in the year 1994 and 1995 respectively and they also have the minimum three years of requisite service in the feeder cadre, even then they were not considered for promotion by the respondents when the departmental promotion committee met on 27.05.2009 (Annexure ^{are} A/3) on the ground that there ^{are} a number of other senior candidates who have also qualified the departmental examination and, therefore, as per DOPTs guidelines dated 08.02.2002 (Annexure A/4), they had to be considered ahead of the applicants. The learned counsel for the applicants submitted that the Inspectors senior to the applicants at sr. no. 6, 10, 15, 17, 29 and 59 in the seniority list of cadre of Inspector have now qualified the department examination in 2008 in their 6th, 2nd, 4th, 3rd, 10th and 6th attempt respectively while the applicants have passed the same examination way back in the year 1994 and 1995 respectively.

6. The learned counsel for the applicants further submitted that when the applicants passed the departmental examination for Income Tax Officer, the rule was that candidate should secure minimum 50% marks in each subject and secure 60% in aggregate. However, these rules were amended in 2008 and now the condition of 60% marks in aggregation has been deleted. Thus the applicants passed the departmental examination with more stringent criteria.

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7. The rules of promotion dated 24.03.2005 (Annexure A/2) prescribes that to be eligible for promotion, a Inspector of Income Tax should have three years of regular service in the grade of pay scale Rs.6500-10500 and he should have qualified the departmental examination for Income Tax Officer but it is silent on the issue whether any preference would be given to those employees who qualified departmental examination earlier. Since the applicants passed the departmental examination way back in 1994 and 1995, therefore, they are much more meritorious than those employees who have qualified in subsequent years after taking even maximum ten attempts. The DPC held on 27.05.2009 have considered the case of those Inspectors who are senior as per length of service in the feeder cadre ignoring the claim of the applicants who are more meritorious and, therefore, the principle of seniority is final rather than merit. The criteria for promotion to the post of Income Tax Officer is 'selection' but in the present case, this criteria has been ignored because the seniority has been given due weightage.

8. The learned counsel for the applicant submitted that the very purpose and intent of holding examination for promotion to a particular post is to find meritorious incumbents otherwise selection/test is not required.

9. That manner in which eligibility conditions are applied would defeat the purpose of conducting departmental examination and an employee having qualified examination earlier to the senior in



the feeder cadre will not have an opportunity to get promotion ahead of the senior just because of the fact that vacancies are not being marked for the year and are not being filled on the basis of the result of the departmental examination of the year in question but by clubbing the same for the years together to fill up those vacancies in one row.

10. The learned counsel for the applicant further argued that respondents applied different method for promotion in Inspector grade in which two parallel lists are to be maintained for promotion. One list is maintained as per the seniority in the feeder cadre of post who have qualified the test and another is maintained on the basis of year in descending manner in which incumbents have qualified examination year-wise and thereafter one by one would be promoted alternatively from both the seniority list but such criteria has not been adopted in the promotion of Income Tax Officer to avoid stagnation.

11. The learned counsel for the applicant further submitted that it is not the situation that the employees of the feeder cadre (Inspectors) only are allowed to qualify the departmental test for the post of Income Tax Officer but employees in grade post below the feeder cadre like OS, Assistant, Tax Assistant, UDC etc. are also being allowed to face the departmental test. The applicants are amongst those who qualified the departmental test even when they were not promoted in the feeder cadre of Inspector. Allowing the employees below the feeder cadre to appear in the departmental test for the post of Income Tax Officer makes it clear

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that it is 'selection' post where qualifying the test is of much importance than seniority.

12. The learned counsel for the applicant vehemently argued that the criteria of giving importance only to the seniority in the feeder cadre as per rules irrespective of the year in which departmental test is qualified is totally illegal and arbitrary and such rule to that extent deserves to be struck down.

13. The names of the applicants have been ignored by the respondents while considering the promotion to the post of Income Tax Officer on the ground that there were other number of senior employees who had qualified the test. This is against the spirit of Articles 14 & 16 of the Constitution of India.

14. He further argued that the post in question is classified as 'Selection' post and hence year of qualifying the test should be given due importance. Merit is to be given weightage rather than seniority to keep the spirit & intent of rule/instruction of law makers.

15. The learned counsel for the applicant argued that respondents ought to have maintained two lists like which is maintained for promotion to the post of Inspector and alternatively one by one should be promoted as Income Tax Officer from both the lists so as to avoid stagnation and discrimination. Therefore, the learned counsel for the applicant argued that rules published vide notification dated 01.01.2005 (Annexure A/1) and

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24.03.2005 (Annexure A/2) in respect of promotion to the post of Income Tax Officer should be quashed and set aside. The respondents be directed to include the names of the applicants in the panel of selected incumbents, which is based on DPC conducted on 27.05.2009 (Annexure A/3).

16. The respondents have filed their reply. The learned counsel for the respondents submitted that the applicants may have qualified the departmental examination for Income Tax Officers at an early date and may have put in the requisite service of three years prescribed for promotion to the post of Income Tax Officers, but according to DOP&T's OM No. F.No. 35034/7/97-Estt (D) dated 08.02.2002, where the mode of promotion is 'selection', the DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench mark and accordingly grade the officers as 'fit' and 'unfit' only. As per OM dated 08.02.2002, only those who are graded 'fit' by the DPC shall be included and arranged in the select panel in order of their inter-se-seniority in the feeder grade. Thus there shall be no supersession in promotion among those who are graded 'fit'.

17. The learned counsel for the respondents submitted that applicants S/Shri B.S. Tanwar and Anoop Gupta have no doubt cleared the departmental examination but there are a number of other senior candidates who have also qualified the departmental examination and, therefore, as per DOPT guidelines, they have to be considered ahead of the applicants. The employees who are senior and have necessary qualifications required for promotion as

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Income Tax Officer are to be considered ahead of juniors even if the juniors have qualified the departmental examination earlier and have put in the requisite years of service prescribed for promotion.

18. He submitted that being eligible for consideration for promotion to the post of Income Tax Officer, following eligibility has been laid down in the Rules of 2005; "Inspector of Income Tax in the pay scale of Rs.6500-10500 with three years regular service in the grade and who have qualified the departmental examination for Income Tax Officers". He further submitted that the condition of qualifying the departmental examination for Income Tax Officers was their even prior to amendment of 24.03.2005 (Annexure A/2). The passing of the departmental examination is only a qualifying examination. It is not to find the meritorious officer. This test is held to judge the eligibility of officers for promotion to the post of Income Tax Officer. As per the existing rules, the employee's seniority cannot be enhanced on the basis of his having passed the examination before his seniors. Hence at the time of conducting DPC if senior Inspectors are available, who have passed the requisite departmental examination even later than his juniors, are selected prior to their juniors who passed the examination before their seniors in consideration zone. The junior employee can be promoted to the post of Income Tax Officer prior to a senior in case no senior is available who has qualified the examination. The merit is considered amongst the employees who are in the zone of consideration as per the eligibility condition and their seniority in the feeder cadre. The applicants have not

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challenged the seniority list published vide letter dated 10/16.02.2009 (Annexure A/5).

19. The learned counsel for the respondents further submitted that the applicants are trying to mix two separate issues of promotion to the post of Income Tax Officers and promotion to the post of Inspectors. As far as the promotion to the post of Inspector is concerned, rules for the same are different due to various factors such as having multiple feeder cadres and the fact that 1/3rd of the posts are meant for direct recruitment. No such issues are involved in the promotion to the cadre of Income Tax Officer. The applicants cannot claim that the rule of Income Tax Inspector should also be followed in the case of promotion to the post of Income Tax Officer. He denied that there is any violation of Articles 14 & 16 of the Constitution of India. He further submitted that present scheme of promotion is effective for many decades and has never been challenged on the grounds put in the present OA.

20. The applicants were considered by the DPC in view of an interim order dated 22.05.2009 by this Tribunal. The learned counsel for the respondents further submitted that there is no provision in the rules that if an employee passed the departmental examination for the post of Income Tax Officer in second, third or tenth attempt then he would be junior to an employee who has passed the department examination for the post of Income Tax Officer in the first attempt for being considered for promotion to the post of Income Tax Officer. However, those seniors who do not

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qualify the examination are ignored for promotion. The applicants being junior cannot be promoted ahead of eligible senior officers.

21. The learned counsel for the respondents further argued that the applicants have failed to prove that the rules published vide notification dated 21.12.2004 (Annexure A/1) and further amendment issued vide notification dated 24.03.2005 (Annexure A/2) are ultra virus and hence they should be quashed and set aside.

22. Heard the learned counsel for the parties and perused the documents on record. The main contention of the learned counsel for the applicant is that the criteria for promotion to the post of Income Tax Officer is selection, which involves merit. Since the applicants have qualified the departmental examination for the post of Income Tax Officer way back in 1994 and 1995 respectively, therefore, they are more meritorious than those employees who have the examination much later and that too in their 2nd, 3rd, 4th, 6th and 10th attempts. Therefore, they are more meritorious than those employees who have passed the said examination in subsequent years even if those employees are senior as Inspectors to the applicants. On the contrary, the learned counsel for the respondents has stated that passing of the departmental examination for the post of Income Tax Officer is only the qualifying examination. It does not involve merit among those who have passed the departmental examination.

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23. We have carefully perused the notification dated 21.12.2004 (Annexure A/1) where it has been mentioned that the post of Income Tax Officer is a selection post. Under the heading 'Promotion', it has been stated that Inspector of Income Tax in the pay scale of Rs.6500-10500/- with three years regular service in the grade" are eligible. Vide notification dated 24.03.2005, under the heading "Promotion", the following phrase has been added "and who have qualified the departmental examination for Income Tax Officer." It has been clarified in this amendment that this phrase was left out by mistake while publishing the rules vide notification dated 24.12.2004 (Annexure A/1).

24. In Para No. 4 of the notification dated 24.03.2005, it has been stated that "it is also certified that the amendment from a retrospective date will not affect any one adversely as similar provision existed in the earlier Rules". It is not disputed by the learned counsel for the applicant that a similar provision existed in the rules prior to publication of the Rules dated 21.12.2004 (Annexure A/1) and 24.03.2005 (Annexure A/2). Thus it is clear that the condition of qualifying the departmental examination has been there even prior to publication of these recruitment rules dated 21.12.2004 (Annexure A/1) and 24.03.2005 (Annexure A/2).

25. The learned counsel for the respondents has made amply clear that the passing of the departmental test/examination for the post of Income Tax Officer is only a qualifying examination. It is only a pre condition of being considered for promotion to the post

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of Income Tax Officer. This practice has been invoked for decades. We are of the opinion that had the intention of the law makers would have been to give due weightage to the marks obtained in the departmental examination then the rules would have specifically stated so. It is not the case of the applicants that their juniors have been promoted while they have been left out. On the contrary, their case is that applicants are juniors but since they have qualified the departmental examination earlier than their senior, therefore, they should be considered for promotion prior to their seniors who have subsequently qualified the departmental examination. We are not inclined to agree with this contention of the learned counsel for the applicant because a plain reading of the rules states that passing of the departmental examination is only the condition for being eligible to be considered for promotion to the post of Income Tax officers. We are also not convinced with the contention of the learned counsel for the applicant that the present rules, as published in the notification dated 21.12.2004 (Annexure A/1) and subsequently amendment issued vide notification dated 24.03.2005 (Annexure A/2), are violative of Articles 14 & 16 of the Constitution of India. Therefore, we hold that the applicants are not entitled for the relief, as claimed by them that these notifications dated 21.12.2004 (Annexure A/1) and 24.03.2005 (Annexure A/2) are ultra virus and can be quashed and set aside.

26. The learned counsel for the applicants had submitted that the respondents apply different methods for promotion in Inspector Grade in which two parallel lists are maintained for

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promotion. One list is maintained on the basis of seniority in the feeder cadre who have qualified the test and another is maintained on the basis of year in descending manner in which incumbents have qualified examination year wise and thereafter one by one are promoted alternatively from both the lists. He had argued that the respondents be directed to follow the same principle for promotion to the post of Income Tax Officer. The learned counsel for the respondents has argued that that there are two separate issues of promotion to the post of Income Tax Officer and promotion to the post of Inspector. Since the promotion to the post of Inspector is concerned, rules for the same are different due to various factors such as having multiple feeder cadre and the fact of 1/3rd of the posts are meant for direct recruitment. No such issues are involved in the promotion to the cadre of Income Tax Officers. We are inclined to agree with the contention of the learned counsel for the respondents that the post of Income Tax Inspector and post of Income Tax officer have different recruitment rules. Two posts are different. The promotion criteria of the two posts are also different. Therefore, the respondents cannot be directed to follow the same rule to the promotion to the post of Income Tax Officer as are applied to promotion to the post of Inspector. They are two different cadres and therefore, they are governed by two different rules for recruitment/promotion. The rules for recruitment in promotion for the post of Inspector cannot be applied to the recruitment/promotion to the post of Income Tax Officer automatically.



27. The learned counsel for the applicant had vehemently argued that the criteria for promotion to the post of Income Tax Officer is 'selection', therefore, merit should be given due consideration. We have carefully perused office Memorandum dated 08.02.2002 (Annexure A/4) issued by the DOPT which deals with the procedure to be observed by the Departmental Promotion Committee (DPC). This office memorandum provides that prior to the issue of this memorandum, there were two criteria for promotion under selection mode (i) selection cum seniority and (ii) selection by merit. Para 3.1 and Para 3.2 of the OM are quoted below:-

"3.1 Mode of Promotion

In case of 'selection' (merit) promotion, the hitherto existing distinction in the nomenclature ('selection by merit' and 'selection cum seniority') is dispensed with and the mode of promotion in all such cases is rechristened as 'selection' only. The element of selectivity (higher or lower) shall be determined with reference to the relevant benchmark ("Very Good" or "Good") prescribed for promotion.

3.2 Bench mark for promotion

The DPC shall determine the merit of those being assessed for promotion with reference to the prescribed bench-mark and accordingly grade the officers as 'fit' or 'unfit' only. Only those who are graded 'fit' (i.e. who meet the prescribed bench-mark) by the DPC shall be included and arranged in the select panel in order to their inter-se-seniority in the feeder grade. Those officers who are graded 'unfit' (in terms of the prescribed bench-mark) by the DPC shall not be included in the select panel. Thus, there shall be no supersession in promotion among those who are graded 'fit' (in terms of the prescribed bench-mark) by the DPC.

27. Thus this OM provides that amongst those who secure the prescribed bench mark inter-se-seniority of the feeder cadre shall remain in tact. Thus the contention of the learned counsel for the applicant that where promotion is based on 'selection', merit has

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been ignored is not correct. The detailed instructions of the DOPT are available regarding the procedure to be followed where promotions are to be made on the basis of selection mode. The respondents have followed the instructions issued by the DOPT and we do not find illegality/infirmity in the action of the respondents in following these instructions.

28. We have carefully perused the proceedings of the DPC held on 27.05.2009 (Annexure A/3). The DPC has considered the case of the applicants for promotion to the post of Income Tax Officer but in view of the fact that there were a number of other senior candidates who have also qualified the departmental examination, the applicants could not be promoted as Income Tax Officers in that DPC.

29. Thus looking from any angle, the applicants have failed to make out a case for interference of this Tribunal. We are of the opinion that the OA has no merit.

30. Consequently, the OA being devoid of merit is dismissed with no order as to costs.

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(M. NAGARAJAN)
MEMBER (J)

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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