

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 03.03.2014

OA No. 654/2011

Mr. Sandeep Saxena, counsel for applicant.
Mr. Gaurav Jain, counsel for respondents.

Arguments heard.

Order is reserved.


(M. NAGARAJAN)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

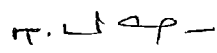
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The Order is pronounced
in the Open Court today.



CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Draft / pre-delivery order in OA No. 654/2011 is
respectfully submitted for approval.


(M. Nagarajan)
Judicial Member

Hon'ble Shri Anil Kumar,
Administrative Member

I agree.
Anil Kumar

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 654/2011

Order reserved on : 03/03/2014

Order pronounced on : ^{06 03 -}.../.../2014

Coram :

Hon'ble Shri Anil Kumar, Administrative Member
Hon'ble Shri M. Nagarajan, Judicial Member

N.S. Poonia S/o Shri Lalchand Poonia Aged about 44 years, resident of 269-A, Guru Jambheshwar Nagar Gandhi path, Vaishali Nagar, Jaipur. Office -working as N.C.R. Building Statue Circle Jaipur.

....Applicant

(By Advocate: Shri Sandeep Saxena)

V E R S U S

1. Union of India, Through the Secretary, Department of Revenue, Ministry of Finance, New Delhi.
2. The Chief Commissioner Income Tax (CCA), Income Tax Department, Central Revenue Building, Statue Circle, Jaipur.

....Respondents

(By Advocate: Shri Gaurav Jain)

O R D E R

(Per : Mr. M. Nagarajan, Judicial Member)

Being aggrieved by the communication dated 04/10/2011 under which the claim of the applicant for promotion to the cadre of Income-tax Officer w.e.f. 01/10/2011 has been rejected, the applicant has

presented this O.A. seeking a direction to the respondents to promote him to the cadre of Income-tax officer with effect from 01/10/2011 with consequential benefits.

2. The brief facts of the case stated by the applicant in support of his prayer in the O.A. are that the DPC which held its meeting on 16/08/2011 for consideration of Income-tax Inspector coming in the zone of eligibility for promotion to the cadre of Income-tax Officer recommended names of 16 officer including of the applicant and his name found place at serial No. 10 in the recommendation made by the DPC. According to the applicant respondents have granted promotion as per the panel recommended by the said DPC as per the availability of the vacancies and promotions were granted to such of those officials whose names are at serial No. 1 to 8 of the panel, whereas he has not been given promotion in spite of the fact that the total number of vacancies available as on 01/10/2011 was 10.

3. The applicant made a representation requesting the respondents to promote him w.e.f. 01/10/2011. The Addl. Director of Income Tax (International Taxation), Jaipur forwarded the representation of the applicant to the Chief Commissioner Income Tax

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(CCA), Jaipur and in turn the Chief Commissioner Income Tax, Jaipur has directed the Addl. Director of Income Tax (International Taxation), Jaipur to inform the applicant that presently there are four vacancies in the cadre of the Income-tax Officer which has been kept vacant as per the directions of the Hon'ble CAT, Jodhpur's order dated 25/02/2011 and as and when more than four vacancies arise in the cadre of Income-tax Officer, then according to panel his name will be released for promotion. Thus he is aggrieved by the said order dated 04.10.2011.

4. The respondents have filed reply contending that the applicant is not entitled for the relief as sought by him.

5. Heard the learned counsel for the applicant Shri Sandeep Singh and Shri Gaurav Jain, learned counsel for the respondents and perused the pleadings and the documents annexed to the pleadings. The learned counsel for the applicant Shri Sandeep Saxena argued that as per the availability of vacancies the respondents have granted promotion only to eight empanelled officers. He submitted that the officers at serial No. 1 to 8 in the panel recommended by the DPC were granted promotion on 01/10/2011 whereas the

W. J. S. —

said benefit was not granted to him in spite of availability of vacancies as on 01/10/2011.

6. In support of the contention that as on 01/10/2011 vacancies were available, the applicant has furnished certain particulars of the availability of vacancies at para No. 4.5 of the O.A. which has been denied by the respondents in their reply. According to the learned counsel for the applicant that though the applicant was promoted to the Income Tax Officer in the month of February 2012, he ought to have been promoted w.e.f. 01/10/2011 on the ground that vacancies for promotion were available and eight officers who were empanelled along with him were promoted to the said cadre of Income Tax Officer.

7. On hearing the learned counsel for the applicant Shri Sandeep Saxena, we put a query to the learned counsel for the applicant whether any of his juniors were promoted in between 01/10/2011 and till such time he was promoted to the cadre of Income Tax Officer. The answer of the learned counsel for the applicant is NO. The learned counsel for the respondents Shri Gaurav Jain, also submitted that no officer who is junior to the applicant was promoted either w.e.f. 01/10/2011 or prior to the date on which

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the applicant was promoted to the said cadre of Income Tax Officer.

8. In view of the above admitted facts and circumstances, the point that arises for consideration to decide the issue in controversy in the O.A. is *"whether mere existence of a promotional vacancy and eligibility for promotion could be a ground to issue direction to the respondents to grant promotion to a civil servant"*.

9. While answering to the above question, we are required to follow the settled principle of law relating to promotion as laid down by the Hon'ble Supreme Court time and again. The Hon'ble Supreme Court in the case of Union of India vs. K.V. Jankiraman (AIR 1991 SC Page 2010) has held that an employee has no right for promotion. He has only a right to be considered for promotion. If this principle were to be applied to the fact of the case, it can be well said that mere existence of a vacancy as on 01.10.2011 and that applicant has all the eligibility for promotion to the cadre of Income-Tax Officer can not be a ground at all to issue any direction as sought by the applicant. The applicant has admitted the fact that none of his juniors were promoted as on 01.10.2011. He further


admitted that all the eight officers who were promoted as per the recommendation of the said DPC were all seniors to him. Hence we answer the point articulated in negative.

10. A reading of the averments in the O.A. and the grounds urged therein reveals that the claim of the applicant in the O.A. is for promotion with effect from an anterior to the date on which he was granted promotion. In other words, the claim of the applicant in the O.A. is for retrospective promotion. Retrospective promotion is not permissible in law, unless a particular rule provides for grant of retrospective promotion subject to fulfillment of certain terms and conditions under such a rule. The claim of applicant for retrospective promotion is not traceable to any rule. Thus in view of the position that the claim of the applicant for retrospective promotion is not traceable to any rule and in view of the settled principles of law that an employee has no right for promotion, but has only a right to be considered for promotion and while considering the claim of the applicant for promotion, none of his juniors were allowed to take a march over, we do not find any reason to issue any direction as sought by the applicant and hence the O.A. is liable to be dismissed.

IT IS ORDERED

Accordingly, the O.A. is dismissed. In the circumstances, there is no order as to costs.


(M. Nagarajan)
Judicial Member


(Anil Kumar)
Administrative Member

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