

9

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 2133/2003

New Delhi, this the 5th day of March, 2004

HON'BLE MR. SHANKER RAJU, MEMBER (J)
HON'BLE MR. S.K. NAIK, MEMBER (A)

1. Arkender Singh,
S/o Sri Rachpal Singh,
Income Tax Officer
2. Lalji Singh Yadav,
S/o late A.S. Yadav,
Income Tax Officer,
3. Saras Kumar,
Income Tax Officer
4. O.P. Pathak,
S/o Late R.N. Pathak,
Income Tax Officer,

All at Income Tax Office, CGO Complex-I, Ghaziabad,
Uttar Pradesh

Applicants
(By Advocate : Shri Narendra Kaushik)

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
North Block, Central Secretariat,
New Delhi
2. Central Board of Direct Taxes,
through its Chairman,
North Block, Central Secretariat,
New Delhi
3. U.P.S.C.
through its Secretary,
Shahjahan Road,
New Delhi
4. Chief Commissioner of Income Tax,
(C.C.A.) Kanpur, Uttar Pradesh
5. Shri O.C. Mishra,
Income Tax Officer
6. Shri R.K. Gupta,
Income Tax Officer
7. Shri A.N. Mishra,
Income Tax Officer,
8. Shri R.R. Aggarwal,
Income Tax Officer,
All C/o and through Opp. Party No. 2

Respondents

(By Advocates : Shri V.P. Uppal for Respondent No.1 to 4
Shri R. Prashant Mathur, for Res. 5
Shri M.L. Ohri for Respondent 6
Shri A.N. Singh for Respondent 7
None for Respondent No.8

O R D E R

BY SHANKER RAJU, MEMBER (J) :

Applicants impugn OA order dated 28.2.2003 passed by the Chief Commissioner of Income Tax (CCA), Kanpur, UP, revising the seniority of one D.C. Mishra, Respondent No.5 to the detriment of applicants in the posts of Income Tax Inspector as well as Income Tax Officer. Directions have been sought to quash the impugned order and to maintain the seniority of the applicants as already accorded to them and further consider them for promotion to the post of Assistant Commissioner of Income Tax as per the seniority assigned vide order dated 24.12.2002.

2. Brief factual matrix as reflected in the pleading is that in OA 1089/2002 filed before the Allahabad Bench of this Tribunal, seniority has been sought to be revised by the applicants therein. Directions have been issued on 25.9.2002 to dispose of the representations of the applicants therein by a speaking and reasoned order. Those who were likely to be affected by revision of the seniority had not been impleaded as necessary parties. They preferred OA 1064/2003 before the Allahabad Bench of the Tribunal. Directions have been issued on 9.9.2003 to consider the representations of those who are likely to be affected by order dated 28.2.2003 passed by respondent No.4 in the present OA revising the seniority. Accordingly, by an order dated 23.12.2003 CBDT, respondent No.2, disposed of the representations.

3. According to the applicants, their seniority has been altered to their detriment without affording them a reasonable opportunity to show cause is alone sufficient to quash the impugned seniority list. Moreover, it is contended that as per the seniority in the feeder cadre of Income Tax Officers those in the post of Income Tax Inspectors revised seniority list dated 24.12.2002 has been properly maintained as per DOP&T's OM's dated 22.12.1959 and 7.2.1986. Accordingly, this should have been maintained by the respondents.

4. On the other hand, both official and private respondents have questioned the jurisdiction of this Court and contended that as the order impugned is passed by respondent No. 4 who is situated at Kanpur, Uttar Pradesh, and the fact that the applicants are also posted at Ghaziabad within the jurisdiction of the Allahabad Bench of this Tribunal, the Principal Bench of the Tribunal, in absence of any application under Section 25 of AT Act, 1985 and as per Rule 6 of the CAT (Procedure) Rules, 1987, is not competent to decide the issue. It is further stated by Shri Uppal, learned counsel that merely because the representations are to be decided by ^{CBT} would not confer jurisdiction upon the applicants to maintain an OA before the Principal Bench.

5. The learned counsel for the applicants contended that the seniority in the grade of ITO is to be maintained on All India basis by the CBT, as such any alteration to their detriment or revision of the seniority list falls

within the jurisdiction of this Court as CBTO is situated within the jurisdiction of the Principal Bench.

6. We have carefully considered the rival contentions of the parties on the preliminary issue of jurisdiction. Rule 6 of the CAT (Procedure) Rules insofar as jurisdiction provides as under:

"6. Place of filing application - (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen;

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter."

7. If one has regard to the above, an application shall ordinarily be filed where the applicant is posted for the time being or the cause of action wholly or in part has arisen there. Admittedly the applicants are posted at Ghaziabad which falls in Utter Pradesh within the jurisdiction of Allahabad Bench of the Tribunal.

8. Insofar as the cause of action is concerned, the only challenge put in this OA is directed against an order passed on 28.2.2003 by respondent No.4 (CCIT) who is situated at Kanpur within the Jurisdiction of Allahabad Bench of the Tribunal. Unless the aforesaid order goes, there cannot be a question of restoring back the seniority

of the applicants. The only consequence of quashing of the order would bring D.C. Mishra and other private respondents below the applicants in the seniority list.

9. We have also perused the decision of the Allahabad Bench of the Tribunal in OA No.1064 of 2003, therein as the seniority was revised without giving an opportunity to the affected parties, the representation was ordered to be disposed of by CBDT. Whether rightly or wrongly CBDT rejects it or not, the further cause of action in the OA would lie to the Allahabad Bench of this Tribunal. However, we are of the considered view that the cause of action of revising the seniority has wholly arisen at Kanpur on the orders of the CCIT. As CBDT happens to be located within the jurisdiction of Principal Bench at New Delhi and the fact that the applicants have represented against revision of seniority to the CCIT clearly shows that in part also the cause of action had arisen at Kanpur which falls within the jurisdiction of Allahabad Bench of this Tribunal.

10. Moreover, the Chairman of the Tribunal is competent and it is within his powers to order transfer of the cases from one Bench to another, but this power cannot be exercised *suo motto* other than on an application by the applicants under Section 25 of the Administrative Tribunal Act as well as Rule 6 of the Rules *ibid*. As no such application has been filed, we cannot entertain this application merely because the seniority list is issued by the CBDT in the cadre of TTOS. Therefore, the OA is liable to be rejected for want

of jurisdiction and the same is dismissed accordingly, with liberty to the applicants to take appropriate proceedings in accordance with law. No costs.

S. NAIK
(S.K. NAIK)
MEMBER (A)

S. Raju
(SHANKER RAJU)
MEMBER (J)

/pkr/