

CENTRAL ADMINISTRATIVE TRIBUNAL,
PRINCIPAL BENCH

O.A.NO.3164/2003

New Delhi, this the 27th day of April, 2004

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI R.K. UPADHYAYA, MEMBER (A)

Shri S.K.S. Rawat
Commissioner of Income Tax
504, Mansi Apartments, Opp. Tube Company
Old Padra Road
Baroda - 390 020. ... Applicant

(By Advocate: Sh. M.L. Ohri)

Versus

Union of India through

1. The Secretary
Department of Revenue
Ministry of Finance
North Block
New Delhi.
2. The Chairman
Central Board of Direct Taxes
Department of Revenue
Ministry of Finance
North Block
New Delhi.
3. Shri Ashutosh Prasad
Commissioner of Income Tax
16, Gokhley Marg
Lucknow (U.P.). ... Respondents

(By Advocate: Sh. V.P. Uppal for R-1&2 and same for R-3)

O R D E R

Justice V.S. Aggarwal:-

Applicant is a Commissioner of Income Tax. By virtue of the present application, he seeks quashing of the order of 8.1.2003 (for short 'the impugned order'); to direct Respondents 1 and 2 to hold fresh review Departmental Promotion Committee meeting to consider the case of the applicant in accordance with the Indian Revenue Service Rules, 1988 as amended on 14.6.1995, i.e., by considering the Annual Confidential Reports of eight years; and to assign proper seniority to the applicant.

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2. Needless to state, vide impugned order a review DPC which was held had been reviewed on October, 2000 and the operative part of the same reads:

"6. The proceedings of DPC held in March, 1995 were reviewed by the review DPC held in October, 2000 because Sh. Ashutosh Prasad had to be excluded from the consideration zone on his promotion based on the review DPC recommendations of July, 1998 (the other officer Sh. A.K.Gupta was not considered by the DPC of 1994-95 as he had retired by that time) and also because two other officers Sh. S.K.S. Rawat and Smt. Bharati Dubey were to be included in the consideration zone on their reversion to the grade of DCIT. The Review DPC of October, 2000 recommended both Sh. S.K.S.Rawat and Smt. Bharati Dubey for promotion to the grade of CIT.

7. The recommendation of the Review DPC having been accepted by the competent authority and in partial modification of this Department order No.9/94 dated 12th January 1994, the names of Shri S.K.S. Rawat (Sl. No.12) and Smt. Bharti Dubey (Sl. No.55) were deleted from list of officers promoted to the grade of Commissioner of Income Tax vide order dated 12th January 1994. Subsequent to this names of Shri Ashutosh Prasad and Shri A.K.Gupta are included at S.No.66A below Smt. Pamela Bhandari (Sl. No.66) and at Sl. No.71 below Shri P.J.Thomas Kutty (Sl. No.70) respectively.

8. Further, in partial modification of order No.74 of 1995 dated 29th June 1995, the names of Shri S.K.S.Rawat and Smt. Bharti Dubey are included at Sl. No.4A and 4B respectively below Shri Edkas Lakra (Sl. No.3) and above Shri P.P.Jauhri Sl. No.(5).

9. Accordingly the names of Shri S.K.S. Rawat and Smt. Bharti Dubey are included at Sl. No.244A and 244B respectively below Shri G. Muthuramakrishnan at (Sl. No.244) and above Shri P.P.Jauhri, (Sl. No.245) in the IRS civil list 2000 as on 30th November 2000 (CIT Portion).

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10. This issues in partial modification of Order No.103 of 2001 dated 2nd August, 2001 and in pursuance of CAT, Principal Bench, New Delhi order dated 5th September 2002 in O.A.No.3122/2001 (MA 2430/2001)."

3. Some of the other relevant facts for disposal of the present application are that the applicant joined the Indian Revenue Service in 1971. He was promoted as Deputy Commissioner of Income Tax in the year 1980 and was awarded Non-Functional Selection Grade w.e.f. 1.7.1986. He was promoted as Commissioner of Income Tax vide order dated 12.1.1994.

4. Respondent No.3 (Ashutosh Prasad) had filed OA 2694/1993, which was transferred to the Lucknow Bench of this Tribunal. The Lucknow Bench of this Tribunal upheld the validity of the Indian Revenue Service Rules, 1988 as amended retrospectively by notification dated 14.6.1995. Respondents No.1 and 2 were directed to hold review DPC in accordance with the rules referred to above as a result of which, they had issued an order dated 2.8.2001 whereby the seniority of the applicant was downgraded. The applicant was not a party in the Original Application that was filed by Respondent No.3 and was decided by the Lucknow Bench of this Tribunal. Respondents No.1 and 2 admittedly had challenged the order passed by the Lucknow Bench of this Tribunal and the Apex Court had dismissed the appeal in limine.

5. Applicant had filed OA 3122/2001 in which this Tribunal had allowed his application and held that in accordance with rules as amended in the year 1995, eligibility criterion is eight years regular

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service as Deputy Commissioner of Income Tax/Deputy Director of Income Tax and that the amendment dated 14.6.1995 should be taken into account. It was further held that the stand of the respondents that 17 years of Annual Confidential Reports was the criteria and that there was no discrimination, was not in accordance with the Judgment of the Lucknow Bench. Thereafter, Respondents No.1 and 2 had issued the impugned order which according to the applicant is contrary to the decision of this Tribunal.

6. The application has been contested.

7. Before proceeding further, it would be appropriate to refer to the Indian Revenue Service Rules, 1988. Schedule-II provides the method of recruitment in the field of promotion to the grade of Senior Administrative Grade (Commissioner of Income Tax and Director of Income Tax). Column 4 of the same reads:

""Dy. Commissioners of Income-tax/Dy. Director of Income-tax with 8 years regular service, if any, in the non-functional selection grade or 17 yrs. regular service in Gr. 'A' of Indian Revenue Service out of which at least 4 yrs should be in the Grade of Dy. Commissioners of Income-tax/Dy. Directors of Income-tax""

8. The said entry had undergone an amendment on 14.6.1995 and thereafter the same reads:

""Deputy Commissioners of Income-tax/Deputy Directors of Income-tax with eight years regular service in the grade including service, if any, in the non-functional selection grade or 17 yrs. regular service in Group 'A' of Indian Revenue Service, out of which atleast

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four years should be in the grade of Deputy Commissioner of Income-tax/Deputy Director of Income-tax".

9. The argument of the learned counsel for the applicant is that the case of the applicant was covered by the amended Rule, i.e., 8 years regular service as Deputy Commissioner of Income Tax. Thus, application of the second alternative of 17 years of regular service in Group 'A' is not applicable. The respondents have wrongly interpreted the decision of the Lucknow Bench of this Tribunal and vide impugned order a conclusion has been arrived at, which is contrary to law. Respondent No.3, who is a party herein, has filed the counter reply but during the course of the submission, there was no appearance on his behalf.

10. Respondent No.3, as already referred to above, had filed OA which was treated as TA No.11 of 1994 and decided on 30.10.1996 at Lucknow Bench.

11. The Lucknow Bench held the validity of the rules and had held further:

"17. Having taken a view on the validity of the amendment, we may now revert to the contention of the applicant that the respondents should have considered 17 years CRs for assessing the comparative merit of officers and not only 8 years. In this connection, it is noteworthy that as is clear from the first sentence of the notification dated 12.5.1988, the I.R.S. Rules are designed to regulate recruitment of various levels of Indian Revenue Service. These therefore, are confined to the method of recruitment, field of selection, minimum qualifying service for promotion etc. These rules do not include any instructions on the procedure to be adopted by the Departmental Promotion Committees, which are entrusted with the

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responsibility of making recommendations for promotion to various levels/grades. These are incorporated in the O.M. dated 10th March, 1989 of the D.O.P.T. (Annexure 3 to the O.A.). The relevant portion of which has already been reproduced by us earlier, (Supra para(9).

18. The respondents do not deny that they have considered CRs of all the officers in the zone of consideration for 8 years. According to them, they were justified in their action as the minimum qualifying service was 8 years as Deputy Commissioners of Income Tax or Dy. Director of Income. They claim that their action is also supported by clause (a) of para 2.2.1 of the O.M. dated 10.1.1989 of the DOPT as they have considered the CRs of all the officers for the same number of years i.e. 8 years."

12. Thereafter when the applicant filed OA 3122/2001, he had arrayed Respondent No.3 as party. The Principal Bench specifically recorded that the Lucknow Bench of this Tribunal has not concluded that ACRs of 17 years have to be taken note of and the findings of the Principal Bench are:

"10. In the light of the provisions of the 1988 Rules as amended in 1995, the eligibility criterion is 8 years regular service as DCIT/Dy. Directors of Income-tax. It is also made clear from paragraph 20 (ii) of the Tribunal's order dated 30.10.1996 that the amendment of 14.6.1995 should be taken into account. As mentioned above, the stand of the respondents that 17 years ACRs is the criteria as ordered by the Tribunal and there has been no discrimination vis-a-vis the applicants as all the eligible persons have been similarly considered is, therefore, not in accordance with the aforesaid judgment of the Tribunal (Lucknow Bench). The issue in this case is not one of discrimination but application of the relevant Rules. In the facts and circumstances of the case and having regard to the aforesaid amendment of the 1988 Rules by Notification dated 14.6.1995 which has come into effect w.e.f. 12.5.1988, that is the date on which the 1988 Rules came into effect, we see force in the submissions made by the learned senior counsel for the

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applicants. The eligibility for consideration to the grade of CIT would be DCIT/Dy. Director of Income Tax with 8 years regular service in the grade, including service, if any, in NFSG which the applicants fulfil. We also see force in the contention of the applicants that the impugned order dated 2.8.2001 does not clearly spell out the actual manner of implementation of the Tribunal's order dated 30.10.1996 and whether the criterion for considering the eligible officers as laid down in the Recruitment Rules as amended has been taken into account correctly or not. Accordingly, the impugned order dated 2.8.2001 is quashed and set aside."

(Emphasis supplied)

13. In the review DPC that was held which led to the passing of the impugned order, reliance has strongly been placed on the decision of the Lucknow Bench.

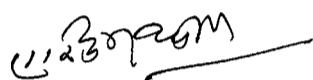
14. The sequence of events clearly show that the decision of the Principal Bench of this Tribunal is interse between the parties. The Principal Bench clearly held that it is not the decision that the 17 years ACR have to be taken note of as the criteria for promotion. It was further held that eligibility for consideration to the grade of Commissioner of Income Tax, would be Deputy Commissioner of Income Tax and Deputy Director of Income Tax with 8 years regular service in the grade, including service, if any, in the Non-Functional Selection Grade which the applicant fulfilled. Once such a decision has been arrived at between the parties, it would bind and, therefore, there is no option but to hold that the next step had to be taken in terms of the said decision.



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Unfortunately, the same had been ignored. The impugned order in face of the aforesaid, cannot be sustained.

15. For these reasons, we allow the present application and quash the impugned order. It is directed that respondents No.1 and 2 shall hold a fresh review DPC to consider the claim of the applicant in accordance with the rules as amended on 14.6.1995 and thereupon assign the seniority to the concerned persons.



(R.K. Upadhyaya)
Member (A)



(V.S. Aggarwal)
Chairman

/NSN/