

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE**

ORIGINAL APPLICATION No. 170/00694/2019

TODAY, THIS THE 27th DAY OF NOVEMBER, 2019

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Antara Si
D/o Shri Biswanath Si
Age about 31 years
R/o O/o the PCIT-5
BMTC Building, Koramangala
Bangalore-560095.

...Applicant

(By Advocate Sri T.C.Gupta)

Vs.

1. Union of India
through the Finance Secretary

Ministry of Finance
Department of Revenue
Government of India
New Delhi-110 001.

2. Pr. Chief Commissioner

of Income Tax
Karnataka & Goa Region
Queens Road
Bangalore – 560001.

3. Amandeep Mittal, Inspector

O/o the Addl.CIT, Special Range-7

BMTC Building, Koramangala

Bangalore-560095.

...Respondents

(By Advocate Shri V.N. Holla, Sr.PC for CG)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that she joined as Tax Assistant on 11.1.2016 under the jurisdiction of the Pr.Chief Commissioner of Income Tax, Karnataka and Goa Region, Bangalore. She was due for promotion to the post of Inspector of Income tax along with her junior Sri Amandeep Mittal from 18.1.2019 as Sri Amandeep Mittal was promoted as Inspector of Income Tax vide letter dtd.18.1.2019(Annexure-A1). As per Recruitment Rules for Inspector, the eligibility for promotion is 3 years as Tax Assistant(TA) and passing of departmental examination of Inspector. She has already passed departmental examination of Inspector and she has to complete 3 years service as TA on 11.1.2019 for further promotion as Inspector. As per seniority list of TA as on 1.1.2018, the applicant is placed at Sl.No.145 whereas Sri Amandeep Mittal was placed at Sl.No.147 and as such she is senior to Sri Amandeep Mittal. When her junior was promoted as Inspector, the applicant also deserved promotion along with his junior, irrespective of the fact that she had not completed minimum service of 3 years as TA but had completed her probation and requisite minimum service of more than 2 years, as required under the relevant rules. The applicant submitted

representation dtd.17.5.2019(Annexure-A2) which is still pending for consideration with the respondents.

2. The applicant submits that the CAT Principal Bench, New Delhi in OA.No.3405/2014 in the case of *Pankaj Nayan & Ors* relying on the DoPT OM dtd.25.3.1996 and also as per the law declared by the Full Bench of the Tribunal in *Ms.Garima Singh & Ors. Vs.UOI & Ors (OA.No.3278/2010 & Batch)* held that the applicants being senior though not completed the requisite regular qualifying service for promotion, but they are entitled for inclusion of their names in the eligibility list, as the juniors to them were considered for promotion. This decision was upheld by the Hon'ble High Court of Delhi in WP.No.11277/2016 dtd.29.10.2018. Relying on their decision in OA.No.3405/2014, the CAT, Principal Bench in its order dtd.21.12.2018(Annexure-A3) in OA.No.4681/2018 had directed the respondents to consider the representations of the applicants therein and to examine whether they are identically placed like the applicants in OA.3405/2014. The applicant also relied on the decision of the Hon'ble Supreme Court in Civil Appeal No.8208/2001 in *UOI vs. Smt.Sadhana Khanna* in support of his contentions. Being aggrieved by the respondents' order dtd.18.1.2019 in not considering him for promotion along with her junior Sri Amandeep Mittal, the applicant has filed the present OA seeking to quash the order dtd.18.1.2019(Annexure-A1) to that extent and to direct the respondents to consider her case for promotion as Inspector from 18.1.2019 the date on which her immediate junior Sri Amandeep Mittal was promoted, with consequential benefits.

3. The respondents, on the other hand, have submitted in their reply statement that the applicant was issued with the offer of appointment on 17.11.2015(Annexure-R2) to the post of Tax Assistant(TA) in the Income Tax Department instructing her to join on or before 11.12.2015 but she chose to join on 11.01.2016 only and she was

promoted as Sr.Tax Assistant on 22.1.2019. She claims that she was due for promotion to the post of Income Tax Inspector along with her junior Sri Amandeep Mittal from 18.1.2019. But as per recruitment rules for Inspectors, the eligibility for promotion is 3 years service as Tax Assistant and passing of departmental examination of Inspector(Annexure-R1). The applicant had passed the departmental examination in 2018. She has to complete 3 years service as Tax Assistant on 11.01.2019. She claimed that she was placed at Sl.No.145 as per the seniority list of TA as on 1.1.2018 whereas Sri Amandeep Mittal was placed at Sl.No.147. Her claim is that irrespective of the fact that she had not completed minimum service of 3 years as TA but had completed probation and requisite minimum service of more than 2 years as required under the relevant rules, she deserved to be promoted when her junior Sri Amandeep Mittal is promoted as Inspector. The respondents submit they are bound to follow the eligibility conditions for promotion to the rank of Inspector of Income Tax as stipulated by the CBDT in F.No.48/1/2001-AP/DOMS dtd.4.6.2001 wherein the eligibility for promotion is 3 years service as Tax Assistant and passing of Departmental Examination of Income Tax Inspector. In the instant case, the applicant had not completed 3 years of service as on 1.1.2019(date of eligibility as per annual DPC calendar) for the vacancy year 2019, hence her case was not considered for promotion to the rank of Inspector of Income Tax.

4. The respondents submit that the decisions relied upon by the applicant is not relevant to the promotion of the applicant. The decisions of the CAT, PB, New Delhi in OA.3405/2014 and in OA.No.3278/2010 pertain to the cadre of Section Officer belonging to the Central Secretariat Service. The recruitment rules are different for the above cadres. Accordingly, the question of the applicant comparing herself with the above cadres and claiming eligibility for promotion to the post of Income Tax Inspector along with his junior does not arise. Similarly the decision of the Hon'ble

High Court of Delhi in WP.No.11277/2016 dtd.29.10.2018 upholding the decision of CAT, PB in OA.No.3278/2010 (*Ms. Garima Singh & Ors. vs. UOI*) is also not applicable to the present case. The applicant also relied on the decision of the CAT, PB in OA.No.4681/2018 in the case of *Anirudh Kaushik & Ors. vs. UOI* which was disposed of at admission stage itself relying on their earlier order in OA.No.3405/2014. On enquiries with the O/o Pr.CCIT, New Delhi, it is ascertained that the matter is pending with their office for decision on further appeal and that the matter has not reached finality. In the instant case, the applicant's representation was considered and the prayer of the applicant could not be acceded to, keeping in view of the existing rules, which prescribes three years of service as a condition precedent for promotion to Inspector Grade. Accordingly, it was considered that no further action was feasible on the representation. In view of the above, the applicant is not entitled to any relief and the OA is liable to be dismissed with costs.

5. The applicant has filed rejoinder reiterating the submission made in the OA and submits that it is true that the applicant did not complete three years of service on 1.1.2019 but she had completed probation period and service of more than two years. As per DOPT OM dtd.25.3.1996(Annexure-A6), 'where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service.' The DOPT being the nodal agency for formulation of the rules of recruitment and promotion, in the OM directed all the Ministries/departments of the Govt. of India to amend the recruitment rules accordingly. The CBDT also in compliance of the DOPT directions have amended the

recruitment rules formulated after the date of the DOPT OM. Recruitment Rules of Inspector are of 1969 and have not been re-formulated, therefore, the rules of 1969 do not have the clause regarding promotion of seniors with juniors as directed vide DOPT OM dtd.25.3.1996. The CBDT has formulated draft recruitment rules of Inspectors, 2015 in supersession of RRs of 1969 and has included the clause regarding promotion of seniors along with juniors subject to their completion of probation and two years of service(Annexure-A5). The contention of the respondents that the decisions of the CAT, PB and Hon'ble High Court of Delhi in the case of *Garima Singh* relied upon by the applicant are not applicable to the present OA, is not correct as it is important to see the ratio decided in these cases and not the departments. The statement of the respondents that the matter in regard to the order dtd.21.12.2018 in OA.No.4681/2018 in the case of *Anirudh Kaushik* is pending for decision on further appeal in the office of the Pr.CCIT Delhi, is also not correct as the Tribunal, Principal bench vide order dtd.21.12.2018 directed the respondents to decide the representations within 90 days. Since the respondents have not yet decided on the representations, the applicants therein have filed Contempt Petition No.414/2019 on 29.8.2019 before the Tribunal for non-compliance of the Tribunal's order dtd.21.12.2018. Therefore, the claim of the applicant is to be allowed.

2. We have heard the Learned Counsel for both the parties and perused the materials placed on record in detail. Both the parties have filed their written argument note. The case of the applicant rests mainly on the DoP&T OM dtd.25.3.1996 which states as follows:

"Where juniors who have completed their qualifying/eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying/eligibility service by more than half of such qualifying/eligibility service or two years, whichever is less, and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying/eligibility service".

3. In the same OM, the administrative Ministries/Departments were empowered to amend all the service rules/recruitment rules to incorporate the note as amended above. In the respondent organisation, the draft recruitment rules for the post of Inspector of Income Tax vide Annexure-A5 have been uploaded and comments have been invited. In the said draft rules, the method of recruitment etc., is specified in column 5 to 13 of the said schedule. The relevant portion in the draft recruitment rules is as follows:

"Where juniors who have completed their qualifying or eligibility service are being considered for promotion, their seniors would also be considered, provided they are not short of the requisite qualifying or eligibility service by more than half of such qualifying or eligibility service or two years whichever is less and have successfully completed probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service half of such qualifying or eligibility service or two years whichever is less and have successfully completed their probation period for promotion to the next higher grade along with their juniors who have already completed such qualifying or eligibility service".

4. It is therefore clear that the applicant cannot be faulted for the non-amendment of the said provision in the extant rules relating to their promotions to the post for which the DoP&T OM was issued in the year 1996 itself. It is also to be noted that the said OM of 1996 was issued in the light of the Hon'ble Apex Court judgment in R.Prabha Devi & others vs. GOI & others in Civil Appeal Nos.2040-2042/1987 and the order dtd.11.2.1986 passed by the Principal Bench of this Tribunal. The applicant has also brought in the order of the Principal Bench of this Tribunal in OA.No.3405/2014 dtd.12.5.2016(copy is enclosed in OA.651/2019) wherein the entire gamut of the issue has been covered in detail. The specific point relating to the existing rules not providing for such relaxation has also been covered in detail vide para-27 which reads as follows:

27. However, Full Bench has given reasons as to why in their opinion the DoP&T OMs dated 18.03.1988, 19.07.1989, 25.03.1996 and 24.09.1997 would not be covered by this law. According to them, these OM's can well be

considered to have been issued by the Executive of the Union in the Legislative power conferred upon by Article 73 of the Constitution. They deal with uncovered issues i.e. a situation where a junior is being considered for promotion even though his senior was not being so considered owing to the fact that he does not have the prescribed eligibility service. Full Bench has held that such a situation had not been covered by the relevant Service Rules. Further, they have gone on to hold that in the aforesaid OMs there was a mandate that all cadre controlling authorities should insert a note in their respective Rules to the effect that when a junior was being considered for promotion then his seniors should also be considered by giving relaxation in the eligible service. Full Bench has observed that the directive issued by DoP&T has admittedly been complied with by many cadre controlling authorities by inserting such a note in the Recruitment Rules. Moreover, in cases where such a note has not been incorporated, Government has been freely resorting to taking relaxation in the rules as regards eligibility.

5. In para-29 of its order, the Tribunal also ordered as follows:

29. Thus, Full Bench has given ample justification as to why OM dated 25.03.1996 has to be read along with the service rules and why this is not against the law laid down by Hon'ble Supreme Court that executive instructions cannot override statutory rules. As stated earlier, this OM prescribing relaxation in eligibility service for seniors by maximum of 02 years in situation when their juniors are being considered for promotion will operate in areas uncovered by service rules.

6. It is abundantly clear that as per the OM of 1996, the applicant has every right to be considered for promotion subject to completion of his probation and reduced years of service as per the note. Therefore, the respondents are directed to issue necessary orders in this regard with all consequential benefits to the applicant within a period of two(2) months from the date of issue of this order.

7. The OA is allowed as above. No costs.

(C.V.SANKAR)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER(J)

Annexures referred to by the applicant in OA.No.170/00694/2019:

Annexure-A1: Copy of respondent order 18.1.2019

Annexure-A2: Copy of representation dtd.17.5.2019

Annexure-A3: Copy of Tribunal order dtd.21.12.2018

Annexures with reply statement:

Annexure-R1: Copy of recruitment rules for Inspectors

Annexure-R2: Copy of offer of appointment dtd.17.11.2015

Annexures with rejoinder:

Annexure-A5: Copy of draft RRs of Inspectors

Annexure-A6: Copy of DOPT OM dtd.25.3.1996
