

Central Board of Direct Taxes and another

Vs.

Dr. O. N. Tripathi and others

Civil Appeal No. 2675 of 1987

(P.B. Sawant, K. Ramaswamy JJ)

24.10.1990

JUDGMENT

SAWANT J

1. Respondents 1 and 2 in this appeal Dr. Tripathi and Shri Sinha (hereinafter referred to as the respondents) were recruited directly to the posts of Income Tax Officers, Class-1. They had made a grievance before the Central Administrative Tribunal, Allahabad that they were not appointed to the next higher post of Assistant Commissioner, Income-tax according to their turn in the seniority list prepared as per the directions given by this Court in the cases of Bishan Sarup Gupta v. Union of India, (1975) 1 SCR 104: (AIR 1974 SC 1618) and Union of India Etc. v. Majji Jangamayya, (1977) 2 SCR 28 : AIR 1977 SC 757). As a result, their seniority as Assistant Commissioners was adversely affected and it required correction. This grievance found favour with the Tribunal which by its impugned decision of 18-3-1987 quashed the seniority list of Assistant Commissioners and Commissioners of Income-tax and directed the appellants herein, namely, the Central Board of Direct Taxes and the Union of India to redetermine their seniority in the list of Asstt. Commissioners, vis-a-vis, the seniority of respondents 3 to 20 who are also direct recruits, and other concerned officers, in the light of the directions and principles laid down by this Court in the case of Union of India Etc. v. Majji Jangamayya Etc. (supra).

2. The dispute with regard to the seniority between the direct recruits and the promotees in the Income-tax Department was set at rest by a Constitution Bench of this Court when it delivered its decision on 16-4-1974 in B. S. Gupta case (AIR 1974 SC 1618) (supra) which is also known as the IInd B. S. Gupta case. By that decision, this Court accepted as correct the seniority list of Income Tax Officers which was filed before it on February 15, 1973 having been prepared in accordance with the directions given in the judgment dated August 16, 1972 in, what is known as the Ist B. S. Gupta case reported in (1975) Supp. SCR 491 : (AIR 1972 SC 2627). On the basis of this seniority list, the Departmental Promotion Committee (hereinafter referred to as the Committee) prepared a selection list in July, 1974 for promotion of Income-tax Officers, Class-1 to the posts of Assistant Commissioners. There were 112 vacancies and the Government sent to the Committee 336 names in order of seniority for consideration of the field of choice. The Committee followed the instructions given for the purpose in the Government Memorandum of 1957 and found 276 Officers fit for the area of choice, assessed the merits of 145 persons in order of seniority, found one officer outstanding, 114 very good and 7 Scheduled Caste/ Scheduled Tribes Officers good. This selection was challenged in various High Court. Two of the High Courts allowed the petitions in favour of the challenging petitioners and the other High Courts gave interim orders staying the operation of the

selection list. At that stage, the Union of India preferred appeals to this Court. This Court allowed the appeals and upheld the selection list, vide Union of India v. Majji Gangamayya case (AIR 1977 SC 757) (supra) decided on 5-11-1976. While doing so, this Court explained the observations made in the Ist B. S. Gupta case (supra) (1975 Supp SCR 491) at page 506 : (AIR 1972 SC 2627 at p. 2637) thereof, which were relied upon by the respondent-Officers in that case. These observations were as follows:

"After the fresh seniority list is made in accordance with the above directions, it will be open to any direct recruit or promotee to point out to the department that in the selections made to the post of Assistant Commissioner from 1962 onwards, he, being otherwise eligible, was entitled on account of the new seniority given to him, to be considered for promotion to the post of Assistant Commissioner. The department may have to consider his case for promotion on his record as on the date when he ought to have been considered for selection but not so considered. If he is selected, his position will be adjusted in the cadre of the Assistant Commissioners without affecting the promotee Assistant Commissioners who had been confirmed prior to 22-2-1967 the date on which the Jaisinghani's case (AIR 1967 SC 1427) was disposed of by this Court." (Emphasis supplied)

While explaining these observations, this Court observed as follows (AIR 1977 SC 757, Para 58):

"The observations..... are that if as a result of the fresh seniority list it is found that any officer was eligible for promotion to the post of Assistant Commissioner on account of his place in the new seniority list, the department might have to consider his case for promotion on his record as on the date when he ought to have been considered, and if he would be selected his position will be adjusted in the seniority list of Assistant Commissioners. The object is to see that the position of such a person is not affected in the seniority list of Assistant Commissioners because he is actually promoted later pursuant to the new seniority list, although according to the new seniority list itself he should have been promoted earlier. The observations do not mean that although the Committee can meet for the selection of officers for promotion to the post of Assistant Commissioner only after the seniority list is approved by this Court, the selection would be deemed to be made at the time when a vacancy in the post of Assistant Commissioner occurred and the eligibility of officers for selection will be determined by such deemed date of selection. No employee has any right to have a vacancy in the higher post filled as soon as the vacancy occurs. Government has the right to keep the vacancy unfilled as long as it chooses. In the present case, such a position does not arise because of the controversy between two groups of officers for these years. The seniority list which is the basis for the field of choice for promotion to the post of Assistant Commissioner was approved by this Court on 16 April, 1974. Promotions to the post of Assistant Commissioners are on the basis of the selection list prepared by the Committee and are to be made prospectively and not retrospectively."

The contention raised by the respondents Dr. Tripathi & Shri Sinha in the present appeal and which as stated above, is accepted by the Tribunal, was that in view of the said observations in Ist B. S. Gupta case (AIR 1972 SC 2627) (supra) as explained in Majji Jangamayya case (AIR 1977 SC 757) (supra) while selecting the Income-tax Officers to the post of Assistant Commissioners, the Committee was required to

consider the cases of the Income-tax Officers falling within the zone, with reference to their records on the date the Committee met for selection. They were not to be selected with reference to their records relevant to the year for which their selection was to be made. Since the Committee followed the latter course, it had, according to the petitioners, violated the directions of this Court given in the case of Ist B. S. Gupta (supra) as explained in the case of Majji Jangamayya (supra). Unfortunately, the Tribunal fell (sic) for this contention little realising that it was the first course canvassed by the contesting respondents and not the latter which would have been contrary to the directions of this Court in both the Ist B. S. Gupta case (AIR 1972 SC 2627) (supra) as well as Majji Jangamayya case (AIR 1977 SC 757) (supra). As is abundantly clear from the relevant observations reproduced above, what was desired by this Court in both these cases was that if according to the new seniority list there were cases of officers who were entitled to be considered for promotion much before they were considered on the basis of the old seniority list, the Committee should look into such cases, and should adjust the promotions given right from the year 1962 onwards by considering the cases of such unjustly superseded officers. Hence the Committee was, required to consider the vacancies in the posts of Asstt. Commissioners year-wise from 1962 onwards, and if the superseded officers were found fit for such promotion, they were to be given seniority as Asstt. Commissioners from the year in which they would have been promoted. It goes without saying that while considering the promotions in the earlier years, the Committee had to consider the record of the officers relevant to those years. The Committee could not have taken into consideration the record of future years for promotion in the earlier years. This is also the import of the observations of this Court emphasised by us above. The Committee did . exactly that as is clear from what is stated in paragraphs 12 to 18 of the counter filed on behalf of the appellants in the proceedings before the Tribunal. There it is pointed out specifically with reference to the contesting respondents Dr. Tripathi and Shri Sinha that the Committee which met from 1977 to 1979 to adjust the promotions are directed by this Court, considered in 1978 the case of Dr. Tripathi with respect to his claim which arose in September 1967 Feb. 1969 and September 1969. He was not selected to the post for the vacancies in September 1968 and February 1969 on the basis of comparative merit. However, he was selected for one of the vacancies in September 1969 and was given deemed promotion with reference to that date. So also the case of respondent Shri Sinha was considered for the vacancies in September 1968, February 1969 and September 1969. He was not selected for the vacancies in September 1968 and Feb. 1969, but was selected for one of the vacancies in September 1969. He was given the deemed date of promotion from that date. There is no dispute that the seniority of both the respondents as Asstt. Commissioners has been fixed with reference to the said dates of their deemed promotion.

3. Mr. Salve, the learned counsel appearing for both the contesting respondents however, urged two contentions. His first and the main contention was that the claims of the said respondents should have been considered on the basis of their records either on the date the new seniority list was prepared. i.e., Feb., 2, 1973 (as approved in the IInd Gupta case (AIR 1974 SC 1618) decided on April 16, 1974) or on the date the Committee met in 1978 to consider their claims for the promotional posts. He contended that this was the direction given by this Court in the Ist Gupta case (AIR 1972 SC 2627) (supra) and in Majji Jangamayya case (AIR 1977 SC 757) (supra). We have

already quoted above the directions given in both the said cases. It will be obvious from the said directions that the course suggested by Shri Salve, if adopted by the Committee, would have been in clear violation of the said directions. On the other hand, the Committee had strictly and correctly abided by the said directions.

4. The second contention urged by Shri Salve was that the selection was not made according to the instructions given in the Government Memorandum of 1957. According to him, it is the merit-cum-seniority and not seniority-cum-merit formula which should have been followed while making the promotions. We have no record before us to find out what exactly were the comparative merits of the contesting respondents as against the other candidates. The respondents in their counter-affidavit have stated in so many words that the comparative merits of the respondents were considered, vis-a-vis the other candidates for each of the occasions. They were not selected for the vacancies of two earlier occasions and were selected on the third occasion on the basis of the comparative merits. We also cannot overlook the fact that before the Tribunal the contesting respondents neither advanced any such contention nor requested for the production of the records. In fact, their case before the Tribunal did not centre round this point at all. Even so, since the records were brought by the appellants in this Court, we had asked Shri Salve to look into them and inform us whether his grievance that the merits of his clients were not given due weight by the Committee had any substance. No such material was furnished to us.

5. The result is, the appeal is allowed and the impugned decision of the Tribunal is set aside. In the circumstances, there will be no order as to costs.

6. The interim application and the contempt petitions respectively were filed by the contesting respondents for seeking directions .to the appellants to appoint them provisionally as Chief Commissioners of Income-tax and for taking action for the alleged breach of the orders of this Court for not considering claims to the said posts according to seniority. In the view we have taken, they have to be dismissed. We also understand from the appellants that the contesting respondents have since been appointed as Chief Commissioners according to their seniority as determined by the department and approved by us as above. We have been told by appellants, counsel that the reversal of the Tribunal's decision no longer affects the promotion granted to them.

Appeal allowed.

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