

Union of India and others

Vs

Syed Mohd. Raza Kazmi and others

Civil Appeal No. 2255 of 1992

(S. Ranganathan, V. Ramaswamy, Yogeshwar Dayal JJ)

13.03.1992

JUDGEMENT

RANGANATHAN, J.:—

1. Leave is granted and the appeal is disposed of after hearing counsel for both parties.
2. The four respondents joined service in the Income-tax department as Upper Division Clerks. Their scale of pay was Rs. 330- 560. In the normal course of events, after putting in five years of service and passing a ministerial staff examination, they would have been promoted as Head Clerks (HC) on the scale of Rs. 425-700. Perhaps because of the stagnancy of a large number of Upper Division Clerks (UDCs) without any promotion, the Government constituted a grade of Tax Assistants (T.As.) by an order dated 11th March, 1978. The pay-scale of the post of Tax Assistants was fixed at Rs. 380-12-EB-15-560-EB-20-640. In other words, the cadre of T.As. was created as an intermediary cadre between U.D.Cs. and HCs. classifying it also as a ministerial cadre in Group C of the Central Services. This was done by upgrading as T.As. one third of the cadre strength of U.D.Cs. The idea was to provide more experienced and competent ministerial staff to deal with important clerical work particularly in the Companies' and investigation circles. 4,140 posts of TAs were created by upgrading an equal number of posts of UDCs with the result that a corresponding number of posts of UDCs got abolished from time to time as posts of Tax Assistants got filled up in the respective charges. The recruitment to the post of TAs was entirely by promotion from the cadre of UDCs on a selection basis on the recommendation of a duly constituted departmental promotion committee out of those of the UDCs as had (a) rendered a minimum service of three years, and (b) secured at least 40 per cent marks in the papers on four subjects in the departmental examination conducted for the post of Income-tax Inspectors (I.T.I) from time to time.
3. This may be described as a limited qualification in the I. T. I. Examination. A pass in every paper of the examination with 50% marks and an overall average of 60% made the candidates eligible for consideration for promotion to the post of ITIs which is a non-Gazetted, non-ministerial post in Class III (Group C) of the Central Services.
4. The four respondents had obtained the limited qualification referred to above in the ITI examination in 1976 and 1977 and, as such, they were all promoted as TAs and have been functioning as such.
5. There were two promotional avenues for Upper Division Clerks. They could become Head Clerks after putting in five years of service and passing a ministerial staff examination as already mentioned. They were also eligible, along with staff in higher ministerial grades and stenographers,

to be considered for the post of Inspectors provided they had also completed the departmental examination for ITIs. For his purpose, persons in the higher grades got preference over the persons working in the lower grade. An Upper Division Clerk could become an Inspector only after persons in higher ministerial grades had been duly considered. But Upper Division Clerks could become Head Clerks and Inspectors in due course of time, subject to their passing the respective qualifying examination. When the post of Tax Assistant was created, the rules of recruitment for Head Clerks was not modified. In other words, so far as the post of Head Clerks was concerned, that had to be filled up 100 per cent by promotion only from Upper Division Clerks. The Tax Assistants were not eligible for promotion as Head Clerks. They were, however, eligible for consideration as Inspectors on completing the ITI examination. Thus Tax Assistants could be promoted only to the posts of Inspectors but there also they stood in the queue till all eligible candidates from higher ministerial cadres had been considered. Considering that they formed a grade higher than the grade of Upper Division Clerks, it was inequitable that they should be denied promotion to the post of Head Clerks. The Department, therefore, issued instructions that promotion to the grade of Head Clerks could be made not only from the cadre of Upper Division Clerks but also from the cadre of Tax Assistants but added, as a rider, that in so doing, the Tax Assistants would be considered only in turn in accordance with their seniority in the cadre of Upper Division Clerks, irrespective of the fact that they may have been confirmed in the grade of Tax Assistants. These instructions appear to have been issued in 1978 itself but were reiterated by another Memorandum dated 26th March, 1982. The result of this was that though Tax Assistants got promotion as Head Clerks, it was available only according to their order of seniority among the Upper Division Clerks. They felt that it was very inequitable that they, who belonged to a higher cadre than the Upper Division Clerks should get promotion as Head Clerks much after persons who continued to remain as Upper Division Clerks and had not qualified for appointment as Tax Assistants. This, they felt, amounted to putting a premium on inefficiency.

6. The Tax Assistants, thus aggrieved, went to the Central Administrative Tribunal for redress. They contended that, for promotion as Head Clerks, Tax Assistants should be treated en bloc as a cadre senior to UDCs (as was the position regarding promotion as ITIs) and should not be made to wait for promotion to HCs for their turn in seniority as UDC. To illustrate their grievance, it may be mentioned that respondent Syed. Mohd. Raza Karmi (who was the applicant before the Tribunal) had completed the departmental examination for Income-tax Inspectors as early as 1977 and had qualified for becoming and had become a Tax Assistant by reason of complete success in the above examination which made him eligible even for promotion as Income-tax Inspectors subject, of course, to his seniority. On the other hand, though promoted as Tax Assistant as early as 1977 he found himself continuing as a Tax Assistant even as late as 1988, whereas if he had been treated as belonging to a higher grade of employees than Upper Division Clerks he would have been promoted as Head Clerk w.e.f. 7-3-1984. There was also another hurdle in the way of this respondent in that he could not appear in the Income-tax Officers' Examination, (Group-B), until promoted as a Head Clerk. To sum up, his promotion as a Head Clerk was inordinately delayed; his promotion as Inspector was also consequently delayed because Tax Assistants could be considered for promotion as Inspectors only after Head Clerks; and he was also under a handicap in regard to his eligibility for appearing in the officers' examination. The Central Administrative Tribunal felt that there was an injustice in this situation. The Tribunal observed:

"It is not under dispute that the post of Tax Assistants is an intermediary cadre post in a higher grade and is considered as a promotional post from the grade of UDC. The only reason that has been emphasised in the replies filed by the respondent for not giving any consideration to the fact that it is an intermediary cadre and higher

grade post and a promotional post from the grade of Upper Division Clerk is that in case this was made a channel of promotion of UDCs (sic) who do not appear in the departmental examination for promotion to the post of ITIs and who wait for promotion to the post of HCs will be denied any promotional avenue and will stagnate and retire on the same post i.e. Upper Division Clerk. To our mind, this explanation is not founded on well considered principles and the chances of further promotion for TAs should also have been safeguarded because once they took a chance to appear in a departmental examination and qualify through a DPC for promotion as TAs which is a higher grade post they cannot be. for the purposes of consideration for further promotion to the grade of Head Clerks, made to lose their rights accrued to them by virtue of their promotion and by virtue of occupying a post which is without any doubt a higher grade and promotional post. At the same time, when these posts were created, only part of the cadre of Upper Division Clerks i.e. 1/3rd was upgraded to those posts. Therefore, majority of UDCs still remain in the parent cadre of UDCs. A plain reading of the manner in which the post of Tax Assistants have been created also does not leave any doubt that these posts could very well be treated in the regular avenue of promotions from the post of UDC to that of HC but this would have resulted in a peculiar situation i.e. all UDCs would have to pass through the post of HC which posts are definitely not in large numbers and thereby there would have been no stability and continuity in the incumbency of the post of HC as he would have thereafter moved for further promotion to the category of Supervisor Grades I and II or ITI. The respondents raised a contention in their reply that if TAs were allowed to occupy the post of HC and they already have a chance for promotion as an Inspector, which is a higher grade post than that of Head Clerk, they would have not been able to find sufficient number of staff to man the post of Supervisor grades I and II who are in the avenue of promotion of Head Clerks (sic) can also not be just right."

7. Considering the above aspects, the Tribunal was of the opinion that the Government should evolve a proper scheme by which the fact of the Tax Assistants being in a higher grade is not ignored and the difficult situation facing the applicants could be overcome. The Tribunal proceeded to suggest three alternative methods by which such an improvement in the situation could be achieved.

- (i) A quota or roster on the same lines as in the case of inspectors for promotion to the post of Head Clerks should be fixed:
- (ii) Option should be invited from such of the TAs who want to opt for HC's posts and thereafter for supervisors' posts; and
- (iii) The posts of HCs should be filled not by seniority alone but by an open competition where all UDCs of certain minimum years of service are allowed to compete.

The respondents filed an application for review praying, inter alia, that "specific orders for immediate implementation be passed that the TAs be given seniority over UDCs for promotion to 'HCs w.e.f. 31-5-78". This application was dismissed by the Tribunal on 28-4-1989. Then they preferred petitions for special leave to the Supreme Court being SLP Nos. 15854-63 of 1991. These petitions were dismissed by this Court's order dated 24-1-1990 with the following observations :

"The Tribunal has formulated the scheme which we hope will be implemented by the Department within reasonable time. The Special Leave Petitions are dismissed."

8. The Department claims that it has given careful consideration to the various suggestions made by Tribunal. Apropos the three suggestions made by the Tribunal, the department's comments are as follows :

4. That the Government has carefully re-examined various alternatives suggested in the directions of Central Administrative Tribunal. The first alternative suggested was that a quota system could be introduced for promotion to the grade of Tax Assistant. (TA). This has been examined carefully. The quota system in the grade of Inspectors, ITI, referred to by the CAT is only for the feeder categories as provided in the relevant recruitment rules. This position is not obtaining in the case of TAs. The quota / Roster system cannot be introduced for promotion to the post of Head Clerks (HC) as under the recruitment rules for HCs, the TA is not a feeder grade for promotion to the post of HC. The quota / Roster system for promotion to HC would not be advantageous to the TAs as at present they are eligible for consideration for promotion to all available posts of HCs on the basis of their seniority as UDC. That if quota system is introduced it is likely that junior UDCs may get promotion to the post of HCs earlier than some of the TAs who may be senior in the grade of LDC as promotion of TA to HC would then be restricted to the fixed quota only. They may be senior as UDCs but cannot get promoted to the grade of HC due to the proposed fixation of quota for TAs/UDCs. Hence, fixation of quota system for promotion of Tax Assts. to MC is not considered feasible.

5. That as regards the suggestion that option be obtained from TAs, it is considered that it should be a retrograde step to obtain options from TAs, who want to be absorbed in the Ministerial cadre, foregoing their chances for promotion in the grade of Inspectors. The efficiency of the Income-tax Deptt. would suffer if such a step is taken. The purpose behind creation of the grade of TAs senior to the level of UDC, would be defeated if option is allowed to the TAs for absorption in the ministerial cadre.

6. That the TA perform work of Technical and complicated nature in the Income-tax Deptt. having qualified in the Departmental examination of ITs. Promotion to the ministerial cadre posts of HCs and above are basically provided for UDCs, who form part of the ministerial cadre. However, TAs are also considered for promotion to HC as per their place in the UDC seniority list.

7. That the TAs have been made eligible for promotion as HC, as a concession and they do not have a statutory right for such promotion, as their line of promotion is in the Executive cadre of ITI.

8. That the Government has issued special executive orders making the TA eligible for -promotion to the post of HC on the basis of heir seniority as UDC along with other UDC who have not received promotion to the grade TA.

9. That giving an overriding seniority to the post of TA in the matter of promotion to HC would be doing injustice to the UDCs and is not contemplated in the recruitment rules. It would also be against the general principles of natural justice.

10. That thirdly, the post of HCs cannot be filled by open examination as no open examination is held for such supervisory post in any department of Govt. of India.

11. As already explained all the above three alternatives have been duly considered after detailed

examination and the Department of Revenue have come to the conclusion that existing system is in the best interest of the Department and all feeder categories of employees and could not be changed.

The department was of view that the existing scheme of promotion of Tax Assist ants to the grade of Head Clerks by virtue of their seniority in the grade of Upper Division Clerks had stood the test of time. It was in the best interests of the department and all the feeder categories of employees. No representations had been received by the department from the staff side for any change in the scheme. No difficulties had also been experienced so far from any other charge of the department which is located all over India. On the other hand, any change made in the present scheme, it was thought, would create enormous difficulties for the department. It was, therefore, decided to continue the existing system.

9. With the department taking up this stand, the respondents had no option but to go back to the Central Administrative Tribunal. They submitted to the Tribunal that, though the department had categorically admitted that they accepted the earlier order of the Tribunal, it was declining to give effect to the directions contained in the said order. On the other hand, certain amendments to the recruitment rules to various promotional posts that had been made in the meanwhile were also brought to the Tribunal as placing the respondents in a worse position. The Tribunal also seems to have thought that the amendment in the rules were intended to defeat the respondent's claim for promotion. The Tribunal also took the view that the respondents had become entitled to the promotion posts under the earlier rules as they existed in view of the Tribunal's directions on the earlier applications. Their rights for promotion thus crystallised since 1988, they observed, could not be defeated because of subsequent amendments in the rules. They commented adversely on the department's failure "to formulate a scheme even after judicial orders had been passed which had to be obeyed and implemented by them". The Tribunal directed (in terms which are not quite clear in the copy of the order furnished to us) :

"We direct that the respondents (sic) with rules along with as per the order of the Tribunal dated 26-8-88 referred to above notwithstanding the fact there was any failure on their part to formulate the scheme. In case the applicants are found entitled, their appointment will take effect from that date and not from the date they were subsequently promoted. Let compliance of this order be made within a period of two months and one week from today. As this order has been passed in the presence of the counsel and officials of the Income Tax Department, it is not necessary to say that the order is to be implemented from the date of receipt of copy of the same."

It is from this order of the Tribunal dated 9-5-1991 that the Union of India has preferred the present appeal.

10. We are afraid that the Tribunal's order is based on confusion and misapprehension. In the first place, we do not think that any right had crystallised in the favour of respondents as a result of the earlier order of the Tribunal. At that time, the Tribunal was no doubt inclined to think that, the grade of Tax Assistants being higher than the grade of Upper Division Clerks, the department should evolve some scheme whereby the respondents could be made eligible to be considered for promotion as Head Clerks otherwise than in their turn of seniority as Upper Division Clerks. The earlier order did not however, given any specific direction to the department. The operative portion of the order only read thus :

"We dispose of this application only by a direction to the respondents to evolve a scheme considering the suggestions given in our observations along with any other scheme that they may be able to evolve to remove the anomalous situation whereby the incumbents of promotional post which are in intermediary cadre are clubbed for their seniority with persons in a lower grade for consideration for promotion to the post of Head Clerk."

It is, therefore, difficult to see how any rights had got crystallised in favour of the respondents which have been taken away by the department subsequently. The second major impression underlying the order of the Tribunal is that the department had defeated the rights of the respondent by the subsequent amendments made in the rules. This, again, is an incorrect impression as the amendments did no such thing. Neither the original rules nor the amended rules provided for the promotion of Tax Assistants to the post of Head Clerks. The amended rules in respect of Inspectors did not also place the respondents under any greater disadvantage than before in the matter of their promotion as Inspectors. Only, the reference to higher ministerial establishments contained in the earlier rules was replaced by a more detailed specification by a reference being made to "Supervisors Grade-I, Supervisors Grade-II, Head Clerks, Tax Inspectors, Upper Division Clerks and Stenographers", providing a similar arrangement of gradation as earlier and creating quotas for ministerial grades on the one hand and the stenographer's grades on the other. There is no basis for the Tribunal's conclusion that the department had attempted to by-pass any direction or conclusion of the Tribunal by the amendments to the rules.

11. It is no doubt true that, by its earlier order, the Tribunal had suggested to the department that some alternative schemes should be thought of and some solution should be evolved to redress the grievances of the respondents. But no specific direction was given and the mere fact that the department has not found it feasible to accept any of the suggestions made by the Tribunal cannot justify the grant of the respondent's prayer. The only effect of the order dated 26-8-88 not being implemented is therefore, to put the parties back in the position in which they were and to call for a fresh consideration of their plea on the merits.

12. Now the short question is whether there is any injustice suffered by the respondents which can be remedied by the Tribunal or the Court. The respondents no doubt have a grievance that, though promoted to a grade higher than the Upper Division clerk they are being considered for promotion as Head Clerks only in accordance with their seniority in the cadre of Upper Division Clerks. This creates two types of anomalies. One is that a UDC (who has not qualified as TA) can become HC earlier than one who has, by virtue of his seniority as UDC. The second is that a senior UDC, who qualifies as a TA much later than a UDC junior to him, can become HC earlier, though, as TA, he would be junior to the latter. But as against these anomalies, one has to consider the difficulties faced by the Department in giving TAs as a class higher preference than UDCs for promotion as Head Clerks. For one thing, the Recruitment Rules of 1969 did not, naturally, envisage TAs as a feeder post for promotion as HCs and, when the posts of TAs were created, it was deliberately decided not to include them as such; the rules were not amended and the instructions only put them on par with other UDCs. This remained unchallenged and, even when challenged in 1987, the Central Government as such was not made a party and no specific directions for the amendment of the rule in this behalf were prayed for. But, this apart, there were insuperable difficulties in the way. The figures given to us indicate that there were about 13,000 Upper Division Clerks in 1978. Their promotional avenue was only to become Head Clerks by passing a ministerial service examination or to become Inspectors on passing the ITI examination. There were UDCs who could do this and get such promotions in due course. Secondly, there were Upper Division Clerks who were not

capable of passing the Income-tax Inspectors' Examination but were able to qualify in the lower grade ministerial examination which made them eligible to become Head Clerks. There was a third category of Upper Division Clerks who fell in between these two categories. They did not completely pass the Income-tax inspectors' Examination but qualified in it with sufficient marks to justify the view that, given some encouragement, they would be able to move into the inspectors' executive line. The department was also in need of a category of persons who would not be simply doing clerical work but who showed such promise of developing into Inspectors. In this situation, the department created the post of Tax Assistants and promoted to these posts persons who had not fully completed the ITI examination but had secured a "limited" pass therein. This gave the UDCs who had achieved this distinction two advantages : (i) they became immediately entitled to a higher scale of pay than other UDCs, and (b) they acquired higher eligibility to become Inspectors of Income-tax for which selection they stood in between Head Clerks and other Upper Division Clerks. But they suffered this advantage (or disadvantage) that they would not become Head Clerks; their ability to pass the ITI examination was taken as an indication of their propensity to move to an executive line and so, promotion for them was to be only as ITIs in due course. So far as the rest of the UDC staff was concerned, who had qualified neither in the Income-tax Inspectors' Examination, nor in the Tax Assistants' Examination, they continued to be Upper Division Clerks. The department felt that, if the Tax Assistants were also allowed to compete for the post of Head Clerks by the mere reason of their, limited qualification in the Income-tax Inspectors' Examination at a level higher than UDCs, there would be a tremendous stagnation among the Upper Division Clerks. More than 23rd of the Upper Division Clerks would be completely shut out from at chances of promotion. However, realising that, to deny the Tax Assistants completed any promotion as Head Clerks would also amount to an anomaly since they were in no way inferior to the other Upper Division Clerks who were eligible for such promotion the department decided that while Tax Assistants should normally await promotion as Income-tax Inspectors, they should be enabled as and when their normal seniority II the rank of Upper Division Clerks warranted it, to be promoted as Head Clerks though strictly speaking, they belonged to a grad from which there would be no promotion to the posts of Head Clerks. This was a via media found by the department between the two alternatives (a) of altogether denying the Tax, Assistants promotion as Head Clerks, and (b) of treating the Tax Assistants as a cadre superior to Upper Division Clerks in al respects including promotion as Head Clerks It was a concession shown to the TAs, standing in the longer queue for ITIs, by permitting them to join the queue for HCs but with no precedence over other senior UDCs already standing in this second queue. In this situation, it is very difficult to agree that the department has acted unreasonably or unjustly. The respondents are no doubt better than the other Upper Division Clerks in the they have qualified in a limited manner in the Income-tax Inspectors' Examination which the other Upper Division Clerks have no done. But, for this "achievement", they have been given a promotion and they have been receipt of higher grades of salary right from the beginning from the day (they) became Tax, Assistants. To this extent, they have gained march over the other un-enterprising UDCs who could not qualify, wholly or partly, it the ITI examination. They have also gained preference, for promotion as ITIs, over UDCs who do not qualify as TAs but who pass the ITI's examination in due course. It is no doubt true that the promotion of the respondents as TAs has not been carried to it fullest logical sequel by giving them promotion as Head Clerks treating them as a cadre higher to UDCs entitled to such promotion But this was a calculated decision taken in the difficult situation of having to reconcile the claims of the large number of UDCs who would be left otherwise with no avenues of promotion and of the UDCs who had already earned some advantages by becoming TAs. The policy decision is not arbitrary or meaningless. It has a background and it has a purpose. It is for the department to decide on policies of promotion which will be consistent with the interests of all employees belonging to various cadres. It is not for the Administrative

Tribunal or for the Courts to interfere with this and to dictate the avenues of promotion which the department should provide for its various employees. The courts cannot, we think, direct that TAs should be made a direct feeder post to HCs superior to UDCs. No doubt the Court will interfere if there is arbitrariness or resultant discrimination. But, after considering very carefully all aspects of the situation, we are unable to say that there is any such arbitrariness or discrimination. We are unable to see any ground for interfering with the policy of the department which has been in force since 1978. We may also point out that, in the proceedings before it, the Tribunal has had no opportunity to hear the point of view of the larger category of Upper Division Clerks who have not qualified to be either Inspectors or officers and whose future is fully jeopardised by the directions given by the Tribunal. This is also an additional reason why we think the Tribunal was not justified in giving such a direction as it did to the effect that the respondents should be promoted as HCs by treating them as belonging to a cadre higher than UDCs.

13. For the above reasons, we quash the Tribunal's direction to give promotion to the respondents on the basis indicated in its order. We would only like to add that, while there is no doubt some ground for complaint on the part of the respondents. it should not be forgotten that, for the "limited" qualification they had obtained, they have had clear and tangible benefits by being appointed to the higher post of TAs. They are better off then they would have been had they not qualified as TAs at all. We, therefore, do not consider it necessary to interfere in the matter.

14. The appeal is allowed, but, in the circumstances, we make no order regarding costs. Appeal allowed.

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