

(2020) 01 CAT CK 0002

In the Central Administrative Tribunal

Case No : Original Application No. 2030 Of 2014, Miscellaneous Application No. 1740 Of 2014

Ashish Kumar Thakur And Ors

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 03-01-2020

Acts Referred:

Citation : (2020) 01 CAT CK 0002

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : A.K. Behera, Hanu Bhaskar

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. Applicants are working as Income Tax Inspectors (ITIs) in Income Tax Department in 5th Central Pay Commission (CPC) scale of Rs.6500-10500. The next promotion lies to the post of Income Tax Officer (ITO) in the pay scale of Rs.7500-12000. As per Recruitment Rules (RRs), issued on 21.12.2004 and as amended on 24.03.2005, the posts of ITO are to be filled from those ITIs who have completed requisite number of years of regular service as ITI (three years needed) in feeder grade and should have qualified the relevant departmental examination before the cut off date for such consideration.

2. For the purpose of administration, the entire jurisdiction in India is sub-divided in 18 regions and the promotions are to be effected in each region separately as per region-wise seniority list. DPCs are also to be held region-wise.

3. The Government undertook cadre restructuring-II for entire Income Tax Department and the Union Cabinet approved the same vide their decision dated 23.05.2013 and created a large number of posts at various levels of departmental hierarchy. The number of posts at the level of ITOs got increased to 5942 for entire department vis-à-vis 4204 earlier. These were distributed for

various regions vide letter dated 31.03.2014 (i.e. in Financial year 2013-14), issued by Department of Revenue, Central Board of Direct Taxes (CBDT). Out of this, there were 654 posts allocated to Delhi Region to which applicants belong as against 385 earlier. It was modified to 655 through a subsequent communication named cadre restructuring plan issued on 04.04.2014. This meant an increase of 270 posts for ITOs in Delhi region. It is pleaded that 30 vacancies for the posts of ITOs had occurred for financial year 2013-14 in normal course i.e. not on account of cadre restructuring. All of these posts are to be filled by way of promotion as per RRs. It is about this promotion that applicants, who belong to Delhi region, have ventilated their grievance.

4. The respondent - Income Tax Department initiated the action to fill up the newly created posts after distribution was issued on 31.03.2014. This process to fill includes finalisation of the seniority lists of feeder category, allocation of budget to fill up the newly created post. Thereafter holding of the DPC meeting, to fill these newly created posts of ITOs, was held on 25.05.2014 (which happened to be Sunday) and promotion orders for 234 candidates were also issued by PCIT/New Delhi on 25.05.2014. This action to fill was in financial year 2014-15.

For this DPC meeting, it was taken that vacancies actually pertained to the financial year 2013-14 as the Union Cabinet decided to create these posts in their meeting held on 23.05.2013 and post allocation was issued on 31.03.2014. Accordingly, 01.01.2013 was kept as the cut off date to assess eligibility of STAs for promotion as Income Tax Inspectors, i.e., they should have requisite service of three years and should have passed the departmental examination by this cut off date.

The applicants plead that all six of them had completed the requisite service of 03 years but they had not passed the departmental exam by this cut off date.

5. The applicants plead that since posts were to be filled up separately by various regions and creation of new posts was advised to these regions on 31.03.2014 only, the entire action to fill up the posts could be undertaken in financial year 2014-15 only. Moreover, the working of Income Tax Department is governed by Income Tax Act, 1961. This necessitates demarcation of jurisdiction for various posts. In absence of this notification, posts can actually not be put to operation. This Gazette notification was issued on 22.10.2014. Thereafter, the different regions issued instructions in respect of jurisdiction and reporting structure of ITOs in November, 2014.

Accordingly, vacancies are required to be counted for the financial year 2014-15 and the cut off date ought to be 01.01.2014.

Applicants wrote the departmental examination held in September 2013 and qualified the same as per result declared on 13.01.2014, which took effect from 18.12.2013. On this basis, it is claimed that they ought to have been treated as eligible for DPC held on 23.05.2014. Since they were treated as ineligible for said

DPC, they were aggrieved and made representations on 21.04.2014, 22.04.2014, 23.04.2014, 21.05.2014 and 23.05.2014. One of the applicants herein (Shri Hitendra Rajput) represented as under vide his letter dated 22.04.2014:

"Sub: Filling-up of vacancy consequent to Cadre Restructuring-2013 -regarding.

.....

Kindly refer to the above and to the Notification dated 31-3-2014 issued by CBDT whereby the additional posts created due to Cadre Restructuring-2013 has been allocated to the 18 CCIT (CCA) regions across the country.

2. In this regard, with all humility at my command, I draw your kind attention to the following factual and legal position:

I. Process of filling-up of vacancies

Now i.e. in F.Y. 2014-15 (1-4-2014 to 31-3-2015) the process of filling-up of the additional posts in all grades, created by Cadre Restructuring-2013 will be taken-up by all CCsIT (CCA), more specifically the promotion quota i.e. 100% in ITO grade, 2/3rd in Inspector, Executive Assistant, etc.

II. Confusion regarding eligibility criteria It is reliably learnt that in some CCsIT (CCA) regions (including Delhi) the officials who have cleared the Departmental Exam, the results of which was declared in December 2013 are not being considered for the promotions despite the fact that these officials have the requisite residency period in the feeder grade. At the same time, officials who are junior to such officials who have cleared departmental exam in December 2013, are being considered for the promotion.

The above course of action i.e. denial of promotion to officials who have cleared the departmental exam in December 2013, is being justified on the ground that the vacancies belong to Recruitment Year 2013-14 and accordingly only those who fulfil the eligibility criteria as on 1-1-2013 can be considered for promotion.

III Effect of the above stand

Many officials who are otherwise senior and fulfil all the eligibility criteria as on today will be denied promotion and officials who are junior will be promoted and thus will get unintended march in seniority over their seniors.

IV Fallacy in the Administration's stand at (II) above The ground as mentioned as para (II) above is fallacious because of following facts:

a. Vacancies consequent to Cadre Restructuring-2013 has been allocated to all CCsIT (CCA) only 31-3-2014 and therefore the process for filling-up of the same can be initiated only from 1-4-2014 onwards i.e. F.Y. 2014-15.

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6. It is further pleaded that only 234 posts of ITOs were filled up by promotion and a large number of vacancies were left unfilled (about 66=30+270-234). If applicants are promoted against these vacant posts, no third party rights are infringed. However, some of the ITOs who were promoted on 25.05.2014 and who are junior to applicants and they represent various communities, are arrayed here as private respondents 5-8.

By treating the vacancies for financial year 2013-14 instead of financial year 2014-15, applicants have been deprived of their legitimate rights and the entire process of DPC and promotion was conducted in haste and hence this OA.

7. Applicants also plead that in communication dated 31.03.2014, it was not specifically spelt out as to which year the vacancies pertain.

Thereafter, another communication was issued on 04.04.2014 (which is claimed to be wrongly typed as 04.03.2014), by Department of Revenue, CBDT to take immediate steps to convene DPC for filling up the additional post. This also did not indicate the year for vacancies.

The decision that vacancies actually pertain to financial year 2013-14, was conveyed by Department of Revenue, CBDT only on 27.05.2014 by when DPCs were already held.

8. Applicants also plead that their representations were not replied to before holding DPC. The draft seniority list of it is was issued on 21.05.2014. It was claimed by respondents that all objections received were disposed off and final seniority list was issued on 25.05.2014. The DPC was also held on 25.05.2014 and promotion orders were also issued on 25.05.2014, which happened to be Sunday. This shows the haste in this entire process.

8.1 Applicants also plead that DPC, for normal vacancies (30 in number) that occurred in 2013-14 was never held till 31.03.2014 when restructured vacancies were allocated to the regions.

9. The applicants have primarily prayed for the following reliefs:

"(b) Declare that the applicants are eligible for consideration for promotion against the 270 newly added posts of ITO in Delhi Region/Charge.

(c) Quash and set aside the proceedings and recommendations of the DPC held on 25.05.2014 excluding the applicants from consideration for promotion against the newly added posts of ITOs in Delhi Region/Charge.

(d) Quash and set aside the promotion order dated 25.05.2014 to the extent that the applicants were not considered for promotion as ITOs against the newly added posts of ITOs in the cadre of Delhi Region/Charge.

(e) Direct the respondent to consider and promote the applicants as ITOs against the 270 newly added posts of ITOs in Delhi Region/Charge."

10. The respondents opposed the OA and submitted that the cadre restructuring

proposal was approved by Union Cabinet vide decision taken on 23.05.2013 and allocation of posts was also communicated to all the regions on 31.03.2014, i.e. in financial year 2013-14. Once posts allocated to a region are communicated on 31.03.2014, the year of vacancies gets fixed as financial year 2013-14. Accordingly, the vacancies pertained to the financial year 2013-14 only.

11. It was further pleaded that steps to fill the newly created posts were specified by CBDT letter dated 31.05.2013. Relevant parts are reproduced below:

"I am directed to state that the Government has approved, as per decision taken in Cabinet Meeting held on 23rd May, 2013 (Minutes issued on 27th May, 2013), additional manpower for Income Tax Department in various cadres as per Annex A of this communication. These posts are created in addition to the existing posts as per restructuring of the Department vide F.No.A-11013/3/98-Ad.VII dated 24th October, 2000 and 7051 additional posts created vide their order F.No.A-11013/3/2006-Ad VII dated 20.11.2006.

2. All the additional posts at different levels as per Annex A stand created with effect from 23rd May, 2013 (the date of the Cabinet Meeting). These posts shall be filled up in accordance with the Cabinet approval in the following manner:-

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1(ii). The Cabinet has permitted, as a one-time measure, filling up of the additional posts that are to be filled by promotion immediately, without awaiting amendments in the recruitment rules on the basis of the model recruitment rules issued by DOPT. Accordingly, the process of filling up of all the additional posts that are to be filled by promotion shall be initiated immediately on the basis of the model recruitment rules issued by the DoPT without awaiting amendment in the recruitment rules of the relevant post(s).

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3. The region-wise/charge-wise distribution of the posts at various levels will be intimated separately. Revised sanctioned strength will be notified in the recruitment rules in due course.

4. This issues in pursuance to the approval of the Cabinet conveyed vide Cabinet Secretariat Note No.20/CM/2013(i) dated the May 27, 2013."

(Emphasis supplied)

12. The reasoning by applicants that action to fill up vacancies was undertaken in financial year 2014-15 and hence vacancies pertain to the financial year 2014-15, is fallacious on the face of it. Creation of vacancies and action to fill up the same are two separate activities. Cut off date to adjudge eligibility has to be governed by the time of creation of vacancies only.

For vacancies of financial year 2013-14, the cut off date was 01.01.2013 and admittedly, applicants did not fulfil eligibility on this cut off date.

13. It was further pleaded that while issuing notice on the instant OA, Tribunal had also ordered as under on 06.06.2014:

"The representations dated 21.04.2014, 23.04.2014, 21.05.2014 and 23.05.2014 filed by applicants will be disposed of by passing reasoned and speaking order. Till such time no DPC will be held by the respondents for this post."

Even though, promotions had already been effected on 25.05.2014 all representations were disposed of by passing detailed orders on 15/16-7-2014 and this was acknowledged by all six applicants.

14. Matter has been heard at length. Sh. A.K. Behera, learned counsel represented the applicants and Sh. Hanu Bhaskar, learned counsel represented the respondents.

14.1 Applicants have filed MA No.1740/2014 for joining together. For reasons put forth in MA, same is allowed.

15. The controversy lies in a very narrow compass. The only question that needs consideration is as to when were vacancies created. It is admitted that Union Cabinet approved the cadre restructuring scheme in their meeting that took place on 23.05.2013. The action to fill the vacancies was to be undertaken by the region. Clarification on "how to fill" was issued on 31.05.2013 (para-11 supra). For this purpose, the region-wise allocation was issued on 31.03.2014. By this very act of communicating the allocation, the region-wise vacancies came into being on 31.03.2014, i.e. in financial year 2013-14. The action by respondents to treat the vacancies for financial year 2013-14 cannot be faulted.

16. The action of creation of vacancies and action to fill up the same are two distinct matters. Even if action for filling up is undertaken late, the DPC has to assess the candidates who fulfil the eligibility for relevant year of vacancies. It is for this reason that there are many judgments where directions have been issued that DPC, even if held belated in subsequent years, is to be held year-wise. Even if DPCs are delayed, the zone of consideration includes only those who satisfied the eligibility on the cut off date for the relevant vacancy year and were in service on that date.

17. The need for holding DPCs timely and how to process the promotions if there is delay in holding the DPCs, was adjudicated by Hon'ble Apex Court in Union of India vs. N.R. Banerjee, AIR 1997 SC 3761. In this case, certain vacancies were likely to arise in the Financial Year 1994-95. A proposal for filling up the ensuing vacancies in Ordnance Factory Board was sent to the Ministry on 22.12.1993. The ACRs of the eligible candidates were approved on 16.08.1994 and the DPC was held on 15.03.1995 to fill up the four vacancies which were likely to arise in the year 1994-95. The Tribunal, however, directed the Government to ignore the ACRs for the year 1994. It also directed the DPC to be constituted as on 01.04.1994. This was challenged by the Government before the Supreme Court

and it was contended that crucial date for DPC should be April or May, 1995, because the DPC will have to consider the ACRs for the year, 1994. Rejecting the contention, the Supreme Court, inter alia, held as under:

"..... Though, prima facie, we are impressed with the arguments of Shri Altaf Ahmed, on deeper probe and on going through the procedure laid by the Ministry of Personnel and Training, we find no force in the contention. Preparation of the action plan for consideration by the D.P.C. of the respective claims of the officers within the Zone and thereafter for setting in motion the preparation of panel on year wise basis is elaborately mentioned. In case of their failure to do so, what further procedure is required to be followed is also indicated in the rules. It thereby manifests the intention of the rule-maker that the appellant-Government should estimate the anticipated vacancies, regular vacancies and also vacancies arising thereafter due to various contingencies and it should also get the A.C.Rs. prepared and approved. It is also made clear that the D.P.C. should sit on regular basis to consider the cases of the eligible candidates within the zone of consideration. The object is clear that the Government should keep the panel ready in advance so that the vacancies arising soon thereafter may be filled up from amongst the approved candidates whose names appear in the panel. In that behalf, it is seen that in the guidelines issued by the Government in Part I of clause (49) dealing with Functions and Composition of Departmental promotion Committee etc. necessary guidelines have been enumerated. It envisages that a post is filled upon by promotion where the Recruitment Rules so provide. In making promotions, it should be ensured that suitability of the candidates for promotion is considered in an objective and impartial manner. In other words, the consideration of the candidate is not clouded by any other extraneous considerations like caste, creed, colour, sect, religion or region. In consideration of claims, merit alone should enter into objective and impartial assessments.....

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Part II of the guidelines relating to the frequency of meeting of the D.P.C. Para 3.1 indicates that the D.P.Cs should be convened at regular annual intervals to draw panels which could be utilised for making promotions against the vacancies occurring during the course of a year.....

D.P.Cs. should be convened every year, if necessary, on a fixed date, i.e. 1st of April or May, in the middle of the para, by way of amendment brought on May 13, 1995, it postulates that very often action for holding D.P.C. meeting is initiated after the vacancy has arisen. This results in undue delay in filling up of vacancies and causes dissatisfaction among those who are eligible for promotion. It may be indicated that regular meeting of D.P.C. should be held every year for each category of posts so that approved select panel is available in advance for making promotions against vacancies arising every year. Under para 3.2, the requirement of convening annual meetings of the D.P.C. should be dispensed with only after a certificate has been issued by the appointing authority that

there are no vacancies to be filled by promotion or no officers are due for confirmations during the year in question. It would, thus, be seen that D.P.Cs. are required to sit every year, regularly on or before 1st April or 1st May of the year to fill up the vacancies likely to arise in the year for being filled up. The required material should be collected in advance and merit list finalised by the appointing authorities and placed before the D.P.Cs. for consideration. This requirement can be dispensed with only after a certificate is issued by the appointing authority that there are no vacancies to be filled by promotion, or that no officers are due for confirmation, during the year in question.

Part III deals with preparatory action plan for consideration for promotion. Para 4.1 reads as under;

"It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creation of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training etc., should not be taken into account for the purpose of preparation of a panel. In cases where there has been delay in holding DPCs for a year or more, vacancies should be indicated year- wise separately."

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..... It is true that filling up of the posts are for clear or anticipated vacancies arising in the year. It is settled law that mere inclusion of one's name in the list does not confer any right in him/her to appointment. It is not incumbent that all posts may be filled up. But the authority must act reasonably, fairly and in public interest and omission thereof should not be arbitrary.....

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.... The preparation and finalisation of the yearly panel, unless duly certified by the appointing authority that no vacancy would arise or no suitable candidate was available, is a mandatory requirement. If the annual panel could not be prepared for any justifiable reason, year wise panel of all the eligible candidates within the zone of consideration for filling up the vacancies each year should be prepared and appointment made in accordance therewith....."

(emphasis supplied)

18. In view of the foregoing, it is obvious that even if DPC is held belatedly, the cut off date for year of vacancy cannot be altered. Any alteration in this cut off date, will lead to distorted and unjust consequences.

19. In regard to the pleadings of haste in finalizing seniority list and holding of DPC and issuing promotion orders, all on 25.05.2014, which was a Sunday, a specific query was made to the counsel of applicants whether there are any objections to the seniority list issued on 25.05.2014. It was fairly mentioned that there are no objections. In this regard, it is also considered relevant to recall the submission made by applicants' counsel on 04.02.2015, which reads as under:

"Learned counsel for applicants submitted that there is no issue of seniority involved in the present OA and the only prayer made by the applicants is for year-wise bifurcation of the vacancies of ITO."

The Tribunal notes that there was haste but it is required to be seen in the context that there was stagnation which lead to cadre restructuring which was sanctioned on 23.05.2013 and respondents wanted to implement it at the earliest. Since admittedly, there are no objections to the seniority list issued on 25.05.2014, the argument put forth by applicants is of no consequence as regards grievance in instant OA.

20. The other grounds taken by applicants, are not relevant for the controversy at hand which is limited to as to which is the relevant year for the newly created posts under restructuring scheme (which was approved by Union Cabinet on 23.05.2013 and region-wise allocation of posts was communicated on 31.03.2014) and hence not commented upon.

21. In view of foregoing, the OA is without merit and is accordingly dismissed. No costs.