(2020) 01 CAT CK 0003

In the Central Administrative Tribunal

Case No : Original Application No. 3431 Of 2014

Ravi Kumar Srivastava And Ors — APPELLANT

Vs

Union Of India And Ors — RESPONDENT

Date of Decision : 03-01-2020

Acts Referred:

Citation : (2020) 01 CAT CK 0003

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

Bench : Division Bench

Advocate : Sudarshan Rajan, Ramesh Rawat, Gyanender Singh, S.K. Tripathi

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. Applicants are working as Senior Tax Assistants (STAs) in Income Tax Department. The next promotion lies to the post of Income Tax Inspector. As per Recruitment Rules (RRs), 2/3rd of the posts are to be filled from those STAs who have completed requisite number of years of service (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 Inspector got increased to 13265 for entire department. 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 1770 posts allocated to Delhi Region to which applicants belong. This meant an increase of 911 posts for Inspectors in Delhi region. These are to be filled by way of direct recruitment as well as by promotion as per RRs. It is about promotion quota vacancies 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 Inspectors, was held on 23.05.2014 and promotion orders for 194 candidates also issued by PCIT/New Delhi on 23.05.2014. 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 five 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 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 in December 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 filed this OA.

6. It is further pleaded that only 194 posts of Inspector were filled up in promotion quota and a large number of vacancies in this quota were left unfilled. If applicants are promoted against these vacant posts, no third party rights are infringed.

By treating the vacancies for financial year 2013-14 instead of financial year 2014-15, applicants have been deprived of their legitimate rights 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

"G. .... para 2.4.2 of DoPT OM No.220/11/7/86-Estt. (D) dated 30.07.1986 which reiterated DoPT OM No.35014/2/80-Estt.(D) dated 07.02.1986, it is stated as under:

"... The unfilled direct recruitment quota vacancies would, however, be carried forward and added to the corresponding direct recruitment vacancies of the next year (and to subsequent years where necessary) for taking action for direct recruitment for the total number according to the usual practice...."

The above OMs have been upheld by Hon'ble Supreme Court in its judgment dated 27.11.2012 in Civil No.7514/7515 of 2005 in case of UOI vs. N.R.Parmar. Therefore, the ratio decidendi of the case will have to be honoured, in all service matters especially relating to seniority/promotion."

8.1 Applicants also plead that

"J. .... consequent to cadre restructuring 2013, posts of Executive Assistant have been created with Grade Pay of Rs.4200 by merging three existing grades viz. O.S./Sr. TA/Steno-I (with Grade Pay of Rs.4200) and this Executive Assistant is the feeder grade for the post of Inspector (Grade Pay of Rs.4600). Therefore, those officials who are presently in the grade of O.S./Sr. TA/Steno-I will have to be first placed in the grade of Executive Assistant through the agency of DPC. Similarly, officials who are presently in the grade of TA/Steno-II/III (Grade pay of Rs.2400) will have to be first promoted to the grade of Executive Assistant and then be considered for promotion to the grade of Inspector. But in the recent promotion to the grade of Inspector, this requirement has been relaxed and Sr. TA/Steno-I (with Grade Pay Rs.4200) and Steno-II/III (with Grade Pay Rs.2400) have been directly promoted as Inspector. In this regard, it is respectfully stated that if administration is relaxing the stipulation/requirement of promoting the officials directly to the grade of Inspector without promoting them first to the newly created grade of Executive Assistant, if it is all the more necessary that the administration cannot be rigid with eligibility criteria, i.e. only those officials who have cleared departmental examination as on 01.01.2013 will be considered and not those who have cleared the said exam as on the date of DPC, i.e., May 2014, because that will amount to double standards solely for benefitting a select few."

8.2 Applicants also plead that

"K. .... in some regions across the country, DPCs for recruitment year 2013-14 and 2014-15 have been held simultaneously, while in some other regions including Delhi, DPCs have been held for recruitment year 2013-14 only. This also has resulted in inter-region anomaly which cannot be brushed aside by saying that the grade of Inspector and ITA are not All India cadre because eventually the promotion of Income Tax Officers (ITOs) across the country is to the grade of Assistant Commissioner of Income Tax (ACIT) which is an all India cadre of IRS and any delay in promotion in one region to the grade of Inspector and/or ITO will affect their position in the All India seniority as ITO and their further elevation as ACIT."

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

"(i) quash and set aside the communication dated 27.05.2014 issued by respondent no.4 for treating the additional posts of Income Tax Inspectors as allotted on 31.03.2014 pertaining to recruitment year 2013-14;

(ii) direct the respondents to reconsider the matter and treat the additional posts of Income Tax Inspectors as allocated in terms of order dated 31.03.2014 pertaining to recruitment year 2014-15 and convene the review DPC for the purposes of considering the case of the applicants and award all consequential benefits, in case, the applicants are found fit on merit."

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. Matter has been heard at length. Sh. Sudarshan Rajan with Sh. Ramesh Rawat, learned counsel represented the applicants and Sh. Gyanender Singh with Sh. S.K.Tripathi, learned counsel represented the respondents.

14. 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.

15. 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.

16. 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 penal 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)

17. 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.

18. 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.

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