



2024:DHC:7637-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 13770/2024, CM APPLs. 57702/2024 & 57703/2024

UNION OF INDIA & ORS.Petitioners

Through: Mr. Satya Ranjan Swain, Sr. PC
with Mr. Kautilya Birat, Adv. for UOI

versus

JAGDISH SINGH & ORS.Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT (ORAL)

01.10.2024

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C.HARI SHANKAR, J.

1. The respondents were promoted as Joint Commissioners of Income Tax (CIT), along with their juniors, on 17 September 2010. By virtue of such promotion, the respondents entered the 14th year from the time they had entered the service of the petitioners.

2. Officers junior to the respondents, who have been promoted as Joint CIT along with them on 17 September 2010, were promoted



subsequently as Additional CIT (NFSG¹) on 3 January 2022 and 12 December 2022.

3. This provoked the respondents to petition the Central Administrative Tribunal, Principal Bench, New Delhi² alleging that the promotion of the respondents' juniors as Additional CIT (NFSG) on 3 January 2022 and 12 December 2022 was violative of sub-Rules 3 and 4 of Rule 7 of Schedule II to the Indian Revenue Service Rules, 2015³, read with Note 1 below the said Rule. For the sake of convenience, Rule 7(3) and (4) along with Notes 1 and 2 thereunder, may be reproduced thus:

“(3) Appointment in the Service to the post of Deputy Commissioner of Income Tax and above shall be made in the manner specified in column (3) of Schedule II from amongst the officers of the next lower grades with the minimum qualifying service as specified in the column (iv) of Scheduled II.

(4) The selection of officers for promotion shall be made by selection, except in the case of promotion to the post in the grade of Additional Commissioner of Income Tax (NFSG), which shall be on the basis of seniority, subject to suitability on the recommendation of the Committee constituted for this purpose in accordance with the Scheduled III.

Entry no. 5 under Rule 7

Sr. No.	Grade and Designation	Method of recruitment /Promotion/ appointment	Field of selection and minimum qualifying service for promotion
5.	Non-functional selection Grade in Junior	By placement o seniority basis to	Officer in the Junior Administrative

¹ Non Functional Selection Grade

² “the learned Tribunal”, hereinafter

³ “IRS Rules”, hereinafter



	Administrative Grade (Additional Commissioner of Income Tax/ Additional Director of Income Tax	suitability.	Grade who have entered the fourteenth year of regular service in Group "A" of the Indian Revenue Service on the 1st January of the year calculated from the year following the year of examination, on the basis of which the office was recruited or the year in which the officer was promoted to Group "A" as the case may be.
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Note 1 & 2 below of the Schedule -II, read as follows:-

Note 1 Where juniors who have completed their qualifying service are being considered for promotion, their seniors would also be considered provided they are not short of the requisite qualifying service by more than half of such qualifying 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 service.

Note 2 - Eligibility conditions for direct recruitment to Indian Revenue Service cadre shall be as specified by the Union Public Commission at the time of such recruitment."

4. The case of the respondents before the Tribunal was that, by operation of note 1 below Rule 7(4) of the Schedule II to the IRS Rules, the respondents were entitled to two years' relaxation in being considered for promotion to the NFSG, as their juniors had been so promoted w.e.f. 1 January 2022.



5. The contention of the petitioners, by way of opposition to the respondents' application before the learned Tribunal, was that grant of NFSG is only a placement in a higher scale and not a promotion. For this purpose, reliance was placed, by the petitioners, on an office memorandum dated 5 October 2021 issued by the Department of Personnel & Training⁴. Inasmuch as, by virtue of the said OM, grant of NFSG is nearly a placement in a higher scale and not a promotion, it was contended that Note 1 would not ensure to the benefit of the respondents.

6. The learned Tribunal rejected the petitioners' contention. Reliance was placed, by the learned Tribunal on Rule 7(4) of the IRS Rules, which refers to "promotion to the post in grade of Additional Commissioner of Income Tax (NFSG)". As Rule 7(4) of the Schedule II to the IRS Rules itself envisaged promotion to the post of Additional CIT (NFSG), the learned Tribunal held that it could not be held that the post of Additional CIT (NFSG) was not a promotional post.

7. Apropos the OM dated 5 October 2021, the learned Tribunal, relying on the judgment of the Supreme Court in *UOI v Ashok Kumar Aggarwal*⁵ held that an OM could not supersede Recruitment Rules promulgated under Article 309 of the Constitution of India. It was held that an OM, being an executive instruction, could only supplement the statutory Recruitment Rules, and could not supplant it.

⁴ "DOPT", hereinafter

⁵ (2013) 16 SCC 147



8. As such, where Rule 7(4) envisaged promotion to the post of Additional CIT (NFSG), the learned Tribunal held that the DOPT could not, by an executive instruction in the form of the OM dated 5 October 2021, postulate that the post of Additional CIT (NFSG) was not a promotional post.

9. Ergo, held the learned Tribunal, the post of Additional CIT (NFSG) was entitled to be treated as a promotional post. In that view of the matter, the respondents would be entitled to the benefit of Note 1 below Rule 7(4) in Schedule II to the IRS Rules and to relaxation of two years while computing eligibility for promotion to the post of Additional CIT (NFSG). They, therefore, would be entitled to be so promoted along with their juniors, who were promoted w.e.f. 1 January 2022.

10. Thus holding, the respondents' OA has been allowed by the learned Tribunal.

11. Aggrieved thereby, the UOI has petitioned this Court under Article 226 of the Constitution of India.

12. We have heard Mr. Satya Ranjan Swain, learned Senior Panel Counsel appearing for the UOI.

13. The writ petition offers no answer to the reliance, by the learned



Tribunal, on Rule 7(4) of the Schedule II to the IRS Rules. Before us, Mr. Satya Ranjan Swain is also candid in acknowledging the position that emerges from Rule 7(4) but submits that promotion involves a process of selection and other such indicia, which are not involved in ascendancy to the post of Additional CIT (NFSG). He, further, submits that the DOPT was correct while opining, in its OM dated 5 October 2021, that the post of Additional CIT (NFSG) cannot be treated as a promotional post.

14. We are unable to agree with Mr. Swain. The judgment of the learned Tribunal is obviously unexceptionable. The learned Tribunal is correct in holding that the DOPT OM cannot supersede or hold contrary to the statutory Recruitment Rules framed in exercise of the power conferred by Article 309 of the Constitution of India. The IRS Rules were, admittedly, promulgated under Article 309.

15. Rule 7(4) to the Schedule II to the IRS Rules is clear in envisaging promotion to the post of Additional CIT (NFSG). There is no escape from this Rule. The Rule clearly envisages the post of Additional CIT (NFSG) as being a promotional post.

16. In that view of the matter, the learned Tribunal has correctly held the respondents to be entitled to the benefit of Note 1 below Rule 7(4) of the Schedule II to the IRS Rules. Thus, reckoned, there is no dispute that the respondents would be entitled to be promoted as Additional CIT (NFSG) along with their juniors, who were promoted w.e.f. 1



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17. We, therefore, see no reason to interfere with the impugned judgment of the learned Tribunal which is upheld in its entirety. The writ petition is accordingly dismissed in *limine*.

C.HARI SHANKAR, J.

DR. SUDHIR KUMAR JAIN, J.

OCTOBER 1, 2024/aky

Click here to check corrigendum, if any