

\$~28-30.

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

+ W.P.(C) 8235/2015

%

Judgment dated 30th August, 2016

ARBIND MODI & ORS.

..... Petitioners

Through : Mr.A.S. Chandhiok, Sr. Adv. with
Mr.Devashish Bharuka, Mr.Pradeep
Dahiya and Ms.Anu Tyagi, Advs.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr.Sanjay Jain, ASG, with Mr.Sanjeev
Narula, CGSC, Mr.Shreshth Jain,
Mr.Ajay Kalra and Ms.Bani Dikshit,
Advs. for the UOI.
Mr.Naresh Kaushik and Ms.Joymoti
Mize, Advs. for respondent no.4.

+ W.P.(C) 10228/2015

VINOD KUMAR MATHUR & ORS

..... Petitioners

Through : Mr.J.P. Sengh, Sr. Adv. with
Mr.Devashish Bharuka, Mr.Pradeep
Dahiya, Ms.Anu Tyagi and
Ms.Manisha Mehta, Advs.

versus

UNION OF INDIA & ORS

..... Respondents

Through : Mr.Sanjay Jain, ASG, with Mr.Sanjeev
Narula, CGSC, Mr.Shreshth Jain,
Mr.Ajay Kalra and Ms.Bani Dikshit,
Advs. for the UOI.
Mr.Naresh Kaushik and Ms.Joymoti
Mize, Advs. for respondent no.4.

+ W.P.(C) 8960/2015

SUNIL KUMAR MISRA AND ORS

..... Petitioners

Through : Mr.J.P. Sengh, Sr. Adv. with
Mr.Devashish Bharuka, Mr.Pradeep
Dahiya, Ms.Anu Tyagi and
Ms.Manisha Mehta, Advs.

versus

UNION OF INDIA AND ORS. Respondents

Through : Mr.Sanjay Jain, ASG, with Mr.Sanjeev
Narula, CGSC, Mr.Shreshth Jain,
Mr.Ajay Kalra and Ms.Bani Dikshit,
Advs. for the UOI.
Mr.Naresh Kaushik and Ms.Joymoti
Mize, Advs. for respondent no.4.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE I.S. MEHTA

G.S.SISTANI, J (ORAL)

1. At the outset, we may notice that after notice was issued in W.P.(C)8235/2015, W.P.(C) 10228/2015 and W.P.(C) 8960/2015 were filed by the separate petitioners, wherein almost identical questions were raised.
2. Since the pleadings in W.P.(C)8235/2015, which is the lead matter, are complete, with the consent of the counsel for the parties, all the three writ petitions are taken up for hearing and disposal.
3. For the sake of convenience, the facts in the case of W.P.(C)8235/2015 are being noticed.
4. Present writ petitions have been filed by the petitioners seeking to challenge the order dated 12.8.2015 passed by learned Central Administrative Tribunal (hereinafter referred to as '*the Tribunal*') in O.A.No.487/2015. The petitioners also seek to quash and set aside the letter dated 20.1.2015 issued by respondent no.1 to the Secretary, UPSC, whereby the respondents proposed to revert the petitioners from

the post of Chief Commissioner of Income Tax/Director General of Income Tax to the Post of Commissioner of Income Tax.

5. Learned counsel for the parties submit that when these matters were listed on 5.11.2015 before a Bench, which was presided over by one of us (G.S. Sistani, J.), it had fallen from the Bench that in the facts and circumstances of the case, the parties should look for an out of court settlement. It is further submitted that pursuant to the observations so made by the Court, learned Additional Solicitor General had mooted a proposal based on a meeting held on 13.1.2016, which was held between the learned counsel for the parties, in the office of learned Additional Solicitor General.
6. The brief facts of the case [WP(C) 8235/2015] are that the petitioners are the members of Indian Revenue Service of 1981 Batch and presently posted as Chief Commissioners of Income Tax or in the equivalent Grade of Director General of Income Tax. The petitioners were promoted from the post of Commissioner of Income Tax/Director of Income Tax to the post of Chief Commissioner of Income Tax/Director General of Income Tax for filling up 35 posts pertaining to the vacancy year 2013-2014, based on a delayed DPC held on 17.9.2013. Thereafter the respondents issued order dated 28.8.2014 directing holding of review DPC with respect to the original DPC held on 17.9.2013. The respondents also issued order dated 20.1.2015 for holding a review DPC to consider the officers who stood promoted as Chief Commissioners to the newly created lower post of Principal Commissioners of Income Tax. The petitioners thereafter filed their individual representations. Since the petitioners did not receive any response from the respondents, they filed OA No.478/2015 before the Tribunal.

7. According to the respondents, the reasons for passing the orders dated 28.8.2014 and 20.1.2015 were on account of restructuring of the Cadre which took place on 23.5.2013, as per which the petitioners could only be promoted to the post of Principal Commissioner of Income Tax in the pay grade of HAG. This restructuring of the cadre could not be brought to the notice of DPC as also ACC.
8. On 28.8.2015, Mr.Salve, learned senior counsel for petitioners, had contended before this Court that the prime ground of challenge by the petitioners before the Tribunal was that the effect of the review DPC would be that the petitioners, who already stood promoted as Chief Commissioners pursuant to the DPC held on 17.9.2013 would be demoted and relegated to the newly created posts, known as Principal Commissioners of Income Tax (PCIT). It was further submitted that the post of Principal Commissioners of Income Tax (PCIT) had been created on account of cadre restructuring. It was contended that the stand of the respondent that cadre restructuring could not be brought to the notice of DPC and ACC was disputed on account of the fact that the Revenue Secretary had participated in the DPC and, thus, it could not be said that the respondents were not aware of restructuring which was being carried out by the respondents. Another submission, which was made before the Court, was that all the petitioners were eligible for the post of Chief Commissioners as on 1.1.2013. A right had accrued in their favour on the said date, which was prior to restructuring and prior to framing of Rules, which were framed after the DPC was conducted on 29.4.2015.
9. Mr.Jain, learned Additional Solicitor General, had strenuously urged before this Court that since the DPC was held without taking into consideration the restructuring of the cadre, no right would flow in

favour of the petitioners. It was further submitted that the effect of the cadre restructuring was that the next promotion to the post of Chief Commissioner would be Principal Commissioner of Income Tax, a post created by the respondents between the Commissioner and the Chief Commissioner.

10. The stand of the petitioners was that since the new Rules came into effect post the DPC, the petitioners should not be deprived of the promotion granted to them based on the DPC held on 17.9.2013. It was further the stand of the petitioners that the effect of the cadre restructuring would be that the post of Commissioners was upgraded to the next higher grade, which was introduced as Principal Commissioners of Income Tax with the pay scale of Rs.67,000 – Rs.79,000. The grievance of the petitioners is, thus, in case a review DPC is conducted, the petitioners would be relegated back from the post of Chief Commissioners (HAG+) to the Principal Commissioners of Income Tax (PCIT with HAG Scale).
11. Today, learned counsel for the parties have handed over in Court the Minutes of the meeting held on 13.1.2016 between the learned Additional Solicitor General and the counsel appearing for the petitioners to lend clarity to the proposal for settlement. We deem it appropriate and as suggested by the counsel for the parties, to reproduce the Minutes of the Meeting dated 13.1.2016:

“MINUTES OF THE MEETING

A meeting was held between Shri Sanjay Jain, ASG and Petitioners' advocates Shri Devashish Bharuka and Shri Pardeep Dahiya in the Office of the Ld. ASG at AB-83, Shah Jahan Road, New Delhi on 13.01.2016 regarding the case No. W.P.(C)No.8235/2015 titled Arbind Modi & Others Vrs. Union

of India and Ors. and connected writ petitions in view of the observations made by Hon'ble High Court of Delhi during the hearing of the said cases held on 09.12.2015 to discuss the possibility of an amicable and workable resolution in the said cases.

2. After considerable deliberations in the matter, the Petitioners' advocates had been asked by Ld. ASG to suggest and offer the terms and conditions for an amicable resolution of the problem under litigation, which would be acceptable to them.

3. On complete faith being shown by their clients and in their best interest, Petitioners' advocates suggested the following points for kind consideration and approval of the Central Govt.:

A. As the DPC held on 17th September, 2013 was held under the extant IRS Rules, 1988 and was a valid DPC in the eyes of law, the petitioners have been promoted to the post of Chief Commissioner of Income Tax in accordance with law, duly approved by ACC. Thus, the DPC held on 17.09.2013 for promotion from CIT to CCIT being a valid DPC, consequently the promotion of the petitioners to the post of CCIT be held as legal and valid promotion.

B. Although the petitioners are entitled to the HAG+ grade with effect from the date of their promotion orders, i.e. from 16.12.13, 20.2.14 and 4.6.14, in order to buy peace, they would accept the lower grade of HAG from their respective dates of promotion and should be placed in the regular higher grade of HAG+ allowable to CCITs after one year on being promoted to the post of CCIT, i.e. from 16.12.2013, 20.2.2014 and 4.6.2015. However, their designation and lien would remain on the post of CCIT from their date of actual promotion i.e. from 16.12.2013, 20.2.2014 and

4.6.2014. The petitioners would have been placed in HAG+ grade after one year in any case, had there been a review DPC to first consider them for Pr.CIT and then for the post of CCIT. This would also avoid any far reaching consequences and unnecessary litigation, without holding any further DPC/Review DPC, revalidating their actions as CCIT and the other DPCs held thereafter for PrCIT and CCIT.

C. The petitioners would be considered as eligible for promotion to the next higher duty posts of Principal Chief Commissioner of Income Tax (Apex Scale) from 16 December, 2015 and immediate steps should be taken for holding supplementary DPC for their promotion to the Apex Scale for the existing vacancies in the Financial Year 2015-16.

After extensive discussion on the proposals, it was agreed that the proposal was reasonable and a middle solution for amicable resolution of the litigation. The Ld ASG agreed to forward the same to the CBDT along with his comments.

(Pardeep Dahiya)
Advocate for the petitioners”

12. Based on the meeting which was held on 13.1.2016, the learned Additional Solicitor General of India had addressed a communication dated 14.3.2016 to Mr.Pardeep Dahiya, learned counsel for the petitioners, outlining the proposal of settlement. The communication dated 14.3.2016 reads as under:

“To
Shri Pardeep Dahiya,

*Advocate,
B-32, (LGF),
Defence Colony,
New Delhi-110024*

*Sub: WPC No.8235/2015 titled as Arbind Modi Vs. UOI before
the Hon'ble High Court of Delhi*

Dear Mr.Dahiya,

1. You may recall that the Hon'ble Court has entrusted me to explore the possibility of an amicable solution in the above case, pursuant to which we had a meeting on 13.01.2016.

2. You sent me a copy of the minutes, which was shared with CBDT. The proposal made in the said meeting by your clients has been examined and considered by the appropriate authorities, who after due deliberations have been able to crystalise a workable solution and the same is as follows:

(i) The DPC held on 17.09.2013 had assessed the officers in the grade of CsIT having 03 years of service in the grade for promotion to the grade of CCIT in the pay scale of Rs.67,000-79,000/-. Considering that the amended RRs notified on 29.04.2015 also prescribe the residency service of 03 years in the Senior Administrative Grade (CIT/Director of Income Tax) for consideration for promotion to the Higher Administrative Grade (PCIT/Principal Director of Income Tax) in the pay scale of Rs.67,000-79,000/-, the review of DPC held on 17.09.2013 may not be necessary. The recommendations of the DPC held on 17.09.2013 may thus be treated as recommendations for promotion of officers from the Senior Administrative Grade to the higher Administrative Grade.

(ii) A fresh DPC may be held to consider the officers promoted to the Higher Administrative Grade on the recommendations of the DPC held on 17.09.2013 for their promotion to the Higher Administrative Grade plus (CIT/Director General of Income Tax) against the panel year 2014-15, w.e.f. the date on

which they complete the requisite one year of service in the Higher Administrative Grade consequent to their promotion on the basis of the DPC dated 17.09.2013, by providing relaxation in the crucial date for determining eligibility/requisite residency period wherever applicable, to the extent required. The promotion to the grade of HAG+ w.e.f. the date of completion of the requisite one year of service in HAG would be both in terms of designation (CCIT) and for the purpose of pay.

- (iii) *The officers promoted to the Higher Administrative Grade Plus on the basis of the fresh DPC may thereafter be considered by the DPC in the normal course for promotion to the Apex Scale (PCCIT/Principal Director General of Income Tax) against the vacancies in panel year 2016-17, subject to their fulfilling the requisite residency period in the Higher Administrative Grade plus on 01.04.2016 i.e. the crucial date for determining eligibility for the panel year 2016-17.*

3. *While forwarding the above, I may hasten to add that the proposal is without prejudice.*

4. *I, therefore, would take this opportunity to request you to consider the same. If the same is acceptable to you, we could expedite taking it forward to its logical conclusion.*

Best regards,

Yours sincerely,

(SANJAY JAIN) ”

13. Thereafter Mr.Dahiya addressed a communication dated 15.3.2016 to Mr.Sanjay Jain, relevant portion of which reads as under:

“2. We have considered the three-points solution offered in Para 2 of your letter and, without prejudice to our contention in

the aforesaid petition, we wish to convey our agreement with the same based on our understanding that:

- i. The petitioners would be granted the Higher Administrative Grade Plus (CCIT/ Director General) retrospectively with effect from 17th December, 2014 (i.e. the date on which the petitioners would complete one year of service in HAG);*
- ii. The promotion to the grade of HAG+ will be on the basis of Annual Performance Appraisal Report (APAR) and vigilance clearance existing on 17th December, 2014;*
- iii. The residency period for promotion to the Apex Scale (PCCIT / Principal Director General of Income Tax) will be calculated from 17 December, 2012, the date from which the petitioners would be promoted to the HAG+ grade.*
- iv. The DPC for promotion both to the HAG+ grade and Apex Scale will be held simultaneously within the next couple of months.”*

14. As per the minutes of the meeting, more particularly Clause 3B, the petitioners have accepted that although they are entitled to HAG+ grade w.e.f. their date of promotions i.e. 16.12.2013, 20.2.2014 and 4.6.2014, respectively, they would accept the lower grade of HAG from their respective dates of promotion and they should be placed in the regular higher grade of HAG+, which is allowed to Chief Commissioners of Income Tax after one year of being promoted to the post of CCIT i.e. from 16.12.2013, 20.2.2014 and 4.6.2014, respectively. In effect, the petitioners agree that they would have been placed in HAG+ Grade after one year. The petitioners have also agreed to remain bound by the Minutes of the Meeting dated 13.1.2016 in terms of Clause 3B.

15. Based on the minutes of the meeting dated 13.1.2016 and as agreed, the proposal was forwarded by the learned Additional Solicitor General to the CBDT along with the comments. By a communication dated 14.3.2016, as reproduced above, the counsel for the petitioners was informed about the proposal received from the Department.
16. Mr.J.P. Sengh, learned senior counsel appearing on behalf of the petitioners, submits that the moment the review DPC is held, the petitioners would have been deemed to have accepted the new Rules and would then have to remain bound by the amended Rules, which came into force post the DPC held on 17.9.2013; that the petitioners would then be compromising both on the post i.e. having already been promoted as Chief Commissioners accepting a lower post freshly created being Principal Commissioner of Income Tax and also accepting a financial cut from HAG+ to HAG.
17. Mr.Sengh further submits that the petitioners cannot be blamed for the present situation as the DPC was held by the respondents; holding of DPC was with the concurrence of the ACC; the fact that the Revenue Secretary had participated in the DPC; based on the DPC the petitioners stand promoted, they worked on the promotion posts and have passed judicial orders; and in case they are demoted it would have far reaching consequences and some of the orders would also become a nullity. Mr.Sengh, submits that petitioners would remain bound by Clause (i) and (iii) of the communication dated 14.3.2016. Mr.Sanjay Jain, learned Additional Solicitor General, submits that the respondents had forwarded their proposal after considering all the pros and cons and, therefore, a suitable order may be passed balancing contentions of both the sides.
18. We have given our thoughtful consideration to the submissions made

by both the parties. In our view, the ends of justice would be met with the following directions:

- i. The DPC held on 17.9.2013 for promotion from Commissioner to Chief Commissioners is in accordance with the extant Indian Revenue Service Rules, 1988, read with relevant DoP&T instructions contained in OM No.2201/5/86-Estt.(D) dated 10.4.1989. Therefore, the said DPC is legally valid and the proposal of the Government to hold a review DPC to demote the petitioners from Chief Commissioner to the new posts of Principal Commissioners is illegal and accordingly quashed.
- ii. The petitioners will be treated as promoted to the posts of Chief Commissioners of Income Tax as per the orders dated 16.12.2013, 20.2.2014 and 4.6.2014. However, they will draw pay and allowances in the HAG grade for one year from the date of their respective promotions.
- iii. On completion of one year in the HAG grade, they will be placed in the higher HAG plus scale without any fresh DPC but subject to Vigilance clearance.
- iv. The residency period for promotion to Principal Chief Commissioner of Income Tax shall be counted from the date on which the petitioners are placed in the HAG plus grade.
- v. The respondents will take immediate steps to promote the petitioners to the posts of Principal Chief Commissioner of Income Tax in accordance with extant rules.

19. Writ petitions stand disposed of in view of above.

20. We appreciate the efforts put in by learned Additional Solicitor General and counsel for the parties in early resolution of the matter amicably.

CM.APPL Nos.17275/2015 and 21823/2015 in WP.(C).8235/2015
CM.APPL No.25359/2015 in WP.(C).10228/2015
CM.APPL No.20145/2015 in WP.(C).8960/2015

21. The applications stand disposed of in view of the orders passed in the present writ petitions.



G.S.SISTANI, J

I.S. MEHTA, J

AUGUST 30, 2016

msr