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

% ***Judgment dated 18th January, 2017***

\+ **W.P.(C) No.1448/2007**

AMRIT LAL ..... Petitioner

Through : Mr.Yogesh K. Jagia, Adv.

versus

UOI & ORS ..... Respondents

Through : Ms.Archana Gaur, Adv. for UOI.
Mr.Naresh Kaushik, Adv. for UPSC.

\+ **W.P.(C) No.1737/2007**

ARKENDRA SINGH& ANR ..... Petitioners

Through : Mr.Yogesh K. Jagia, Adv.

versus

UOI & ORS ..... Respondents

Through : Ms.Archana Gaur, Adv. for UOI.
Mr.Naresh Kaushik, Adv. for UPSC.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (*ORAL*)

1. Common arguments have been addressed in both the writ petitions and common issue arises for our consideration. The petitioner in W.P. (C) 1448/2007 had filed OA 445/2005 while the petitioners in W.P. (C) 1737/2007 had filed OA 700/2005 before the Central Administrative Tribunal (*briefly the* '*Tribunal*'). Both the applications were decided by a common order dated 18.08.2005 by the Tribunal whereby both the

applications were dismissed.

2. For the sake of convenience, the facts in the case of W.P. (C) No.1737/2007 are being noticed. The petitioners in W.P. (C) No.1737/2007 appeared in the examination conducted by the Staff Selection Commission, Allahabad, for the post of Income Tax Inspector in the year 1985. Upon being declared successful, they joined the department on receipt of an appointment letter in the year 1987. The petitioner in the case of W.P. (C) No.1448/2007 appeared in the examination conducted by the Staff Selection Commission, Allahabad, for the post of Income Tax Inspector in December, 1984 and upon being declared successful joined the department on 05.12.1985. The next promotional post for the petitioners was that of Assistant Commissioner of Income Tax ('ACIT').

3. The grievance of the petitioners before the Tribunal was that for the vacancies in the post of ACIT which arose between 01.04.1993 and 31.03.1994, a DPC was held on 11.06.1993. Since on the date of the DPC the petitioners had not qualified the Departmental Examination for Income Tax Officers Group 'B' which was held between 26.06.1993 and 14.07.1993, their juniors who have been arrayed as respondents No.4 to 6 in the W.P. (C) No.1448/2007 and respondents No.4 to 7 in W.P. (C) No.1737/2007 were granted promotions.

4. The sum and substance of the arguments of Mr.Jagia, learned counsel for the petitioners is that as per OM No.22011/7/86-Estt. (D) dated 19.07.1989, the eligibility of officers to be considered for promotion by the DPC was fixed and as per the said OM, the eligibility in the case of the petitioners would be as on 1st October of the year where the ACRs are written. Learned counsel for the petitioners submits that as per the

understanding of the respondents, the eligibility is to be considered as on the date when the last exam is held and a person would be deemed to be successful on the said date which in the present case is 14.07.1993.

5. Mr.Jagia submits that holding of the DPC on 11.06.1993 for the vacancy which arose between 01.04.1993 and 31.03.1994 is misplaced and in the alternate, since there is no date fixed for fixing a DPC, the petitioners should have been considered in the review DPC post the declaration of their result on 17.02.1994 which is a date prior to 31.03.1994. Strong reliance is placed on the aforesaid OM and the answer to a query raised by the petitioners under the Right to Information Act, the relevant answer to which is extracted below:-

INFORMATION SOUGHT	***REPLY***
B.3. *(a) The Date/Dates from which the successful candidates have been declared to have passed with respect to ITO Group B examinations held in June/July 1993.*	*(a) As per information available on record as per letter bearing F. No.115/3673-Ad. IX dated 6th July 1973, the date on which the last paper of the said exam was held is to be taken the date of passing the examination.*

(Emphasis Supplied)

6. The OM sought to be relied upon by the petitioners is reproduced below:

"*DPT OFFICE MEMORANDUM No.22011/7/86-Estt. (D) dt. 19-7-1989.*

Subject:- Eligibility of officers to be considered for promotion by DPC – fixing of crucial date of –

The undersigned is directed to say that where the *recruitment rules lay down promotion as one of the methods of recruitment, some period of service in the feeder grade is generally prescribed as one of the conditions of eligibility for the purpose of promotion. There are, however, no instructions about the crucial date with reference to which eligibility of Government servants in the feeder cadre should be determined for the purpose of promotion through Departmental Promotion Committees. The matter has been under consideration in this Department and it has now been decided that while holding DPCs during a year, <u>the crucial dates for determining the eligibility of Officers for promotion would be prescribed as under:-</u>*

(i) Ist July of the year in cases where ACRs are written calendar yearwise; and

(ii) <u>Ist October of the year where ACRs are written financial year-wise.</u>

2. The crucial dates indicated above would be applicable to only such services and posts for which Statutory Service Rules detention order not prescribe a crucial date."

(<u>Emphasis Supplied</u>)

7. Per contra, learned counsel for the Union of India submits that there is no infirmity in the order passed by the Tribunal. She submits that on the date of DPC, admittedly, the petitioners were not eligible which factor has been taken into consideration by the Tribunal and since they were not eligible on the date of DPC, they were rightly not considered by the DPC and their juniors who had in the meanwhile cleared the examination were considered and promoted and the petitioners cannot claim any prejudice, for the reason that on the said date they had not cleared the examination.

8. We have heard the learned counsel for the parties and considered their rival submissions. The basic facts in the cases are not in dispute that in the initial seniority list, the petitioners were seniors to the private

respondents in the respective writ petitions. In the first examination held, the petitioners were not declared successful. It is also not in dispute that the vacancies which arose for the first time for the year financial year 1993-94, i.e. between 01.04.1993 and 31.03.1994, the Department held a DPC on 11.06.1993 on which date the petitioners had not cleared the examination, but the date of the examination had been fixed between 26.06.1993 and 14.07.1993. It is also not in dispute that the result of the examination was declared on 17.02.1994, by which date the result of DPC had been declared and the eligible candidates had been granted promotions.

9. The petitioners have placed strong reliance on the OM dated 19.07.1989, the relevant portion of which has been extracted in the paragraph 6 aforegoing. Relying upon the OM Mr.Jagia has contended that the crucial date for determining the eligibility of officers for promotion was prescribed by the aforesaid OM which in the case of the petitioners would be 1st October of the year where the ACRs are to be written financial year-wise. It is also not being disputed before us that for the vacancy arose for the period 01.04.1993 to 31.03.1994 all candidates, who were eligible as on 01.10.1993, would be eligible to be considered in the DPC.

10. The respondents in this case in response to a query raised by the petitioners under the Right to Information Act, 2005 seeking information as to what would be the date from which the successful candidates would have been declared to have passed with respect to ITO Group B examinations held in June/July, 1993, gave the answer that as "*as per letter bearing F. No. 115/3673-Ad. IX dated 6th July 1973, as the date on which the last paper of the said exam was held is*

to be taken the date of passing the examination." The relevant portion of the reply given under the RTI Act has already been extracted in paragraph 5 aforegoing. Thus, according to the response of the respondents, the date on which the candidates would have cleared the examination is not the date of the result, but the date when the last paper of the examination was held, which in this case was 14.07.1993. Similar stand was taken by the respondents when the result was declared on 17.02.1994, the relevant portion of which reads as under:-

> "2. *The following candidates are declared to have passed the above examination w.e.f. 14.07.1993 completely. ...*"

11. The effect of such a stand being taken by the respondents would be that the stand of the respondents itself is not in sync with the reasoning of the Tribunal, wherein it has been held that since the petitioners were not eligible on the date of DPC and would be eligible from the date of the result is declared cannot be accepted. There is no satisfactory answer as to why the DPC was held either before the result of the exam was declared or the successful candidates were not considered subsequently, especially when the vacancies were for the financial year 1993 - 1994.

12. Resultantly, the petitioners must succeed. The impugned order of the Tribunal is set-aside. The writ petitions are allowed.

13. The petitioners would be considered in the review DPC and in case they are successful, they would be granted promotion from the said date. It is agreed that in case the petitioners are found successful, they would only claim the consequential benefits except the salary for the reason that they had not worked for the post if they are promoted.

14. The writ petitions are disposed of. No costs

G.S.SISTANI, J.

VINOD GOEL, J.

JANUARY 18, 2017
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