

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 366 of 2013

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

1. Arjendu Kumar Biswal, aged about 34 years, S/o Shri Dhaneswar Biswal, a permanent resident of Vill & Post - Tarava, Dist.- Dhenkanal, at present working as Tax Assistant, in the office of the CCIT, Odisha Region, Ayakar Bhawan, Bhubaneswar, Dist.- Khurda.
2. Sanjay Kumar Behera, aged about 34 years, S/o Shri Karunakar Behera, a permanent resident of Vill-Dakhinpatal, Post.- Nagar, PS- Astaranga, Dist.-Puri, at present working as Tax Assistant, in the Office of the Joint Commissioner, Income Tax, Range-I, Bhubaneswar, Dist. - Khurda.
3. Prahallad Charan Sahoo, aged about 33 years, S/o Shri Bhanja Kishore Sahoo, a permanent resident of Vill-Narayanpur, Post- Garajanga, Via- Marshaghai, Dist.-Kendrapara, at present working as Tax Assistant, in the office of the CCIT, Odisha Region, Ayakar Bhawan, Bhubaneswar, Dist.- Khurda.
4. Alok Kumar Mistry, aged about 34 years, S/o Shri Ananda Kumar Mistry, a permanent resident of Vill-Patnaikpada, Post/Dist- Sambalpur, at present working as Tax Assistant, in the Office of the Joint Commissioner, Income Tax, Range-I, Bhubaneswar, Dist. - Khurda.
5. Manoj Kumar Rout, aged about 30 years, S/o Shri Bhikari Charan Rout, a permanent resident of Vill & Post - Kusumpur, Via- Asureswar, Dist.- Kendrapara, Odisha, at present working as Tax Assistant in the Office of the Joint Director, Income Tax (Int.,Tax), Odisha, Bhubaneswar, Dist.- Khurda.

.....Applicants

VERSUS

1. Union of India represented through Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi- 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi - 110001.
3. The Chief Commissioner of Income Tax, Odisha Region, Aayakara Bhawan, Bhubaneswar, Dist.- Khurda.
4. The Assistant Commissioner of Income Tax (Hqrs) (Admn), Office of the Chief Commissioner of Income Tax, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007.

.....Respondents.

For the applicant : Ms.P.Rath, counsel

For the respondents: Mr.S.Behera, counsel

Heard & reserved on : 10.1.2020

Order on : 04.02.2020

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

The applicants have filed the present OA seeking the following reliefs :

- “(i) To quash the order of rejection dated 8th June, 2012 (Annexure A/5 series) being contrary to law.
- (ii) To direct the Respondents to count the service rendered by them prior to joining in the Odisha Region/charge so as to make them eligible for consideration for promotion to the Senior Tax Assistant, if necessary by quashing the letter dated 9th march, 2010 (Annexure A/3).
- (iii) To direct the Respondents to give retrospective promotion as given under Annexure A/7 by constituting review DPC vis-à-vis their length of service with all consequential financial benefits.
- (iv) To pass any other order/orders as deemed fit and proper.”

2. The matter was heard on 10.1.2020. At the time of hearing learned counsel for the applicant submitted that the case of the applicant is similar to OA No. 547/2013 which has been disposed of by this Tribunal along with other similar OAs vide order dated 2.12.2019. Copy of the said OA has been filed by the learned counsel for the applicants after giving copy to learned counsel for the respondents. The question to be decided in this OA is whether service rendered by the applicants in another administrative unit prior to the applicants' transfer to Orissa Region on own request, will be counted for the purpose of eligibility for promotion to the post of Senior Tax Assistant, even though the applicants were transferred from another administrative unit on own request with the bottom seniority principle. It is submitted by the learned counsel for the applicants that the applicants have been recruited as Tax Assistant in Regions other than Orissa Region under the respondents in the year 2007 and 2008 and they have been confirmed as Tax Assistant. They have passed the departmental examination and some of the applicants were promoted to the post of Senior Tax Assistant on different dates. When they submitted request for transfer to Orissa region, they were reverted to the post of Tax Assistant before transfer to Orissa Region during the year 2011 and 2012 on different dates. It is the case of the applicants that their past services should be counted for the purpose of their eligibility for consideration of promotion to the post of Sr. Tax Assistant in Orissa Region although they will have bottom seniority on joining in Orissa Region on their own request. Learned counsel for the respondents was also heard. He submitted that since the applicants have joined at bottom seniority principle the prayer cannot be accepted.

3. It is seen that this issue has already been decided vide order dated 2.12.2019 of this Tribunal passed in OA No. 547/2013 alongwith batch of similar OAs. The Tribunal has made the following observations/findings in the order dated 2.12.2019 :

“22. The principle laid down by Hon’ble Apex Court in the above cases is that although an employee is transferred to another administrative unit on compassionate transfer, he/she is placed at the bottom of the seniority, but his/her past services are not wiped out for the purpose of the eligibility for promotion, leave or retirement benefits unless the rules provide for the same.

23. In this OA, the only ground on which the respondents have rejected the request of the applicant to be considered for promotion to the post of STA in the DPC held in the year 2013, is that the applicant had furnished an undertaking to the effect that his/her past services will not be counted for the purpose of the minimum years of service for promotion. The applicant has not mentioned anything about such undertaking in the OA, but has taken a stand in the Rejoinder that such undertaking was furnished under compulsion and it violates the circular dated 14.5.1990 (Annexure-A/1) of the CBDT.

24. The circular dated 14.5.1990 of the CBDT stated the following as one of the conditions for allowing his/her transfer on own request to a different Charge as under:-

“(f) The service rendered in the old charge will not be counted in the new charge for the purpose of seniority. He/She will be placed at the bottom of the list of the employees of the concerned cadre in the new charge. Seniority in the cadre in the charge to which person is transferred will start from the day that person reports for duty in that charge. However, he will not rank senior to any official who belongs to a batch selected on merit whose inter se seniority is not regulated by date of joining.”

It is clear from the above stipulations in the said circular that the inter-charge transfer on compassionate ground affected only the seniority of the employee and there is nothing in the said circular to specify that the past service rendered in the old charge prior to transfer will not be counted for the eligibility for promotion also. No circular or rules have been cited or furnished by the respondents to demonstrate that the past services of an employee prior to compassionate transfer will not be counted for the purpose of the eligibility for promotion to higher grade. The only requirement is that the past service will not be counted for the purpose of seniority.

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29. In view of the discussions above, we are unable to accept the contentions of the respondents that in view of the undertaking at Annexure-R/1 furnished by the applicant, his regular service as Tax Assistant in the Charge prior to his transfer (Andhra Pradesh) to new Charge (Odisha) on his own request, will not be counted for the purpose of the minimum service required for eligibility for promotion to the post of STA in the DPC. Hence, the impugned orders dated 10.12.2012 (Annexure-A/5), dated 18.6.2013 (Annexure-A/6) and dated 16.9.2017 (Annexure-A/7) by which, the case of the Applicant was rejected, are set aside and the matter is remitted to the respondent no. 3 for reconsideration of the Applicant’s case for promotion to the post of Senior Tax Assistant by holding the review DPC for the year 2013-14 and for subsequent years after taking into account the regular service rendered by the applicant prior to transfer to Odisha Charge for the purpose of deciding eligibility for promotion. It is noted that by such consideration of the applicant, all his seniors in Odisha Charge will also be considered for promotion as per the Recruitment Rules at Annexure-A/3 of the OA, even though some of them might not have completed the minimum years of service in accordance with the Rules applicable for such promotion. If the applicant is found eligible for promotion to the post of Senior Tax Assistant, after such consideration, then he will be allowed such benefit on notional basis till the date when he discharged duty against the post of Senior Tax Assistant after his posting.”

4. In view of the clear findings, the cases of the applicants need to be considered from their date of joining as Tax Assistant for the purpose of

deciding their eligibility for promotion to Senior Tax Assistant in the light of the order dated 2.12.2019. Since the applicants in the present OA are similarly placed as the applicants in OA No. 547/2013, they are also eligible for the similar relief which was granted in the case of OA No. 547/2013 in terms of para 29 of the order dated 2.12.2019 as extracted above. The impugned order dated 8.6.2012 (Annexure A/5 series) are accordingly quashed and the matter is remitted to the respondents with a direction to re-consider the case of the applicants for promotion to the post of Senior Tax Assistant by holding a review DPC for the recruitment year 2015-16 after taking into account the regular service rendered by the applicants prior to their transfer to Orissa Region for the purpose of eligibility for promotion. All seniors in Orissa Region will also be considered for promotion in accordance with the Recruitment Rules applicable, even though some of them might not have completed minimum years of service in accordance with the rules as applicable. If the applicants are found eligible for promotion as Senior Tax Assistant, then they will be allowed such benefits on notional basis till the date he discharged duties as Senior Tax Assistant.

5. The OA is allowed as above. There will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath