

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A. No. 901/1988

New Delhi this the 16th day of November, 1993.

The Hon'ble Mr.N.V.Krishnan, Vice-Chairman  
The Hon'ble Mr.B.S.Hegde, Member(J)

Bali Ram Pandey S/o Sh.Dev Raj Pandey,  
R/o 481, Kamla Nehru Nagar, Ghaziabad.

.... Applicant

(By Advocate Sh. M.R.Bhardwaj)

Versus

1. Union of India through  
Secretary, Deptt. of Revenue,  
North Block, New Delhi
2. Chairman, Central Board of Direct  
Taxes, Ministry of Finance, N/Delhi
3. Chief Commissioner (Adm) of Income  
Tax, Delhi, C.R. Building, I.P. Estate,  
New Delhi

.... Respondents

(By Advocate Sh. R.S. Aggarwal)

O R D E R (Oral)

(Hon'ble Mr.N.V.Krishnan )

The applicant retired as a Tax Assistant from the office of Chief Commissioner of Income Tax, New Delhi (III respondents) The applicant joined services as L.D.C. in March, 1969 under the charge of the Commissioner of Income Tax, Kanpur. He was promoted as U.D.C. in Feb., 1973 and confirmed on 1.7.1976.

2. In may, 1980 the applicant sought an interchange transfer from the charge of Commissioner of Income Tax Kanpur to that of the Commissioner of Income Tax Delhi

⑤

on compassionate ground. His request was allowed. Accordingly the applicant joined at Delhi from 11.12.1980(Annexure-2)

3. In the seniority list of U.D.C., the applicant was placed below all the permanent UDCs and also all the temporary UDCs who were in position on 11.12.1980 in the Delhi charge. Being aggrieved by this, the applicant represented <sup>u</sup> ~~to~~ that he had already rendered about 19 years of total service and that he should be placed below only the permanent UDCs who were in a position on 11.12.1980 but that he should not be placed below the Temporary UDCs. This representation was ultimately rejected by the Central Board of Direct Taxes(CBDT) as is clear from Annexure A-1 letter dated 19.3.87 of the IIIInd respondent. It was stated that the C.B.D.T. had rejected the request of the applicant vide their letter F.No.A-23020/6/86-Ad.VIII dated March, 1987 enclosed to Annexure -1. C.B.D.T. has stated therein that a written undertaking <sup>u was</sup> given by the applicant to abide by the instructions No.16/15/69-Ad.IX contained in Board's letter dated 12.12.1969 and hence his representation was rejected.

u

...

(9)

4. In these circumstances, the applicant filed this application on 16-5-1988 seeking a direction to the respondent to place the applicant's name below the junior most UDCs in Delhi cadre charge who stood confirmed in that grade on 11.12.80 and consider him for promotion to the post of Tax Assistant on the basis of such, revised seniority.

5. The respondents have filed a reply denying that any relief is due to the applicant. It is contended that the applicant himself had given an undertaking to abide by the instructions contained in Board No.16/15/69 Ad.IX dated 12.12.69 (Copy of Annexure A-4) This letter contains the guidelines governing such transfer -guidelines in paras a,c,e and g read as follows:-

a "Requests for transfers from one charge to another may be considered on sufficient compassionate grounds at the discretion of the Board whose decision shall be final. Requests for retransfers shall not be entertained.

b "Ordinarily, only non permanent (Temporary or Quasi Permanent) persons would be permitted to be transferred)

e "A person transferred to another charge will not be eligible for consideration for promotion or confirmation in the old charge. His lieu in the old charge can, however, be suspended under F.R.14. He will be eligible for promotion/confirmation in the new charge)

g "The seniority of a person transferred under these instructions shall be reckoned from the date of his/her joining the new charge on transfer."

It is, therefore, contended that the applicants' seniority has been correctly fixed under clause(g). In other words, the applicant was given request transfer on the basis of bottom seniority.

12

10

6. At a very late stage, the learned counsel for the applicant filed MA No.3410/93 to take on record some documents. One is a letter dated 29-1-87 addressed by the Chief Commissioner(Admn) and Commissioner of Income Tax, New Delhi to the Under Secretary, Central Board of Direct Taxes, Jeevan Tara Building(Annexure 1 to the M.A. but renumbered to as Annexure A-7) which reads as follows:-

" No.Estt.3/NG.II/PF/UDC/87/19639

Office of the  
Chief Commissioner(Admn)  
Commissioner of  
Income Tax,  
Delhi-I, New Delhi

Dated, the 29.1.87

To

The Under Secretary  
Central Board of Direct Taxes,  
Jeevan Tara Building,  
Parliament Street, New Delhi.

Sub:- Fixation of seniority on inter-charge transfer  
of a confirmed UDC-Sh.Bali Ram Pandey-Reg.

I am directed to refer to Board's letter No.A-23020/6/86.Ad.VII dated 18.7.1986 on the subject cited above.

vide Sh.Bali Ram Pandey, UDC, was informed of the fact this office Memo.No.Estt.3/NG.II/PF/UDC/86/12763 dated 1.9.86. In reply, he has submitted another representation stating that neither C.I.T., Delhi-I, New Delhi not C.I.T. Kanpur/Meerut had informed him that his seniority would be fixed below all the U.D.Cs whether permanent at temporary on his intercharge transfer. He states that he had not given any written undertaking also in this regard and hence his request for fixation of his seniority above all the unconfirmed U.D.Cs of Delhi charge as on 11.12.80, the date of his joining Delhi Charge, should be considered. His application is forwarded herewith in original for consideration.

It may be mentioned there that on verification of the records it is found that the C.I.T.-I, Kanpur was requested by this office to relieve the official for joining this office if he was agreed to the conditions mentioned in the Board's letter No. A-22020/117/80-Ad.VII dated 25.11.1980 and to paste the written acceptance in his service book but it appears that these formalities were not completed by the C.I.T. Kanpur and Meerut. The C.I.T. Meerut relieved him on 10.12.80(AN) mentioning that Sh. Pandey had fulfilled the requirements regarding acceptance of the terms and conditions. But his written acceptance is not available in the service book or personal file received from Kanpur charge."

u

(11)

7. Learned counsel for the respondents was given an opportunity to make his submissions in respect of the letter. He produced the original records for our perusal.

8. In so far as the objection taken by the respondents that this application is time barred is concerned we have considered the application filed by the applicant, along with the OA, for condonation of delay. The O.A. should have been filed on 19.3.88; instead, it was filed on 16.5.88. The delay has been explained as being due to the preoccupation of the applicant with his wife's illness. We are, satisfied with this explanation and hence the delay is condoned.

9. In so far as merit is concerned, the stand of the respondents that the applicant had agreed to abide by the condition stipulated in, 1969 Office Memo. is not sufficient to defeat <sup>the applicant's</sup> claims. The applicant did accept the terms stipulated in the letter dated 12.12.69 (Annexure A-4). If there was nothing else to it, we would have found it necessary to interpret that circular, particularly clause (g) thereof (extracted in para 5 supra) That situation does not obtain here. It is quite clear that C.B.D.T. had given specific consideration

12

to the applicant's case vide letter dated 25.11.80

(Annexure R-V) ,That letter reads as follows:-

" F.No. 22020/117/80-d.VII  
Government of India,  
Central Board of Direct Taxes  
New Delhi the 25th Nov., 1980

To

The Commissioner of Income Tax,  
Delhi-I, New Delhi.

Sub:- Interchange transfers- Transfer of Sh.B.R.Pandey,  
UDC from Kanpur charge to Delhi charge.

Sir,

With reference to your letter No. Est.3/NG-IT/ICT/80/998 dated 28.9.1980 on the above subject, I am directed to convey the approval of the Board, as a special case and in relaxation of condition (c) of Board's letter F.No. 16/15/69-Ad-IX, dated 12.12.69, to the transfer of Sh.B.R.Pandey, UDC from Kanpur charge to Delhi charge, against the direct recruitment quota. His seniority in Delhi charge will be reckoned from the date he joins duty in that charge and his name will be placed below all the UDCs (whether permanent or temporary) in Delhi charge on the date of his joining. The service rendered by him in Kanpur charge will not count towards the minimum service, if any, prescribed for promotion/appointment to any higher post/grade.

2. The lien of Sh.B.R.Pandey, UDC in Kanpur charge will be suspended under F.R.14. He will not be entitled to promotion/confirmation in that charge after his transfer."

Yours faithfully,

xxxxxxxxxxxx

Under Secretary  
C.B.D.T.

This being a special case, the applicant should have been informed of the contents of the Annexure R-V letter which stipulate the terms on which his transfer is approved. Indeed, this was the view taken by the third respondent as will be clear presently.

10. It now appears from the Annexure A-7 letter dated 29.1.1987 filed by the applicant along with MA-3410/93 that the Chief Commissioner(A), Income Tax Delhi had, admitted, in that letter to the Central

Board of Direct Taxes that the Chief Commissioner, Income Tax, Kanpur was requested by his office to relieve the applicant only, if the applicant is agreeable to the conditions mentioned in the Board's letter dated 25.11.80(Annexure R-V) and if he agrees, the written acceptance should be posted in the applicant's service book. It is further stated in that letter that a perusal of the records shows that these formalities were not complied by the Commissioner of Income Tax, Kanpur and Meerut and the latter relieved the applicant, mentioning that the applicant had fulfilled the requirements regarding the acceptance of the terms and conditions. It is also admitted in that letter that the written acceptance of the applicant was not available in the service book/personal file of the applicant received from Kanpur charge.

11. Learned counsel for the respondents who had perused the records brought by him admits that aforesaid Annexure A-7 letter was available on his file. He is, however, unable to locate the letter addressed to the Chief Commissioner, Kanpur, requesting

(16)

him to ensure strict compliance of the Annexure R-V letter.

12. We are of the view that the mere fact that the applicant had given his consent to abide by the instructions of the Board's letter dated 12.12.69 will not be a sufficient authority to determine the seniority of the applicant in the manner it has been done. The authority for taking such action is contained in the Annexure R-V letter dated 25.11.80. The contents of this letter were, admittedly, not communicated to the applicant, as admitted in the Annexure A-7 letter of the third respondent, by Commissioner of Income Tax, Kanpur who was to take such action. Therefore, this stringent condition of being placed below the temporary UDCs also, cannot be enforced against the applicant, without an opportunity to him to withdraw his request for transfer.

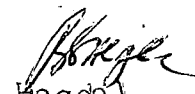
13. In fact, the <sup>kind</sup> respondent could have noticed, as soon as applicant's service records were received in his office, about the lapse of the Commissioner of Income Tax, Kanpur/Meerut in this regard. He could




then have taken ex-post facto consent of the applicant to the conditions stipulated in the Annexure R-V letter, if the applicant was then so willing to abide by it and if not, the applicant could have been retransferred to the Kanpur charge.

14. In the circumstances, we held that, in the seniority list of UDCs, the applicant should be placed only below permanent UDCs who were in position as on 11.12.80 and he should not have been placed below the temporary UDCs.

15. We, therefore, quash the letter dated nil March, 1987 enclosed to the Annexure A-1 letter dated 19.3.87 and direct the third respondents to assign to the applicant seniority in the category of UDCs as on 11.12.80 immediately below the last confirmed UDC in his charge and further, to consider the applicant for promotion from this post on the basis of this revised seniority. If the applicant is found eligible for promotion from an earlier date, he shall be given notional fixation of pay from <sup>that</sup> date and next his pay on the date he was actually promoted to the higher post should be refixed. Pensionary benefits shall also be revised. This may be done within 6 months from the date of this order. Accordingly, OA is disposed of.

  
(B.S. Hegde)  
Member(J)

  
(N.V. Krishnan)  
Vice Chairman(A)