

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A. No.260/00536 of 2016
Cuttack, this the 5th day of August, 2016

CORAM:

THE HON'BLE MR. A.K.PATNAIK, JUDICIAL MEMBER

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Shri Ajay Kumar Biswal, aged about 47 years, S/o. Keshab Biswal, a permanent resident of At-Bhagamara, Po. Pahanga, Dist. Cuttack, at present residing in Plot No. 544/10460, at Gadakana, Po. Railway Colony, (Tala Sabar Sahi), Bhubaneswar, PIN-751 017, at present working as Inspector, Office of the Principal Chief Commissioner, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar.

..... Applicant

For the Applicant :M/s.J.M.Patnaik & C.Panigrahi

-Versus-

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Ayakara Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda.
4. The Joint Commissioner of Income Tax, Hqrs. Admn., O/o. The Principal(CCIT), 1st floor, Aayakar Bhawan, Annexe Rajaswa Vihar, Bhubaneswar, Dist. Khurda.
5. The Assistant Commissioner of Income Tax (Hqrs) & (Admn.&Vig), Office of the Principal Chief Commissioner of Income Tax, Ayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist. Khurda.

..... Respondents

For the Respondents :Mr. B.P.Nayak

O R D E R(Oral)

A.K.PATNAIK, JM:

This OA has been filed by the Applicant under section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- “(i) To quash the order of rejection dated 5th November, 2015 as communicated in letter dated 23rd May, 2016 at Annexure-A/6 and to direct the Respondents to allow the benefits of the decisions rendered by the Hon'ble Principal Bench of the Tribunal in the case of Pramod Kumar –Vrs- Union of India and others in OA No. 2406 of 2005 dated 24.8.2006 and in the case of Shri Nandaram Singh Vrs



UOI and others, OA No. 2732 of 2009 disposed of on 29.9.2010 based on which benefits have been by the CCIT, New Delhi vide order No.67/NGO/2012-13 dated 4.6.2012, by the Chief Commissioner of Income Tax, NWR, Chandigarh vide Order No. 51 of 2012 dated 11.5.2012 in F.No. CC/CHD/CB-III/Sr. TAs. Pro/2012-13/182 and by the CCIT, Kanpur Region vide order No.01/2012 dated 25.2.2013 (file No.11-40/CIT-KNP/2012-13);

- (ii) To direct the Respondents to reconsider the case of the applicant for his re fixation of seniority in the grade of Senior Tax Assistant against the vacancy year 2000-2001 and consequential service and financial benefits retrospectively by counting his past service rendered in his parent region;
- (iii) And accordingly direct the Respondents to revise his position in the seniority list of Senior Tax Assistant;
- (iv) And/or to pass any other order/orders as deemed fit and proper.

2. By way of ad interim measure, the applicant has also sought the following reliefs:

" Pending final decision on this OA, the Hon'ble Court may be pleased to direct the Respondents to reconsider the representation of the applicant by taking into the decisions in the case of Pramod Kumar -Vrs- Union of India and others in OA No. 2406 of 2005 dated 24.8.2006, in the case of Shri Nandaram Singh Vrs UOI and others, OA No. 2732 of 2009 disposed of on 29.9.2010 and the orders of the CCIT, New Delhi vide order No.67/NGO/2012-13 dated 4.6.2012, Chief Commissioner of Income Tax, NWR, Chandigarh vide Order No. 51 of 2012 dated 11.5.2012 in F.No.CC/CHD/CB-III/Sr.TAs.Pro/2012-13/182 and CCIT, Kanpur Region vide order No.01/2012 dated 25.2.2013 (file No.11-40/CIT-KNP/2012-13);

3. Heard Mr. J.M.Patnaik, the learned Counsel for the Applicant and Mr. B.P.Nayak, learned ACGSC appearing for the Respondents, who has been served copy of this OA, appearing for the Respondents and perused the records.

4. The case of the Applicant, in sum and substance, is that on being recruited, he joined as Upper Division Clerk on 16.05.1996 under the CCIT, Pune. Subsequently, in terms of the instructions contained in Board's F. No. 22020/76/89-Ad.VII dated 14.05.1990, he was transferred and posted as Upper Division Clerk in the charge of Chief Commissioner of

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Income Tax, Orissa, Bhubaneswar. Accordingly, on being relieved he joined at Odisha Region as UDC on 05.06.2000. The post of UDC was redesignated as Tax Assistant on 20.7.2001. After acquiring the prerequisite qualification, he was promoted to Senior Tax Assistant on 29.09.2004 and thereafter to the post of Inspector on 21st July, 2010. The competent authority of the Odisha Region invited objection from the existing incumbents on the proposed restructuring of the placement in the seniority list in all grades vide letter No. CCIT/Estt.III-156/2015-16 dated 24th July, 2015. The applicant represented on 29th July, 2015 for showing his name as a promote Sr. Tax Assistant against the vacancy year 2000-01 taking into consideration the past service rendered by him in other region. But the authority concerned without taking into consideration the law laid down by the Hon'ble Apex on the subject, rejected his representation vide letter No. CCIT/Estt.III-156 (Pt.II)/2015-16 dated 5th November, 2015 which was communicated to him in letter dated 23rd May, 2016. According to the learned counsel for the applicant the rejection is contrary to the law laid down by the Hon'ble Apex Court in the cases of **Scientific Advisor to Raksha Mantri & Anr -Vrs-V.M.Joseph** (para-6), (1998) 5 SCC 305, **Renu Mallick -Vrs- Union of India**, 1994 1 SCC 373 and **Union of India & Another Vrs V.N.Bhat** (2003) 8 SCC 714.

Further, it has been contended by the learned counsel for the applicant that one of the Tax Assistants working in the office of the Chief Commissioner of Income Tax, Jodhpur having faced the same and similar situation, like the present applicant, approached before the **Jodhpur Bench of the Tribunal** in **OA No.522 of 2011** which was disposed of on dated 9th August, 2012 in favour of the applicant. The Lucknow Bench of the Tribunal also in **OA No. 315 of 2012 (Narendra Kumar and others Vrs Union of India & Others)** took the view in favour of the applicant. The principal Bench



of the Tribunal in the case **Pramod Kumar -Vrs- Union of India and others**, OA No. 2406 of 2005 disposed of on 24.8.2006, and in the case of **Shri Nandaram Singh Vrs UOI and others**, OA No. 2732 of 2009 disposed of on 29.9.2010 granted the benefit of promotion and seniority in favour of the applicants. Next submission of the learned counsel for the applicant is that in compliance of the aforesaid orders, the CCIT, New Delhi vide order No.67/NGO/2012-13 dated 4.6.2012 and the CIT, NWR, Chandigarh vide Order No. 51 of 2012 dated 11.5.2012 in F.No.CC/CHD/CB-III/Sr.TAs.Pro/2012-13/182 promoted many Tax Assistant to Senior Tax Assistant taking into consideration the service rendered in previous region. It has been contended that similarly benefits were also granted to the employees by the CCIT, Kanpur Region vide order **No.01/2012 dated 25.2.2013 (file No.11-40/CIT-KNP/2012-13)**, by the Chief Commissioner of Income Tax, Kolkata-I, vide order **No. 215 (F.No.SE/3/2001-02/Part I dated 9.3.2012)**. Whereas, the grievance of the applicant has been negated by the Respondents, without taking note of the aforesaid facts and as such, the order of rejection is not sustainable in the touch stone of judicial scrutiny.

5. On the other hand, the learned counsel appearing for the Respondents has fairly submitted that instantly he has no instruction with regard to the orders cited by the learned counsel for the applicant and accordingly, submitted that if some time is granted he will obtain the instruction and file the reply stating details of the matter.

6. At this stage, Mr. Patnaik, the learned counsel appearing for the applicant submitted that had the authorities taken into consideration the aforesaid facts, the applicant could not have been made to approach this Tribunal in the present litigation and, therefore, he has submitted that his client shall be satisfied if this OA is disposed of at this stage with direction to



the Respondents to reconsider the representation of the present applicant taking into consideration the law and orders cited above, granting the relief to the applicants therein.

7. I have gone through the decision rendered in the case of **Union of India & Ors. vs. C.N. Ponnappan**, AIR 1996 SC 764= 1996(1) SCC 524, in which the Hon'ble Apex Court have held that , where an employee is transferred from one unit to another on compassionate ground and is placed at the bottom of the seniority list, the service rendered by him at the earlier place from where he has been transferred, being regular service has to be counted towards experience and eligibility for promotion.

In the case of **Scientific Advisor to Raksha Mantri & Anr -Vrs- V.M.Joseph reported in** (1998) 5 SCC 305 the Hon'ble Apex Court held that even if an employee is transferred at his own request, from one place to another, on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors.

The same view has also been taken by the Hon'ble Apex Court in the cases of **Renu Mallick -Vrs- Union of India** (supra) and **Union of India & Another Vrs V.N.Bhat** (supra)

8. The order of rejection prima facie shows that rejection of representation is without taking into consideration the aforesaid law laid down by the Hon'ble Apex Court and the facts that in compliance of the order of other Benches of the Tribunal, the other region of the same Income Tax Department granted the seniority and promotion to many employees taking

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into consideration the past service rendered in other region before their transfer to new region. Hence the issue of counting the past service rendered in other region, has to be taken into consideration for considering the eligibility for promotion is no more *res integra*. If similar benefit has already been granted to similarly situated employees, there is no justification on the part of the respondents not to grant the same benefit to the Applicant as creation of a class within a class is nothing but amounts to violation of the mandate enshrined in Articles 14 and 16 of the Constitution of India. Be that as it may, a final decision can be taken only after filing of detailed reply by the Respondents. But at present, the learned counsel for the applicant submits that as the order of rejection without taking into consideration the aforesaid facts and law, he has prayed for an innocuous relief to direct the respondents to re consider the representation of the applicant keeping in mind the aforesaid facts and law. I am of the considered opinion that no right of the respondents shall be adversely affected if this OA is disposed of at this stage with direction to the Respondents to reconsider the representation of the applicant.

9. Hence, without expressing any opinion on the merit of the matter, this OA is disposed of at this admission stage, with direction to the Respondents that notwithstanding the order of rejection, let them reconsider the representation of the applicant, keeping in mind the law laid down by the Hon'ble Apex Court, other Benches of the Tribunal and the benefits granted in compliance thereof by the Department and communicate the result thereof, in a well reasoned order, to the applicant within a period of 60 (sixty) days from the date of receipt of a copy of this order. There shall be no order as to costs.


(A.K.Patnaik)
Judicial Member