

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No.274/2009

Jodhpur, this the 23rd day of January, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, JUDICIAL MEMBER
HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Asit Kumar s/o Shri Ramchandra Prasad Singh, aged about 36 years,
r/o 18, Income Tax Colony, Paota Mandore Road, Jodhpur. Working
as Data Processing Assistant Grade-A in the office of Addl.
Commissioner of Income Tax (Computer Operations) Jodhpur

.....Applicant

By Advocate : Mr. Kamal Dave

Vs.

1. Union of India through the Secretary, Ministry of Finance,
Department of Revenue, Government of India, New Delhi.
2. Chief Commissioner of Income Tax, Central Revenue building,
Janpath, Jaipur
3. Kashi Nath Purohit working as DPA Grade-A in the office of
Commissioner of Income Tax (Computer Operations), Jaipur

...Respondents

By Advocate : Mr. Sunil Bhandari for resp. No. 1 and 2 and Mr. Vinod
Choudhary for Mr. Kuldeep Mathur for resp. No.3.

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The applicant, Asit Kumar, has filed this OA under Section 19 of
the Administrative Tribunals Act, 1985, aggrieved of rejection of his
representation vide communication dated 6.11.2009 (Ann.A/1), by

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which the applicant has challenged assignment of seniority list dated 20.10.2009 and denial of fair consideration as per statutory requirement to consider his case for promotion against the post of DPA Grade-B. Therefore, the applicant has prayed for the following reliefs:-

- (a) That by quashing the order impugned seniority list dated 20.10.09 as well as order dated 06.11.1009 by which objections to seniority list are rejected may kindly be quashed and set aside and the respondents may kindly be directed to accord promotion w.e.f. 2005 i.e. from the date when vacancy was available and applicant was at No.-1 in the seniority list.
- (b) That the applicant may be allowed all consequential benefits in real terms as accrued to him after quashing of above impugned orders.
- (c) Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.
- (d) Costs of the application may kindly be awarded in favour of the applicant.

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially appointed as Data Processing Assistant (DPA) in the year 1997. After completion of 12 years' service in April, 2009, he was not allowed the benefit of ACP. In the seniority list of DPA Grade-A circulated in the year 1999 showing status of the employees as on 1.9.1999 (Ann.A/3), name of the applicant was placed at Sl.No.2 and date of entry in the department was shown as 28.4.1997. The incumbent placed at Sl.No.1, Shri R.S.Rana, was promoted as DPA Grade-B and he was further promoted from to the post of DPA Grade-B to Assistant Director (System) on 6.6.2005. In this manner, the applicant holding the seniority at No.1 in the cadre DPA Grade-A got

accrued a right of consideration against vacant post of DPA Grade-B in view of promotion of the holder of the post. The applicant has also filed representations to the respondents raising his grievances. The applicant further stated that he was awaiting for promotion or the benefit of ACP, but the respondent No.2 vide impugned seniority list dated 20.10.2009 released revised seniority list of DPA Grade-A showing status regarding seniority of the cadre of DPA Grade-A on 1.1.2009. In the revised seniority list (Ann.R-3/2), applicant is pushed down to No. 2. and respondent No.3, Shri Kashi Nath Purohit was placed at No.1. The applicant raised objection to this seniority submitting that respondent No.3 Shri Kashi Nath Purohit entered in the respondent department as UDC on 6.2.1978 and was enjoying the seniority position amongst the UDC's and was included in the seniority list of UDC till he was adsorbed as DPA Grade-A on 24.3.2000. Now the respondents allowed even the benefit of the seniority to respondent No.3 from 30.11.1995 when he was substantially holding and enjoying all the benefits as admissible to UDC. The respondents rejected representation of the applicant vide communication dated 6.11.2009 in which reference of Rule 4 of the Recruitment Rules has been made. Therefore, aggrieved of the action of the respondents, the applicant has filed the present OA praying for the reliefs as mention in para-1 above.

3. Respondent Nos. 1 and 2 as also respondent No.3 have filed their separate replies. The respondent No. 1 and 2 in their reply have submitted that Sh. Kashi Nath Purohit was considered as senior to the

applicant because Shri Purohit had been working as Console Operator on deputation from 1995 which was prior to joining of Department by the applicant. It is further submitted in the seniority list sent vide letter dated 31.1.2006, the applicant was shown senior to respondent No.3. Thereafter Recruitment Rules for the post of DPA Grade-A and B were circulated vide board's letter dated 16.4.2008. After implementation of the CAT-Principal Bench judgment in the case of S.R.Gautam vs. UOI (OA No.2516/2000 decided on 19.4.2001) which has become final as the Writ Petition filed against the judgment has been dismissed, the respondent No.3 has been given seniority from 1995 i.e. the date of initial deputation and since the applicant joined in the year 1997, therefore, he has been placed below respondent No.3. It has been further stated that as per para 4 of the Recruitment Rules, the period spent by respondent No.3 on deputation has been treated as regular service including for the purpose of fixing the seniority. This interpretation of Rule 4 was in consonance with judgment in S.R. Gautam of the CAT-Principal Bench and the judgment in the case of R.S.Rana by the CAT-Jaipur Bench in OA No.532/2002 on 18.11.2004. Therefore, the respondent No. 1 and 2 have submitted that the applicant is not entitled to any relief.

Respondent No.3 has also filed reply and submitted that the representation submitted by the applicant has been rightly rejected. It has also been submitted that the law laid down by the CAT-Principal Bench in the case of S.R.Gautam has become final as the said judgment has already been upheld by the Hon'ble Delhi High Court. Respondent No.3 further submitted that he has filed OA No.111/2007

before the CAT-Jaipur Bench in which the respondents were directed to treat the service rendered by the applicant as Programme Assistant/Console Operator from the date of initial deputation to the date of absorption as regular service for the purpose of considering him for promotion as Programmer/ Assistant Director Systems. It has been further stated that the service rendered on deputation on the post of Programme Assistant/Console Operator from 30.10.1995 to 24.3.2000 has to be counted as a regular service in view of the various decisions of the CAT Benches. The seniority list dated 20.10.2009 is perfectly in accordance with the rules and the applicant is not entitled to any relief as prayed for.

4. Head learned counsel for the parties. Counsel for applicant contended that the applicant was selected on the post of DPA Grade-A on 20.4.1997 and he was not granted MACP w.e.f. 1.9.2008. The respondent department published a seniority list Ann.A/3 in which the applicant was shown at Sl.No.2 and Shri R.S.Rana was reflected at Sl.No.1. In Ann.A/3 name of respondent No.3 Shri Kashi Nath Purohit does not appear because he was not working at Data Processing Assistant Grade-A as on 1.9.1999. After that Shri R.S.Rana got his promotion as DPA Grade-A and as Assistant Director (Systems) therefore, the applicant stood at Sl.No.1 of the seniority list, because Shri Kashi Nath, although entered in service in 1978, but he was holding the post of DPA Grade-A from the year 2000. The respondent department abruptly issued letter Ann.A/1 denying the applicant seniority at Sl.No.1 and showing Shri Kashi Nath senior to the

applicant. Therefore, the counsel for the applicant contended that Ann.A/1 cannot be said to be a legal order because the respondent department mis-interpreted Rule 4 of the Recruitment Rules, which is in the following terms:-

"4. Initial constitution.- (1) All Data Processing Assistant Grade 'A' (appointed by the Department during the period November, 195 to May, 2003)/ existing Programme Assistant/ Console Operator working on regular basis on the date of notification of the rules shall be deemed to have been appointed as Data Processing Assistant Grade 'A' in accordance with the provisions of these rules and the previous regular services rendered by them shall be counted for all purposes including seniority.

(2) All Data Processing Assistant Grade 'B' (appointed by the Department during the period November, 1995 to May, 2003) on regular basis on the date of notification of the rules shall be deemed to have been appointed as Data Processing Assistant Grade 'B' in accordance with the provisions of these rules and the previous regular services rendered by them shall be counted for all purposes including seniority."

He further contended that under Rule 4 of the Recruitment Rules, 2008 only a person, who has rendered regular service is entitled to have his service counted for all purposes including seniority whereas respondent No.3 has not rendered regular service, as he was on deputation as Console Operator. Therefore, by mis-interpretation of Rule 4, the applicant has been wrongly denied and thus, Ann.A/1 requires to be set-aside. Counsel for the applicant further contended that benefit of experience can be provided to respondent No.3 but the period of deputation cannot be counted for the purpose of seniority and promotion.

Counsel for the applicant further contended that in OA No.111/2007, Kashi Nath Purohit vs. UOI, the applicant was not a

party and without impleading him as party, the decision is not binding on him and he can raise his grievance by way of this application. In support of his arguments, he relied upon the judgment of the Hon'ble Supreme Court in the case of State of Uttaranchal and Anr. vs. Madan Mohan Joshi and Ors., reported at (2008) 6 SCC 797. We have perused the aforesaid judgment. In that judgment, it has been held by the Hon'ble Apex Court that where a person is not a party to the proceedings, the judgment cannot be binding force on that person.

He further contended that the respondent department while passing the impugned order relied upon the judgment in the case of S.R.Gautam (supra) including the judgment of the CAT-Jaipur Bench and held that the service rendered on deputation shall be deemed to be regular service and the deputation period spent by respondent No.3 as Console Operator was ordered to be counted for the purpose of seniority. The counsel for the applicant further contended that respondent No.3 was working as UDC, which is not equivalent but a much lower post than the Console Operator and, therefore, the services rendered as Console Operator cannot be termed as regular service for the purpose of seniority in the absorbee department. He further contended that respondent No.3 also enjoyed the benefit of seniority in his parent UDC cadre. The learned counsel vehemently contended that the entry of respondent No.3 in the absorbee department was back door entry and this act was to deny the benefit of seniority to the applicant.

In support of his arguments that respondent No.3 was working as UDC, which was much lower post than the Console Operator and only in case of equivalent post, the seniority can be counted, he relied upon para-17 of the judgment in the case of S.I.Rooplal and Anr. vs. Lt. Governor through Chief Secretary, Delhi and ors., reported in AIR 2000 SC 594. He contended that the post of UDC is not only of lesser pay scale than Console Operator, but is not matched in terms of any other parameters like nature of duties, powers and responsibilities or minimum qualification, which have been held as important factor to consider a post equivalent. Therefore, the period of deputation by a UDC on the post of Console Operator cannot be terms as regular service in terms of Rule 4 of Rules of 2008.

5. On the contrary, counsel for the respondents contended that while relying upon the judgment in the case of S.R.Gautam (supra), the CAT-Jaipur Bench has allowed the OA of respondent No.3 and ordered that the service rendered by him on deputation shall be counted as regular service. He further contended that the CAT-Jaipur Bench have relied upon the Full Bench judgment of CAT-Principal Bench in OA no.1343/2007 decided on 2.6.2011 wherein similar controversy was involved and the respondents were directed to fix the seniority of the applicant therein by taking into account his past services in analogous post in his parent department. Shri R.S.Rana, the person shown senior to the applicant had also filed OA bearing

No.532/2002 which was decided vide order dated 18.11.2004 wherein it has been held to treat the service rendered as Programme Operator/Console Operator as regular service from the date of initial deputation for the purpose of considering him for promotion to Programmer Grade- A/Assistant Director (System). Counsel for the respondent department further contended that in view of the judgments in the case of S.R.Gautam, R.S. Rana (supra) and judgment in OA No. 111/2007, the issue is no longer res-integra and in view of the pronouncements in the above judgments, the service rendered by respondent No.3 on deputation basis is to be treated as regular service from the date of initial deputation for all purposes including seniority and promotion.

6. We have considered the rival contention of both the parties. The CAT-Jaipur Bench in OA No.111/2007 held that the service rendered by Shri Kashi Nath Purohit on deputation shall be considered as regular service from the date of his deputation for the purpose of considering him as Programme Grade-A/Assistant Director (System) from the due date and directed to promote him as such from the said date, if found fit by the DPC/Review DPC with consequential benefits. While relying upon the judgment of the Full Bench of CAT-Principal Bench in OA no.1343/2007 decided on 2.6.2011, OA No.532/2002 dated 18.11.2004 in the case of R.S.Rana vs. UOI, the judgment in the case of K.Madhavan and anr. vs. Union of India and ors. reported at (1982) 4 SCC 586 and also the judgment in the case of Sridhar Prakash vs. Union of India and anr. in OA no.871/95 decided on

5.9.1995 by the CAT-Principal Bench, New Delhi, the CAT-Jaipur Bench in OA No.111/2007 came to the conclusion that:-

8. We have given due consideration to the submissions made by the respective parties and we are of the view that the applicant is also entitled to the benefit of the judgment rendered by the Principal Bench of this Tribunal in the case of S.R.Gautam (supra) as the judgment rendered by the Principal Bench is in rem and not in persona and accordingly, the respondents are directed to treat the service rendered by the applicant as Programme Operator/Console Operator from the date of initial deputation to the date of absorption as regular service for the purpose of considering him for promotion as Programmer Grade-A/Assistant Director (System) from the due date and promote him as such from the said date, if found fit by the DPC/Review DPC with consequential benefits.
9. As discussed hereinabove, the respondents are not aware about pendency of any SLP against the judgment of the Delhi High Court, in such circumstances, we want to make it clear that promotion of the applicant will be subject to the decision by the Hon'ble Supreme Court in SLP, if any, filed by the respondents."

The CAT-Jaipur Bench while disposing of OA No.111/2007 has also relied upon 5.2 of the judgment passed in OA no.532/2002,

Rajendra Singh Rana vs. UOI, which is in the following terms :-

"5.2 We have given due consideration to the submissions made by the applicant. We are of the view that the applicant is also entitled to the benefit of the judgment as rendered by the Principal Bench in the case of S.R.Gautam (supra). Accordingly, the respondents are directed to treat the service rendered by the applicant as Programme Operator/Console Operator from the date of his initial deputation to the date of his absorption as regular service for the purpose of considering him for promotion to Programmer Grade-A/Assistant Director (System). The respondents are further directed to consider the applicant for promotion as Programmer Grade-A/Assistant Director (system) from the due date and promote him as such from the said date, if found fit by the DPC/Review DPC, with all consequential benefits. It is made clear that such promotion will be subject to decision to be rendered by the Principal Bench in OA No.2412/2002, Jayanti Barua vs. Union of India and ors., where promotion of Shri S.R.Gautam and others are under challenge.

Such exercise shall be undertaken by the respondents within a period of two months from the date of receipt of a copy of this order."

7. Counsel for the applicant cited three more decision regarding binding effect of a judgment, which are:-

1. Stated of Uttaranchal vs. Sandeep Kumar Singh, reported in 2010 AIR SCQ 7191
2. Sayiya Bee v. Mohd. Bajahath Hussain alia Fasi, reported in 2011 AIR SCW 3880
3. Official Liquidator vs. Dayanand and ors., reported in AIR 2008 SC (Supp) 1177

8. We have considered those judgments also but looking to the entire facts and circumstances of the case, these are not required to be discussed in detail.

9. We have also considered the contention of the counsel for the applicant that the period rendered on deputation can only be counted for the purpose of experience and not for seniority, but in view of the judgment in the case of R.S.Rana, the person who was senior to the applicant in the same office, the arguments advanced by the counsel for the applicant is not sustainable.

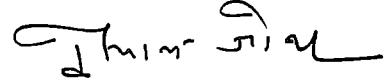
10. In view of the discussions made hereinabove, we are of the view that the period of deputation shall be considered as regular service from the date of initial deputation for the purpose of seniority, therefore, the order Ann.A/1 passed in terms of Rule 4 of Rules of 2008 does not suffer from any infirmity and the same does not require

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any interference by this Tribunal. Accordingly, the OA being devoid of merit is hereby dismissed with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C.JOSHI)
Judicial Member

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