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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

OA No. 84/2012
Jodhpur this the 23rd day of September, 2013.

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

1. Man Singh Panwar S/o Shri Ghazi Ram Panwar, aged 46 years, R/o C/o 1-C-163, Kudi Bhaktasani Housing Board, Jodhpur. Serving as Senior Tax Assistant in the office of Assistant Commissioner of Income Tax, Central Circle – 1, Jodhpur.
2. Nippu Kumar S/o Shri Vijay Singh, aged 31 years, Resident of Quarter No. 14, Income Tax Colony, Mandor Road, Jodhpur. Serving as Senior Tax Assistant in the Office of Chief Commissioner of Income Tax, Jodhpur.

.....Applicants

(Through Advocate Mr Kamal Dave)

Versus

1. The Union of India through the Secretary Ministry of Finance, Government of India, New Delhi - 110001.
2. The Chief Commissioner of Income Tax (CCA), Central Revenue Building, Bhagwandas Road, Jaipur.
3. The Chief Commissioner of Income Tax, Paota-C Road, Jodhpur.
4. Shri Prahlad Rai Panwar, Working as Senior T.A. in the office of Income Tax Office Ward I, Income Tax Office Beawar through Income Tax Office Ward I, Income Tax Office Beawar.
5. Shri Bulaki Das Swami, Working as Senior T.A. in the office of Income Tax Officer, Ward 1(3), Income Tax Office, Bikaner through Income Tax Officer, Ward 1 (3), Income Tax Office, Bikaner.

**(Respondents No. 1 to 3 through Advocate Mr Varun Gupta)
(Respondents No. 4 to 5 through Advocate Mr J.K. Mishra)**

.....Respondents

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ORDER (Oral)
Per Justice Kailash Chandra Joshi, Member (J)

By way of this joint application, the applicants, Shri Man Singh Panwar and Shri Nippu Kumar, have challenged the legality of the common order Annex. A/1 i.e. Seniority list of Senior Tax Assistants as on 01.01.2012. The applicants have also prayed to file joint application which is allowed as the applicants are aggrieved of same cause of action arising out of assigning seniority position in the seniority list and grievance of both the applicants is common.

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2. The short facts of the case are that the applicants are presently serving as Senior Tax Assistant. The applicants after qualifying the Tax Assistant Examination, 2006 conducted by Staff Selection Commission (SSC) were posted under the Rajasthan Circle at Jodhpur. The applicants are aggrieved of erroneous fixation of seniority in ignorance to the applicable provisions for determining seniority of Direct Recruit Tax Assistant vis a vis Tax Assistant appointed on compassionate ground. The applicant No. 1 Shri Man Singh Panwar entered as Direct Recruit Tax Assistant through the SSC w.e.f. 26.09.2007 and further promoted as Senior Tax Assistant and the applicant No. 2, Shri Nippu Kumar appointed as Direct Recruit Tax Assistant through SSC w.e.f. 27.12.2007 and also promoted as Senior Tax Assistant. The private respondents No. 4 & 5 have been appointed on

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compassionate ground as Tax Assistant in the year 2007. The seniority in respect of the Direct Recruit is determined by the order of merit declared by the SSC. The Deptt. of Personnel & Training (DoPT), Government of India vide its memorandum dated 09.10.1998 has introduced the scheme for appointment on compassionate ground in the Central Government and under para 15 of the said scheme, provision for determining the seniority is provided. The Govt. after reviewing the manner of fixation of seniority decided that person appointed on compassionate ground in a particular year may be placed at bottom of all the candidates recruited through direct recruitment, promotion etc. in that year, irrespective of the date of joining of the candidate on compassionate ground. The applicant has averred in the application that the respondent-department has not fixed the seniority of the applicant in accordance with the memorandum dated 09.10.1998 and clarification dated 11.11.2010 in this regard and thus, the applicants have been assigned wrong seniority in the seniority list. Aggrieved by the issuance of Annex. A/2, the applicants have sought following relief(s):

- "(a) That the seniority list impugned as on 01.01.2012 (Annexure A/1) may kindly be quashed and set aside.**
- (b) That the respondents may kindly be directed to place applicant above all Senior Tax Assistant including private respondents who were appointed on compassionate ground and assigned erroneous seniority above applicants.**
- (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.**

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(d) Costs of the application may kindly be awarded in favour of the applicant."

3. By way of counter, the respondents No. 1 to 3 have averred that the seniority of the applicants has been fixed in accordance with DoPT, GOI OM dated 09.10.1998 and have further averred in the reply that OM dated 11.11.2010 by which the clarification to the OM dated 09.10.1998 has been issued, is prospective and not having any retrospective effect, therefore, as per the OM dated 01.10.1998 of DoPT, GOI the inter se seniority has been fixed correctly. They further prayed to dismiss the OA.

4. The private respondents No. 4 & 5 while supporting the averments made by the respondents No. 1 to 3, have averred in their reply that their seniority in Annex. A/1 has been fixed in accordance with the OM dated 09.10.1998 of DoPT, GOI, rules in force, at that time and clarification to this OM was issued on much later date i.e. 11.11.2010. Therefore, it would be illegal to assign the seniority to the applicants above the respondents No. 4 & 5 as their seniority has been assigned as per rules in force at that time.

5. During the course of arguments, counsel for the respondents No. 4 & 5 contended that the applicants have not challenged the seniority list of Tax Assistant which is the feeder grade of Senior Tax Assistant and without challenging the seniority in the feeder

grade i.e. Tax Assistant, how could seniority of the next higher grade i.e. Senior Tax Assistants (Annex. A/1) be challenged.

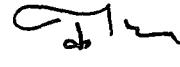
6. Per contra counsel for the applicants contended that the applicant Shri Nippu Kumar had already filed representation before the competent authority but respondents without deciding the representation of the applicant No. 2 have published the seniority list of Senior Tax Assistant, therefore, he has challenged the legality of the Seniority List (Annex. A/1).

7. In view of the submissions made by all the parties, we are inclined to dispose off this OA with certain directions.

8. Accordingly, OA is disposed off with the directions that applicants shall file their representation afresh, if so desired, before the competent authority regarding their objections on the seniority list of Tax Assistant within 15 days from the date of receipt of this order. Thereafter, competent authority of the respondent-department is directed to decide the representation in the light of DoPT, GOI O.M. dated 09.10.1998 and clarification dated 11.11.2010 clearly indicating whether the clarification is having retrospective or prospective effect, within 4 months after receipt of such representations. The competent authority in respondent-department is also directed to provide an opportunity of hearing to

the respondents No. 4 & 5 before deciding the representation of the applicants by way of a speaking order.


(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER


(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

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