के.प्र.अ. (प्रक्रिया) नियमावली के नियम 22 के अन्तर्गत वि: शुल्क प्रति

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application Nos. 101/2013,
102/2013, 103/2013 & 151/2013

RESERVED ON: 11.07.2016

Jodhpur, this the 27th day of July, 2016

CORAM

Hon'ble Dr. Murtaza Ali, Judicial Member
Hon'ble Ms. Praveen Mahajan, Administrative Member

OA No. 101/2013

Sunil Vaishnav s/o Shri Himmat Das Vaishnav, aged about 42 years, resident of B-45, Model Town, Chopasni Housing Board, Jodhpur, at present employed on the post of Income Tax Inspector, in the office of CIT-II, Paota 'C' Road, Jodhpur

.....Applicant

By Advocate: Shri Surendra Mehta

Versus

1. Union of India, through Secretary, Government of India, Ministry of Finance, Deptt. of Revenue, Central Board of Direct Taxes, North Block, New Delhi.

2. Chief Commissioner of Income Tax (CCA), C.R.Building, Statute Circle B.D. Road, Jaipur

.....Respondents

By Advocate : Shri Sunil Bhandari

OA No. 102/2013

Surendra Kumar Joshi s/o Late Shri Ashutosh Joshi, aged about 46 years, resident of Rani Sagar Padam Sagar, near Maha Laxmi Temple, Brahmpuri, Jodhpur, at present employed on the post of Senior Tax Assistant, in the office of Joint Commissioner of Income Tax (CO) Paota 'C' Road, Jodhpur

.....Applicant

By Advocate: Shri Surendra Mehta

Versus

1. Union of India, through Secretary, Government of India, Ministry of Finance, Deptt. of Revenue, Central Board of Direct Taxes, North Block, New Delhi.

2. Chief Commissioner of Income Tax (CCA), C.R.Building, Statute Circle, B.D. Road, Jaipur

.....Respondents

By Advocate : Shri Sunil Bhandari

OA No. 103/2013

Narendra Shankhla s/o Shri Rameshwar Lal Shankhla, aged about 42 years, resident of H-159, UIT Colony, Pratap Nagar Colony, Jodhpur, at present employed on the post of Income Tax Inspector, Sirohi (Rajasthan)

.....Applicant

By Advocate: Shri Surendra Mehta

Versus

1. Union of India, through Secretary, Government of India, Ministry of Finance, Deptt. of Revenue, Central Board of Direct Taxes, North Block, New Delhi.

2. Chief Commissioner of Income Tax (CCA), C.R.Building, Statute Circle, B.D. Road, Jaipur

.....Respondents

By Advocate : Shri Sunil Bhandari

OA No. 151/2013

Kedar Nath Verma s/o Shri Bhagwan Sahai Verma, aged about 48 years, resident of I/2, Income Tax Colony, Mandore Road, Jodhpur, at present employed on the post of Senior Tax Assistant, in the office of Chief Commissioner of Income Tax, Paota 'C' Road, Jodhpur

.....Applicant

By Advocate: Shri Surendra Mehta

Versus

1. Union of India, through Secretary, Government of India, Ministry of Finance, Deptt. of Revenue, Central Board of Direct Taxes, North Block, New Delhi.

2. Chief Commissioner of Income Tax (CCA), C.R.Building, Statute Circle, B.D. Road, Jaipur

.....Respondents

By Advocate : Shri Sunil Bhandari

ORDER

Per Hon'ble Ms. Praveen Mahajan, Member (A)

Since an identical issue involves in these OAs, therefore, these are being decided by this common order.

2. For the sake of convenience, we are taking pleadings of OA No.101/2013. In this OA, the applicant has prayed for the following reliefs:-

(i) That the respondents may be directed to carry out a review/review DPC and assign due seniority and revise date of promotions i.e. by antedating the date of promotion, thereof as a result of change of their initial grade from DEO A to B in accordance with order dated 31.3.2011 (Annexure A/6). The amount of arrears of difference of pay thereof, may be paid along with market rate of interest.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded

3. The facts, in a nutshell are, that the applicant was given offer of appointment vide letter dated 8.4.1993 and initially appointed as Data Entry Operator (for short, DEO) in the pay scale of Rs. 1200-2040. He joined on 12.4.1993 in the Income Tax Department. In the 5th Central Pay Commission, the scale of Rs. 1150-1500 and Rs. 1200-2040 were revised to a single scale of Rs. 4000-6000 with new designation as DEO Grade-A. The applicant undertook special examination held for appointment to the post of DEO Grade-B in the pay scale of Rs. 4500-7000 on 30.3.1999 and passed the same. He was appointed as DEO Grade-B vide order dated 31.3.1999 **(Ann.A/2)**. The applicant was promoted to the post of Senior Tax Assistant in the pay scale of Rs. 5000-8000 vide order dated 21.9.2001 **(Ann.A/3)** and posted at Jodhpur. He also passed the requisite Departmental Examination for Ministerial Staff 2001 held in January, 2002 and was further promoted to the post of Office Superintendent in the pay scale of Rs. 5500-9000 (revised Rs. 9300-34800 + 4200 GP under 6th CPC). He has been promoted to the post of Income Tax Inspector in the pay scale of Rs. 9300-34800 + Grade Pay of Rs. 4200 on 6.11.2011 **(Ann.A/5)**.

According to the applicant, the 1st respondent issued letter dated 31.3.2011 (Ann.A/6) directing that "in all such cases of Data Entry Operators who were recruited against the Recruitment Rules that prescribed matriculations as the

minimum qualification, but were graduate at the time of recruitment/entry in service will be given all the consequential benefits with effect from their entry in service, including grade (DEO Grade 'B') and pay scale."

The applicant represented and requested for grant of due benefits of pay scale and other consequential benefits as per order dated 31.03.2011. Accordingly, he has been granted pay fixation vide order dated 13.9.2011 in the pay scale of Rs. 1350-2200 from the date of his initial appointment as DEO i.e. 8.4.1993. All subsequent pay fixations have been revised to their equivalent pay. The respondents, however, have not reviewed his consequential seniority on merger of various cadres. The applicant has further averred that with the subsequent orders/changes, the applicant's initial post became as DEO Grade-B in the pay scale of Rs. 1350-2200 which is higher than the post of DEO Grade-A in the pay scale of Rs. 1200-2040. In this way the applicant in particular, and, other DEO Grade-B in general, would be enblock senior to the persons holding the post of DEO Grade-A. Hence, they should get their seniority from the date of entry as DEO Grade-B in the merged grade from the date of initial appointment i.e. 8.4.1993. Consequently, there would be changes in the dates of different promotions, which the applicant desires, from earlier dates.

4. In preliminary objections, the respondents have submitted that the applicant filed representations dated 20.7.2011 and 26.3.2012. The same were rejected vide order **dated 29.10.2013 (Ann.R/1)** which was not challenged by the applicant. Further, the incumbents who had already been granted seniority and promotions have not been impleaded as party in the OA, in the absence of whom, no relief can be granted to the applicants.

The respondents state that as per order **dated 31.3.2011 (Ann.A/6)** pay scale of DEO Grade-B Rs. 1350-2200 has been given to the applicant and the arrears arising thereof w.e.f. 8.4.1993 have also been paid. The said order, does not provide for reopening of the case for grant of seniority and promotions retrospectively, or unsettling the seniorities, settled long back, which have attained finality. Grant of consequential benefits, in view of the order dated 31.3.2011 only means grant of arrears of pay scale of DEO Grade-B w.e.f. 8.4.1993 and cannot be stretched to such an extent as has been claimed by the applicant. The Department of Personnel and Training and Department of Law Affairs has also clarified that seniority of officers determined initially, on appointment to a post, cannot be revised retrospectively, by subsequent grant of higher pay scales to officers, possessing higher qualifications, with that post. The respondents have relied upon the judgment **dated 3.7.2012**

passed in OA No.534/2011 and other connected matters of the CAT-Ernakulam Bench whereby it has been held that:-

> **"There is neither a legal sanction for grant of seniority to graduate entrants as DEO selected in the wake of 1988 notification, nor is the same in accordance with the dictum laid down by the Apex Court in matters of seniority as settled seniority cannot be unsettled. Thus, it is amply clear that when the respondents have tried to maintain uniformity, an error has been committed by them in the matter of seniority. The seniority of the applicants in OA no.534 of 2011 and 535 of 2011 in the grade of Data Entry Operator had been decided long back, some score of years ago and the same had been followed in the grant of promotions to the higher posts. As such, such a settled seniority cannot now be permitted to be upset by grant of higher seniority to Graduates when the seniority had been fixed on merit irrespective of qualifications...."**

The Bench has further observed that:-

> **"There had been no whisper in any of the orders of the Tribunal as to grant of seniority. True, consequential benefits were ordered and interpretation of the same should have been restricted to payment of arrears of pay and allowances but not in any event affording seniority on the basis of qualifications possessed by some candidates....."**
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> xxx xxx xxx xxx
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> **"And High Court of Kerala in its judgment vide para 5 of Annexure-7 in equivocal term held that what has been granted is only pay (meaning thereby no other benefit, much lest seniority on the basis of graduation."**

5. In rejoinder to reply, the applicant, while reiterating his submissions made in the OA submitted that the verdict of the CAT-Ernakulam Bench is neither sacrosanct nor can it be said to have universal application.

6. The applicant has also filed an additional affidavit, submitting that he has found out under RTI Act, 2005 that the benefit of consequential seniority has already been given by Principal CCIT, Mumbai on 15.02.2004 and Principal CCIT, Bhopal, as well. The Principal CCIT, Patna has stated that "Process is going on for such consideration, depending upon merit of case".

7. After pleadings were complete, both the learned counsels were heard at length.

8. The learned counsel for the applicant stated that in compliance to letter dated 31.03.2011, the Department has revised the pay, and, arrears have also been allowed. However, as averred in the OA, the consequential seniority has not been assigned to the applicants. However, certain formations (zones) of the Income Tax Department have allowed the benefits of consequential seniority to its officers. He stated that there cannot be different scale of measurement for employees in the same Ministry and same Department. This would be a matter of hostile discrimination, and violation of Article 14 of the Constitution.

The counsel for the applicant referred to the judgment dated 27.11.2012 of the Hon'ble Apex Court in the case of Union of India & Ors. vs. N.R.Parmar and Ors. in civil appeal Nos. 7514-7515 of 2005 and submitted that this judgment has been implemented by

various departments, including the Income Tax Department. He also cited the order dated 15.04.2012 of the CAT-Lucknow Bench in OA No.118/2013 wherein the respondents were directed to recast the seniority list based on the principles of Parmar's case. Our attention was drawn to judgment dated 13.04.2012 of the Hon'ble Allahabad High Court in Writ No.23672/2001 and 56072/2010 wherein direction was given to re-determine the seniority of Income Tax Inspectors afresh. A recent judgment dated 6.5.2016 of CAT-Bombay Bench in the case of Smt. Kavita M. Gaidhani vs. UOI and ors in OA No.259/2012 was also referred to, in which the applicant was held to be entitled to all consequential benefits in terms of designation and promotion as per rules.

9. Refuting the arguments put forth by the applicant, counsel for the respondents vehemently stated that the **order dated 31.3.2011 (Ann.A/6)** does not provide for reopening of cases for granting seniority and promotions retrospectively, and unsettling the seniorities settled long back, which have attained finality. Drawing strength from the observations of the Hon'ble Apex Court on the question of unsettling of seniority, in the case of H.S.Vankani & Ors. vs. State of Gujarat and Ors., AIR 2010 SC 1714, he reiterated that -

> **"Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of Government servant depends either on**

strict seniority or on the basis of seniority-cum merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost..."

On his preliminary objection regarding non-impleadment of effected parties by the applicant, he cited the case of State of Bihar and Ors. vs. Kameshwar Prasad Singh and Anr., 2000 SCC (L&S) 845, where the Hon'ble Apex Court observed as under:-

"High Court erred in allowing writ petition filed by –B by granting such promotion, as a result of which several seniors were superseded who were not impleaded as party respondents."

It was submitted that similar views were expressed in the case of Suresh vs. Yeotmal Dist. Central Co-op Bank Ltd. & Anr. AIR 2008 SC 2432, wherein the Apex Court held that **Petition cannot be adjudicated in the absence of impleading the necessary party.**

10. Considered the rival contention of both sides and perused the record.

11. In the instant case, the basic issue to be addressed by us, is whether the order dated 31.03.2011 **(Ann.A/6)** by which the pay

scale of Data Entry Operators has been revised with retrospective date and the arrears of pay and allowances ordered to be granted, can be inferred to mean that the concerned individual will also get their due place in the seniority list of Data Entry Operators Grade-B, unsettling the settled seniority. The plea of the applicant is that once the pay scale has been revised and corresponding designation granted, the logical corollary is, that individual who has been placed in the higher pay scale and should be placed accordingly, in the seniority list.

On the other hand, the respondents submit that only consequential benefits were ordered dated 31.03.2011 and the benefits are to be restricted only to payment of arrears of pay and allowances. Replying to the contentions made by the applicant that certain zones of Income Tax Department (Mumbai and Bhopal) have granted seniority to its employees, the respondent department has relied upon the judgment of Hon'ble Apex Court in the case of State of Orissa and Anr. Vs. Mamata Mohanty, [(2011) 3 SCC 436] wherein it has been held that-

"56. It is a settled legal proposition that Article 14 is not meant to perpetuate illegality and it does not envisage negative equality. Thus, even if some other similarly situated persons have been granted some benefit inadvertently or by mistake, such order does not confer any legal right on the petitioner to get the same relief (vide Chandigarh Admn. Vs. Jagjit Singh, Yogesh Kuamr vs. Govt. of NCT of Delhi, Anand Buttons Ltd. vs. State of Haryana, K.K.Bhalla vs. State of M.P., Krishan

Bhatt vs. State of J&K, Upendra Narayan Singh and Union of India vs. Kartick Chandra Mondal)".

The learned counsel strongly argued that the relief, as prayed by the applicants, cannot be granted due to non-impleadment of other employees, whose seniority will get effected, if such a relief were to be granted to the applicant. In this regard, the judgments of the **Hon'ble Apex Court in Kameshwar Prasad Singh and Suresh vs. Yeotmal Dist. Central Co-op Bank Ltd. & Anr. (supra) have been relied upon, mentioned at para -9 above.**

12. A careful reading of the letter dated 31.03.2011 (Ann.A/6) does not lead us to infer that grant of seniority, was the intention behind the said OM. In our view, the zones who have given the benefit of consequential seniority have gone beyond the letter and spirit of the letter No. C.18013/3/2011-Ad.VII dated 31.03.2011. A decision has to be within the ambit of rules and regulations. If a region has granted seniority based on incorrect interpretation, the same need not be extended to others to perpetuate the wrong. Even if inference, as deduced by the applicant is taken into consideration, it would not be legal in view of the settled law in the case of H.S.Vankani (supra). In the light of the decisions of the Hon'ble Apex Court as cited above, we are of the view that the claim of the applicants is not tenable and cannot be entertained.

13. At the same time, we cannot help but observe that despite the observations of the CAT-Ernakulam Bench dated 22.09.2009 in OA No.116/2007 (Santhosh Kumar and Ors. Vs. CCIT and Ors., referred to in Para 3 of Ministry of Finance letter dated 31.3.2011), the issue has still not been fully resolved. We further observe that implementation of the order of the Ministry of Finance by various zones of Income Tax Department, in different forms and different manner has created a confusion. There appears to be lack of uniformity in interpreting the intended benefit granted by letter dated 31.03.2011 (Ann.A/6). We, therefore, feel that it would be appropriate for the Secretary, Department of Revenue, Ministry of Finance to examine this issue comprehensively and decide the same so that discriminatory treatment is not meted out to employees of the different zones of Income Tax Department.

14. On merit, we find no substance in all the above OAs and the same are dismissed with no order as to costs.

(PRAVEEN MAHAJAN)
Administrative Member

(DR. MURTAZA ALI)
Judicial Member

R/

COMPARED & CHECKED

CERTIFIED TRUE COPY
Dated 29/7/2016
Section Officer (Judl.)
Central Administrative Tribunal
Jodhpur Bench, Jodhpur