

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.185/2012

Thursday, this the 06th day of June, 2013

C O R A M :

**HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE MR.K GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

1. P.Unnikrishnan
Stenographer Grade II
Office of the Chief Commissioner of Income Tax
Kochi
2. Mani V.V
Stenographer Grade II
Office of the Chief Commissioner of Income Tax, Kochi
3. Padmaja S Nair
Stenographer Grade II
Office of the Chief Commissioner of Income Tax
(Appeals) – II, Kochi
4. K.Anil Kumar
Stenographer Grade II
Office of the Chief Commissioner of Income Tax
Kochi
5. Lali D
Stenographer Grade II
Office of the Commissioner of Income Tax (Appeals)
Kochi
6. E.A Varghese
Stenographer Grade II
Office of the Director General of Income Tax (Investigation)
Kochi
7. Suresh K
Stenographer Grade II
Office of the Deputy Director of Income Tax
(Investigation), Aayakar Bhavan, 8th Floor
Mananchira, Kozhikode
8. Joshilal L.P
Stenographer Grade II
Office of the Commissioner of Income Tax
(Appeals), Kochi

...Applicant

(By Advocate Mr.M.V Thamban)

V e r s u s

1. Union of India
represented by the Secretary to the Government of India,
Ministry of Finance
New Delhi- 110 001
2. The Director
Government of India
Ministry of Personnel
Public Grievances & Pension
and department of Pension, North Block
New Delhi – 110 001
3. The Chief Commissioner of Income Tax
Kochi – 682 018

....Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil,ACGSC)

This application having been heard on 06.06.2013 this Tribunal on the same day delivered the following :-

O R D E R

HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

1. The applicants who were earlier functioning as Stenographer Grade III (Now re-designated as Steno Grade II) in other Charges (Regions) had got their transfer to Kerala Charge as Steno Grade III at their own request, with the attendant condition for such inter-regional transfers. According to the Recruitment Rules for promotion to the next higher post, minimum 5 years of service in the grade is essential. As the applicants had fulfilled this condition by taking into account their service in the previous region, they had staked their claims for consideration for promotion to the next higher grade. The applicants relied upon a decision by the Apex Court in the case of Renu Mullick versus Union of India and another reported in (1994) 1 Supreme Court Cases 373. The Chief Commercial Officer of Income Tax Kochi had referred the matter to the Board in favour of their directions in the matter, but the Board neither approved nor rejected the request but directed the Chief Commissioner to consider the representation of the applicant under the delegated powers adhering to the conditions stipulated in the Board's letter dated 14.05.1990. The Chief Commissioner extracted para 2 (f) of the Board's letter dated 14.05.1990 and stated that on the date of the representation,

there were few seniors available and hence the applicants could not be promoted unless and until the seniors in the list got promoted or were declared unfit for promotion in the DPC. The Chief Commissioner also had referred to the fact of consultation of various pay scales as per the 6th pay commission recommendations resulting in the broadband pay scales and uniform grade pay and stated that the applicants cannot be considered for promotion by counting his past service and accordingly rejected the representation. Hence, this O.A seeking the following reliefs:-

" 8.(i) to call for the records leading upto Annexure A13 and set aside Annexure A13, rejecting the representations Annexure A2 to A10.

(ii) to issue declaration that the applicants are entitled to retrospective promotions as Stenographer Grade II (now re-designated as Stenographer Grade I) from the next day of their joining duty as Stenographer Grade III, considering their previous experience in the previous charge and they are also entitled to further promotions as Stenographer Grade I/Income Tax Inspectors, on the basis of their seniority and availability of vacancy and subject to passing the required mandatory departmental tests.

(iii) To direct the respondents to promote the applicants as Stenographer Grade II with effect from the next day on which they have joined duty as Stenographer Grade III in the Kerala Charge with all consequential benefits and also to the next post of Stenographer Grade I/Income Tax Inspector on the basis of their seniority with reference to the date of promotion as Stenographer Grade II with consequential benefits including arrears of salary and to extend the benefit of re-designation as per Annexure A1 and A2.

(iv) To restore the grade pay of Rs.4,200/- PM from the day of their joining to the applicants. "

2. Respondents have contested the O.A. They have relied upon the conditions of 2(f) & (g) of Board's letter dated 14.05.1990 and also referred to a decision of the Apex Court in the case of Union of India versus Muralidharan Menon and Another. In addition, they have referred to one more senior who joined the Income Tax Department in Kerala from Commission for Agriculture Costs and Prices of the Ministry of Agriculture in New Delhi. The said individual would complete the requisite qualification for promotion only by 01.01.2012 and unless he is promoted, the applicants who were juniors to him cannot be promoted.

3. Counsel for the applicant submitted that the Rules relating to promotion

to the post of Steno Grade II stipulates for promotion to the said post that Steno Grade III who have put in 5 years of regular service in the grade could be eligible for consideration. As regards seniors not completing the requisite service, the Rule also provides that if a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade, but have completed successfully the prescribed period of probation. The counsel referred to the decision of the Apex Court in *Renu Mullick versus Union of India* which is almost identical to the case of the applicant herein save that their post related to UDC and Inspectors while in the instant case it is Steno Grade III & II. In para 7 of the said decision, the Apex Court has extracted relevant Rules relating to promotion to the post of Inspector and the same is as under:-

"7. In the year 1991, the appellant along with several other UDCs was considered for promotion to the post of Inspector by the Departmental Promotion Committee in accordance with the Central Excise and Land Customs Department Group 'C' Posts Recruitment Rules, 1979 (the rules). Rule 4 read with the Schedule to the Rules lays down the eligibility qualifications for promotion to the post of Inspector. The relevant extract is reproduced hereunder:

"Inspector: Promotion by selection from UDC with 5 years service or UDC with 13 years of total service as UDC and LDC taken together subject to the condition that they should have put in a minimum of two years of service in the grade of UDC....."

Note 3: If a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation."

4. The aforesaid provision in the Recruitment Rules in respect of Inspectors is analogous to the relevant portion of the Recruitment Rules for promotion to the post of Steno Grade II. As such, the interpretation of the Apex Court with regard to the above provision would equally apply to the case of the applicant herein. The Apex Court has interpreted the same in para 11 and 12 of the judgment and the same is as under :-

" 11. The provisions of the Rules reproduced above lay down that a UDC with 5 years' service or UDC with 13 years of total service as UDC and LDC taken together subject to the condition that he should have put in a minimum of 2 years of service in the grade of UDC, is eligible to be considered for promotion to the post of Inspector. The Rule nowhere lays down that 5 years of 13 years have to be spent in one collectorate. There is no indication, whatsoever, in the Rule that the service period of 5 years and 13 years is not applicable to an officer who has been transferred from one collectorate to another on his own request. On the plain language of the rule the appellant, having served the department for more than 5 years as UDC and also having completed 13 years composite service as UDC and LDC including 2 years minimum service as UDC, was eligible to be considered for promotion to the post of Inspector. The Tribunal failed to appreciate the elementary rules of interpretation and fell into patent error in non-suiting the appellant.

12. The appellant has stated in para 11 of the petition that 8 persons junior to the appellant were promoted as Inspectors. According to her, even if it is assumed that she was ineligible, she was entitled to be promoted in terms of Note 3 to the Schedule to the Rules (reproduced above) read with Office Memorandum dated July 19, 1989 (quoted above). This argument has not been dealt with by the Tribunal. *Prima facie* there is force in the argument but it is not necessary for us to go into the same."

5. As regards, para 2(f) & (g) of Board's letter dated 14.05.1990, the same revolves round only seniority. Para 2(g) relates to the bar against claiming any promotion or confirmation in the old charge. Thus, the claim of the applicant not relating to seniority nor any promotion or confirmation in the old charge, the said paras of the Board's letter dated 14.05.1990 are not applicable in this case. The decision in Union of India versus Muralidharan Menon relates to transfer from one charge to another and that has admissibly no application to the facts of this case. It is only the decision in Renu Mullick relied upon by the applicant that applies on all the four to the case. The Rules also take care of the case of seniors who would be considered for promotion provided they successfully completed their probation. As such, non promotion of the senior also will not come in the way of the applicant for being considered for promotion.

[Handwritten signature/initials over the bottom left corner]

6. In view of the above, the O.A is allowed. The respondents are directed to consider the case of the applicants for promotion to Steno Grade II taking into account the services rendered by them in the previous charge and subject to their fulfilling all the other conditions for grant of promotion and subject to availability of vacancies, they may be promoted to Steno Grade II against the vacancies available as on date or in future. No costs.



K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER
SV



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Contempt Petition (Civil) No.180/00007 of 2014
in Original Application No.185 of 2012

Wednesday this the 18th day of June 2014

C O R A M :

**HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER
HON'BLE Mr.SHASHI PRAKASH, ADMINISTRATIVE MEMBER**

1. Suresh.K.,
S/o.K.K.Thankappan,
Stenographer Grade II,
Office of the Chief Commissioner of Income Tax (Investigation),
Ayakar Bhavan, 8th Floor, Mananchira, Kozhikode.
2. Joshilal.L.P.,
S/o.Tattunni.N.K.,
Stenographer Grade II,
Office of the Chief Commissioner of Income Tax (Appeals),
Kochi.Petitioners

(By Advocate Mr.V.Sajith Kumar)

V e r s u s

Mr.D.K.Das Sharma,
The Chief Commissioner of Income Tax,
Cochin – 682 018.Respondent

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 18th June 2014 the Tribunal
on the same day delivered the following :-

O R D E R

HON'BLE Mr.JUSTICE A.K.BASHEER, JUDICIAL MEMBER

When this petition is taken up for consideration, it is brought to our
notice that the respondents have passed an order dated April 9, 2014 in
purported compliance of the order issued by this Tribunal in the above
Original Application. However, learned counsel for the petitioners takes
strong exception to the said order. He contends that the said order is

.2.

patently wrong and not in conformity with the directions issued by this Tribunal. It will be open to the petitioners to pursue the matter further in accordance with law, if they are still aggrieved. With that liberty reserved in favour of the petitioners, this Petition for Contempt is closed.

(Dated this the 18th day of June 2014)

S. Prakash
SHASHI PRAKASH
ADMINISTRATIVE MEMBER

A.K. Basheer
JUSTICE A.K. BASHEER
JUDICIAL MEMBER

asp