

Central Administrative Tribunal, Lucknow Bench, Lucknow

O.A. No. 412/2009

This the 10 th day of February, 2011

Hon'ble Shri Justice Alok Kumar Singh, Member (J)

Hon'ble Sri S.P. Singh, Member (A)

Vishnu Vir Singh aged about 57 years son of late Sri Gaj Raj Singh, resident of C-65, Butlar Palace Colony, Lucknow (presently posted as Deputy Commissioner of Income Tax, Aayakar Bhavan, Civil Lines, Sitapur.

Applicant

By Advocate: Sri Prashant Singh for Sri R.C. Singh

Versus

1. Union of India through the Secretary, Ministry of Finance (Department of Revenue), Central Secretariat, New Delhi-110001.

2. Central Board of Direct Taxes, North Block, Central Secretariat, New Delhi-110001, through its Chairman.

Respondents

By Advocate: Sri Praveen Kumar for Sri Amar Nath Singh

ORDER (Dictated in Open Court)

By Hon'ble Sri Justice Alok Kumar Singh, Member (J)

This O.A. has been filed for the following reliefs:-

a) issuing/passing of an order or direction to the respondents to extend the benefit if the judgment and order dated 29.3.2006, passed by Jaipur Bench of this Hon'ble Tribunal on Original Application No. 502/2004 and the judgment and order dated 30.6.2009, passed Principal Bench of this Hon'ble Tribunal in O.A. Nos. 2107/2008 and 2538/2008(as contained in Annexure No.s A-1 and A-5 of this Application) and change the effective date of grant of senior scale/promotion to the post of Deputy Commissioner of Income Tax to the applicant as 1.1.2005, in place of 1.1.2006 and pay the consequential benefits together with interest within a specified period of 2 months

b) issuing /passing of an order directing the respondents to consider the candidature of the applicant for promotion to the next higher post of Joint Commissioner of Income Tax in the Departmental Promotion Committee scheduled to be held shortly and promote him along with the other officers of his batch, including the juniors who have been granted the senior scale/ promotion to the post of Dy. Commissioner of

Income Tax with effect from 1.1.2005 in pursuance and compliance of the judgments of the Hon'ble Tribunal.

c) issuing/passing of any other order or direction as this Hon'ble Tribunal may deem fit in the circumstances of the case.

d) allowing this Original Application with cost.

2. The case of the applicant is that he was promoted to officiate as Assistant Commissioner of Income Tax on regular basis vide order dated 7.11.2001 and his name finds place at Sl. No. 84 in the said promotion order (Annexure A-1). One Sri S.K. Shukla (Sl. No. 272) was also promoted to officiate as Assistant Commissioner of Income Tax vide same promotion order. The applicant was allotted the year 2000 and his Civil Code 00581. Thereafter, he was promoted to officiate as Dy. Commissioner of Income Tax w.e.f. 1.1.2006 vide Annexure A-2 dated 19.9.2006. The name of the applicant is at S.No. 37 while the name of Sri S.K. Shukla is at Sl.No. 132 who was also granted promotion w.e.f. the aforesaid date.

3. Sri S.K. Shukla filed an Original Application No. 502/2004 before the Jaipur Bench of Central Administrative Tribunal for considering his claim for grant of Senior Scale /promotion to the post of Dy. Commissioner of Income Tax against the vacancies of the year 2004. This O.A. was allowed vide order dated 29.3.2005 and direction was issued to consider his case as Assistant Commissioner of Income Tax (Sr. Scale)/Dy. Commissioner of Income Tax and in case he is found fit, he may be given promotion from the date with all consequential benefits (Annexure A-3). But the judgment was not complied with. Consequently, Shri Shukla filed a contempt petition No. 59/2005. On the other hand, the respondents filed Writ Petition No. 5885/2005 before the Hon'ble High Court of Rajasthan assailing the order of Tribunal. But the Hon'ble High Court however, upheld the judgment of CAT vide judgment and order dated 1.11.2006. Thereafter, the respondent changed the

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date of promotion of Sri Shukla from 1.1.2006 to 1.1.2005 subject to outcome of the SLP filed before the Hon'ble Supreme Court. It is said that though the applicant was senior to Sri Shukla, but he was given promotion w.e.f. 1.1.2006 while Sri Shukla has been given promotion w.e.f. 1.1.2005. Therefore, the applicant along with several others preferred representations in the months of November and December, 2006 and requested for change of effective date of grant of senior scale/promotion, keeping in view the judgment of CAT, Jaipur Bench and claiming parity with Sri Shukla. Vide letter dated 23.1.2007 (Annexure A-5), addressed to all chief Commissioners of Income Tax it was intimated by respondent No.2 that since SLP has been filed by the respondent before the Hon'ble Apex Court against the order of Hon'ble Rajasthan High Court, therefore, till the matter is decided by the Hon'ble Apex Court, no action on such representation can be considered. Ultimately, the SLP (Civil) No. 3087/2007 was dismissed on 26.2.2007 (Annexure A-6). Then the applicant preferred a representation dated 3.4.2007 requesting the respondents to change the effective date of Senior Scale/ Promotion from the date the junior Sri S.K.Shukla was given promotion i.e. 1.1.2005.

4. Meanwhile, several other officers who were also senior to Sri Shukla filed O.A. Nos. 2107/2008 and 2358/2008 before the Principal Bench of CAT for the same relief on the basis of parity. Both these OAs were allowed vide order dated 30.6.2009 (Annexure A-8). Thereafter the applicant submitted another representation dated 5.8.09 (Annexure A-9). It is said that the applicant came to know that DPC is going to be held for next promotion to the post of Jt. Commissioner of Income Tax and since the representation have not been considered, the applicant is likely to be adversely affected and kept out of consideration for next promotion so as to perpetuate an injustice. The applicant's contention is

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that as per note appended below Schedule II to the Recruitment Rules for various grades of Indian Revenue Service regarding promotion from one grade to other, if an officer appointed on any post in the service, is considered for the purpose of promotion to a higher post, all persons senior to him in the grade shall also be considered notwithstanding that they may not have rendered the requisite number of years of service." Lastly, it is said that once the judgment and order dated 29.3.2005 passed by Jaipur Bench of Hon'ble Tribunal has become final, the respondents have no option but to extend the benefit of that judgment to entire class of similarly placed persons including the applicant.

5. From the other side, it is said that firstly, the O.A. is liable to be dismissed on the ground of limitation keeping in view the section 21 of the AT Act, 1985. It is said that grievance, if any arose to the applicant for the first time in the year 2006, but he preferred representation for the first time on 3.4.2007 and then on 5.8.2009. It goes to show that he was just sleeping over the matter. Similarly, when Shri Shukla approached the Tribunal of Jaipur, the applicant did not approach any Tribunal. When Shri Shukla was granted the benefit in the year 2005, the applicant could have very well assailed the same well in time but as said earlier, he made representation for the first time in April, 2007 and approached the Tribunal in 2009. The applicant has not even moved any delay condonation application. Secondly, it is said that at least 4 years of regular service is required to be rendered before a person is considered for promotion to Senior Time Scale and the case of the applicant is lacking on this count.

6. We have heard the learned counsel for the parties and perused the material on record.

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7. Before entering into the merits of the case, we would like to mention certain admitted facts. There is no quarrel on the point that applicant is senior to Sri Shukla with whom parity is being claimed. Similarly, this is also on admitted fact that Shri Shukla approached the CAT, Jaipur Bench in the year 2004 and the matter was decided in his favour on 29.3.2005. Since the official respondents did not comply with the order a contempt petition No. 59/2005 was filed. The respondents then approached the Hon'ble High Court of Rajasthan by filing writ petition No. 5885/2005 but they did not get any success and writ petition was decided against them on 1.11.2006. Thereafter, the respondents complied with the orders on 22.11.2006 and gave promotion to Sri Shukla w.e.f. 1.1.2005 subject to the decision / outcome of SLP, filed by the respondents before the Apex Court. At the same time, the respondents issued a letter dated 23.1.2007 addressed to all the Chief Commissioners of Income Tax saying that though the anti dating of Senior scale in the case of Shri Shukla has been done in compliance to the CAT Jaipur Bench order dated 29.3.2007 read with Hon'ble Tribunal's further order dated 22.11.2006 in contempt petition No. 59 of 2005 in O.A: No. 502/2004 and subject to the outcome of the SLP filed by the Department against the order of Rajasthan High Court, but no representation from all concerned officers should be forwarded to the Board till the matter is decided by the Hon'ble Apex Court (Annexure A-5).

8. Now, we firstly take up the point of limitation which has been raised on behalf of the respondents that Shri Shukla was granted the benefit w.e.f. 2005 and this order was passed in the year 2006 whereas the applicant preferred representation for the first time on 3.4.2007. We are afraid that the respondents can not be permitted to blow hot and cold simultaneously. They themselves had put an embargo to all

the concerned officers by issuing the aforesaid letter dated 23.1.2007 (Annexure A-5) addressed to all the Chief Commissioners, Income Tax refraining them from forwarding any such representation of concerned officers till the final decision of the SLP. Admittedly, the SLP was decided on 26.2.2007. Therefore, this contention raised on behalf of respondents have no substance. It is pointed out on behalf of the respondents and rightly so that after the decision of the Apex, similarly placed officers filed two OAs No. 2017/2008 and 2358/08) before Principal Bench. The Principal Bench decided those OAs on 30.6.2009. The applicant taking a safer side, then only filed this O.A. in October, 2009. In the conspectus of the above, it cannot be said that matter is barred by limitation. We decide this point accordingly.

9. Now, we have to consider as to whether or not the applicant is entitled to the relief claimed on the ground of parity. In this regard, the learned counsel for the respondents has drawn the attention of this Tribunal towards Rule 7 (3) of IRS Rules, 1988 which provides the post of Dy. Commissioner of Income Tax filled in by promotion/ seniority-cum-fitness and minimum qualifying service for promotion should not be less than 4 years of regular service in junior scale. It is said that the applicant was promoted in the junior scale w.e.f. 7.11.2001 and as such he was to complete 4 years of regular service in that scale on 7.11.2005, whereas he is claiming promotion w.e.f. 1.1.2005 on the basis of parity with Sri Shukla. This matter has been thrashed out in detail by the Principal Bench of this Tribunal in O.A. No. 2107/2008 with O.A. 2358/2008 decided on 30.6.09 (Annexure A-8). The relevant extracts of the said order is as under:-

".....cannot be any doubt that as per the Recruitment Rules of the officers of the Indian Revenue Service, once Sri S.K.Shukla was considered for promotion, then all others who were senior to him

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should also have been considered for promotion notwithstanding that they had not completed 4 years prescribed service in the junior scale. The aforesaid observation was made by the Principal Bench having regard to the note appended to Schedule II of the Recruitment Rules which is as under:-

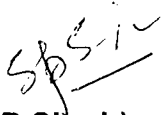
"If an officer appointed on any post in the service is considered for the purpose of promotion to a higher post, all persons senior to him in the grade shall also be considered notwithstanding that they may not have rendered the requisite number of years of service." (Emphasis added).

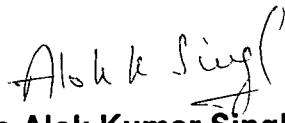
10. Though, this order of Principal Bench is said to have been assailed in the Hon'ble High Court of Delhi but there is nothing on record to show that any favourable interim order/ order was ever passed by the Hon'ble High Court of Delhi. On the converse, it is fairly conceded by the learned counsel for the respondents that as the respondents could not get any favourable interim order, they complied with the orders of the Principal Bench vide notification dated 11.5.2010. Of course, this promotion order in favour of 8 officers have been made subject to final outcome of the writ petition filed by the Department of Revenue, before the Hon'ble High Court of Delhi. A copy of this order submitted today by the learned counsel for the respondents is taken on record. In view of the above, the applicant is entitled to get the relief on the ground of parity. This point is also decided in favour of the applicant.

11. On the basis of above discussion, this O.A. succeeds. The respondents are directed to consider the applicant for promotion to the post of Assistant Commissioner of Income Tax (Senior Scale)/ Dy. Commissioner of Income Tax from 1.1.2005, the date from which the

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junior Sri S.K.Shukla was given promotion .The aforesaid direction should be complied with as early as possible but not later than three months from the date of receipt of a certified copy of this order. No costs.


(S.P.Singh)
Member (A)


(Justice Alok Kumar Singh)
Member (J)

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