

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 130 of 2011

Reserved on 27.11.2013

Pronounced on 20th December, 2013

Hon'ble Mr. Navneet Kumar, Member-J
Hon'ble Ms. Jayati Chandra, Member-A

Chandrakesh Kumar Pandey, aged about 37 years, S/o Sri Vidyadhar Pandey, R/o F-7 Income Tax Colony, Wazir Hasan Road, Lucknow.

.....Applicant

By Advocate : Sri Alok Trivedi.

Versus.

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi.
3. The Chief Commissioner of Income Tax (CCA), Lucknow.

.....Respondents.

By Advocate : Sri R. Mishra.

ORDER

Per Ms. Jayati Chandra, Member (A)

The present Original Application has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s) -

- “(i) *The Hon'ble Tribunal may graciously be pleased to direct the respondents to promote the applicant to the post of Senior Tax Assistant with effect from 13th April, 2007 against the vacancies meant for the Recruitment Year 2006-07 alongwith all consequential benefit including the fixation of pay and payment of arrears etc.*
- (ii) *The Hon'ble Tribunal may graciously be pleased to set-aside the respondent no.2 letter F. No. 41015/23/2008-ADVII dated 9th March, 2010 through which the clarification made by the respondent no.2 vide letter F. No.A-4101523/2008 Ad.VII, dated 18.6.2008 on the issue of counting of past services rendered in the old charge for the purpose of minimum*

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qualifying service for promotion with respect to the applicant has been withdrawn.

- (iii) *The Hon'ble Tribunal may graciously be pleased to set-aside the impugned letter F. No.Estt/CCIT/LKO/07-8/748 dated 23rd March, 2010 of Chief Commissioner of Income Tax (CCA), Lucknow, the respondent no.3, communicating the decision of the respondent no.2 dated 9.3.2010.*
- (iv) *The Hon'ble Tribunal may kindly be pleased to direct the respondents to pay interest on the amount due to be paid to the applicant in the event of promotion from 13th April, 2007 till the date of actual payment @ 18% per annum.*
- (v) *.....*
- (vi) *....."*

2. The facts of the case are that the applicant was initially appointed on the post of Lower Division Clerk (In short LDC) w.e.f. 31.8.2000 and was promoted to the post of Tax Assistant (in Short TA) w.e.f. 15.3.2001. He served in the capacity of TA at Kanpur region. On his own request, the applicant was transferred from Kanpur region to Lucknow region through Inter charge Transfer order No. 11 dated 25.2.2004. In keeping in view the provisions of the Circular issued by Central Board of Direct Taxes (In short CBDT) dated 14.5.1990, he was placed at the bottom seniority of TAs working in Lucknow region. In the transfer order dated 25.2.2004, it was stipulated that the services rendered by him in Kanpur region will not be counted in Lucknow region for the purposes of seniority; his name will be placed below all TAs in Lucknow region; his seniority will be determined from the date on which he reports for duty in Lucknow region; and on transfer he will forfeit all claims for promotion/confirmation in the old region in accordance with seniority allotted to him in Lucknow region after transfer.

3. 44 vacancies of Senior Tax Assistants (In short STAs) were to be filled up by letter dated 8.12.2006. However, it is clear that only 39 eligible candidates against 44 vacancies of STAs for the Recruitment year 2006-07 were promoted vide O.M. dated 13.4.2007. The applicant was not communicated against these vacancies. He preferred a representation dated 17.4.2007 followed by reminder dated 4.5.2007 for considering his name for promotion to the post of STA for Recruitment year 2006-07.

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According to the applicant, he fulfilled all requisite conditions for promotion to the post of STA as he had completed minimum three years of service as TA and had also passed Ministerial examination.

4. The respondent no.3 again initiated the process of promotion to the post of STAs for the Recruitment year 2007-08 vide letter dated 31.7.2007. Once again the name of the applicant was not considered for promotion to the post of STA. The applicant gave another representation to the respondent no.3. However, the respondent no.3 vide letter no. Estt./CCIT/Rep./CKP/07-08/4087 dated 15.1.2008 has rejected the earlier representation of the applicant dated 17.12.2007 on the basis that "on transfer, the transferee will forfeit all claims for promotion/confirmation in the old charge. He will be eligible for promotion/confirmation only in the new charge in accordance with the seniority allotted to him on transfer." After receipt of the aforesaid information, the applicant made second representation dated 31.1.2008 to the respondent no.2 seeking consideration for promotion against the vacancies of STAs for Recruitment Year 2006-07. This decision is totally contrary to the advice received by the respondent no.3 from Deputy Secretary to Government of India, Ministry of Finance by his communication dated 18.6.2008 (Annexure no.11) which stated as under:-

"I am directed to refer to your letters F. No. Estt/CCIT/Lko/CKP/07-08, dated 17.3.2008 on the above mentioned subject and to say that the past services rendered in his respective charges would be counted for determining eligibility of qualifying service for promotion to the next higher grades and not for seniority purpose. The representation of the applicant may be decided accordingly."

As his representation was not disposed of, the applicant sought information under Right to Information Act, 2005 wherein he was informed by letter dated 18.2.2010 that the case was considered in the Board and a clarification was communicated to the CCIT (CCA), Lucknow vide letter dated 18.6.2008 as quoted above. Despite the same, the respondents had referred the matter back on the ground that acting on the advice will open past cases as past service in earlier charges were not counted in

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Lucknow region. Finally, the respondents passed the impugned order dated 23.3.2010 by observing that "the matter has been reconsidered by the C.B.D.T. in the light of the provisions contained in the Recruitment Rules of Income Tax Officer, which inter alia provides that for the purpose of reckoning three year's regular service in the grade, the service rendered by an inter-region transferee in the old region shall not be counted in the new region, which he has joined on such transfer, if the transfer is on the request of the officer concerned."

5. The applicant has challenged the impugned order on the ground that the relevant order governing inter-charge transfer i.e. order dated 14.5.1990 which determines his position in the seniority list of TAs, but no-where does it say that the service rendered in the old region will not be counted as qualifying service for the purpose of promotion. He has cited instance of one Sri R.K. Chaurasia, a inter-charge transferee was promoted to the post of STA vide order dated 30.4.2009, although he was transferred from Gujrat charge to Delhi charge where he had put in only one year's service. He has also pointed-out the internal noting of the respondents as revealed from copy of file No. A-41015/23/2008-Ad VII

*"It may be seen from the above, that the transferee, on inter charge transfer, would only be placed at the bottom of the seniority list. It is, however, silent whether the service rendered by the transferee in the old charge would be counted as qualifying service for promotion to the higher grade or not . Since the existing guidelines on inter charge transferee do not forbid counting of service rendered in the old charge as qualifying service, the same should be allowed to be counted for promotion to next higher grade. However, seniority in the new charge cannot be bypassed. In the other words, all **eligible persons** in the seniority list above him in the new charge should get promotion ahead of transferee.*

Para 11

Para-12 It may be seen from the above that the practice of ignoring past service of inter charge transferee in grade in the old charge adopted by the Lucknow charge is not in order and should be reviewed by them in the light of clarification given vide letter dated 18.6.2008."

The DoP&T also held similar views as is evident from extract of F.No. A-41015/23/2008-Ad-VII that the issue relates to counting of past service rendered in the old charge for determining

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eligibility for qualifying service to be considered for promotion to the next higher grade. CBDT vide their letter dated 18.6.2008 have clarified to the Chief Commissioner, Lucknow in respect of his representation that the past services rendered in his respective charges would be counted for eligibility service for promotion to the next higher grades and not for seniority purpose. However, the respondents have failed to comply with the directions issued by the DoP&T as they have followed the practice of not counting the past service rendered in the old region and by counting the service in the new region from the date he joins in the new region.

6. The respondents have stated that the applicant was not eligible for promotion to the post of STA in Lucknow region as services rendered by the transferee in the old region are not counted for reckoning the minimum qualifying service for promotion to the post of STA.

7. The applicant has filed Rejoinder refuting the contentions of the Counter Reply filed by the respondents and reiterating the averments made in the Original Application. The learned counsel for the applicant has placed reliance on the decision of Principal Bench rendered in Original Application No. 2406 of 2005 (Pramod Kumar Vs. Union of India & Others) in respect of past services rendered in the old region is to be counted for the purposes of qualifying service required for promotion to the next higher grade, which was allowed vide judgment and order dated 24.8.2006 while relying upon the decisions of Hon'ble Supreme Court in the case of **Renu Mallick Vs. Union of India & Others (1994) 1 SCC 373/ Scientific Advisor to Raksha Mantri & Another Vs. V.M. Joseph (1998) 5 SCC and Union of India & Another Vs. V.N. Bhatt (2003) 8 SCC 714**. He has made specific reference from the order of Hon'ble Supreme Court in the case of Raksha Mantri & Another (supra) wherein it has been held as under:

".....Even if an employee is transferred at his own request from one place to another on the same post, the period of service rendered by him at the earlier place where held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, through he may have been placed at the bottom of the seniority list at the transferred place.

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Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors.”

8. We have seen the pleadings of the parties and have heard the learned counsel for the parties at length.

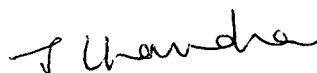
9. It is seen at the first instance that the facts of the case are not in dispute. The controversy arises whether the past services rendered by the applicant at Kanpur before seeking his transfer on personal request at Lucknow are to be counted as qualifying services for consideration for promotion to the next higher rank. The original transfer order dated 25.2.2004 quotes the provisions as applicable to such cases vide order dated 14.5.1990. Perusal of the order shows that there is no mention of status of past service whether they are to be counted as qualifying service or not. The simple direction is that the name of such transferee shall be placed at the bottom of the seniority list of the respective cadre. It is also seen that the respondents were in receipt of the following clarification issued by Deputy Secretary, Ministry of Finance letter dated 18.6.2008 (Annexure-11) by which it was stated that the past services will be counted for the purposes of qualifying service reiterated in the internal noting as discussed in para 5 above . This indication is totally in line with the judgment rendered in the case of Renu Malick Vs. Union of India & Others (supra) and in the case of Nand Ram Singh Vs. Union of India & Others decided by Principal Bench in Original Application No. 2732/2009 on 29th September, 2010 in which it has been held that the seniority and eligibility are totally different parameters. While eligibility determines the qualifying service; seniority determines an order in which all eligible persons are to be considered. Hon’ble Supreme Court further in its judgment dated 14.1.1998 passed in the case of Scientific Advisor to Raksha Mantri & Others Vs. V.M. Joseph (supra) has held that *even an employee is transferred on his own request from one place to another on the same place the period of service rendered by him at the earlier place whether he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion though he may have been placed at the bottom of the seniority list at the transferred*

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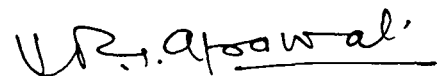
place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors.

9. The respondents have passed the impugned order quoting the directions of CBDT of their letter dated 9.3.2010. They have not produced a copy of the letter or have attempted to demonstrate that such direction having the overriding factor over the pronouncement of Hon'ble Supreme Court. More-over, even if this order for a moment is taken to be as valid, the application of which can only be made perspective and not retrospectively. The case of the applicant was for consideration for promotion against the vacancies of 2006-07 and then 2007-08. The applicant had acquired minimum qualification of three years in so far as consideration of his name for promotion against the vacancies 2006-07 was concerned. It is correct that by virtue of his seniority if he did not come in the field of eligibility commensurate with number of vacancies, then his having fulfilled the qualifying period will be of no assistance to him. However, if there were vacancies whereby the persons upto and inclusive of his position in the seniority list are available, then he cannot be debarred only on the ground that he is not fulfilled the qualifying three years service in his transferred place at Lucknow.

10. In view of the aforesaid, O.A. succeeds. The impugned order dated 23.3.2010 is hereby quashed and set-aside. The respondents are directed to consider the claim of the applicant for promotion to the post of Sr. Tax Assistant against the vacancies of 2006-07 and in case he is not successful, again in the vacancies of 2007-08. The aforesaid exercise shall be completed by the respondents within a period of six months from the date of receipt of a certified copy of this order. No costs.



(Ms. Jayati Chandra)
Member (A)



(Navneet Kumar)
Member (J)