

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, BOMBAY BENCH,
BOMBAY
(CAMP NAGPUR)

Date of order : 10.7.1997.

Pronounced at Mumbai

O.A. NO. 960/93

GAJANAN MARUTRAO ASUTKAR, R/O 56, H.B. ESTATE (HINDUSTHAN BUILDERS), SONEGAON, KHAMELA ROAD, NAGPUR. PRESENTLY WORKING AS TAX ASSTT. IN THE OFFICE OF THE DEPUTY COMMISSIONER OF INCOME-TAX, RANGE-II, SARAF CHAMBERS, SADAR, NAGPUR.

..... Applicant

VS.

1. UNION OF INDIA THROUGH THE SECRETARY, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE, NEW DELHI.
2. CHAIRMAN, CENTRAL BOARD OF DIRECT TAXES, NORTH BLOCK, NEW DELHI.
3. CHIEF COMMISSIONER OF INCOME-TAX, SADHU VASAVANI ROAD, PUNE.
4. COMMISSIONER OF INCOME-TAX, PUNE.
5. COMMISSIONER OF INCOME-TAX, VADARBHA, NAGPUR, AAYAKAR BHAWAN, TELANG KHADI ROAD, NAGPUR.
6. S/SHRI V.V. KAYANDE, INSPECTOR OF INCOME-TAX, WORKING IN THE OFFICE OF THE DY. DIRECTOR OF INVESTIGATION, SARAF CHAMBER, SADAR, NAGPUR.
7. S.P. SHRINGARKAR, INSPECTOR OF INCOME-TAX, WORKING IN THE OFFICE OF DY. COMMISSIONER OF INCOME-TAX, RANGE-I, AAYAKAR BHAWAN, TELANG KHADI, ROAD, CIVIL LINES, NAGPUR.
8. S.S. DESHMUKH, INSPECTOR OF INCOME-TAX, C/O DY. COMMISSIONER OF INCOME-TAX, AKOLA, DIST. AKOLA.
9. S. AGRAWAL, INSPECTOR OF INCOME-TAX, WORKING IN THE OFFICE OF DY. DIRECTOR OF INVESTIGATION, SARAF CHAMBER, SADAR, NAGPUR.
10. M.B. UKE, INSPECTOR OF INCOME-TAX, C/O DY. COMMISSIONER OF INCOME-TAX, RANGE-II, SARAF CHAMBERS, SADAR, NAGPUR.

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11. P.M.BALSARE, INSPECTOR OF INCOME-TAX, WORKING IN THE OFFICE OF THE DY.DIRECTOR OF INVESTIGATION, SARAF CHAMBER, SADAR, NAGPUR.

12. G.H.JESWANI, INSPECTOR OF INCOME-TAX, WORKING IN THE OFFICE OF DY.COMMISSIONER OF INCOME-TAX, RANGE-I, NAGPUR.

13. S.M.KATHOTE, INSPECTOR OF INCOME-TAX, WORKING IN THE OFFICE OF DY.COMMISSIONER OF INCOME-TAX, SPECIAL RANGE, AAYAKAR BHAVAN, TELANG KHADI ROAD, SADAR, NAGPUR.

14. A.R.NAGALKAR, INSPECTOR OF INCOME-TAX, C/O COMMISSIONER OF INCOME-TAX, AAYAKAR BHAVAN, TELANG KHADI ROAD, NAGPUR.

..... Respondents

For the Applicant Mr. R.P.Darda
For the Respondents Mr. K.D.Kelkar

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HON'BLE MR.M.R.KOLHATKAR, MEMBER (A)
HON'BLE MR.A.K.MISRA, MEMBER (J)

PER HON'BLE MR.A.K.MISRA :

This Application has been moved by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying that certain clauses in the orders at Annexs. A-3, A, A-1 and A-2 respectively, may be struck down and consequent reliefs may be granted to him including the consequential pay fixation and interest thereon. The reliefs claimed by the applicant in brief are as follows :-

- i) The conditions laid down in Circular Pn./Genl/ CRS/76-77 dated 29.12.1976 (Annex A-3) in the transfer order passed by the Commissioner of Income Tax, may be struck down as being arbitrary and beyond his powers ;

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- ii) The Clause (g) of Circular dated 12.12.69 (Annex.A), be struck down as it is not applicable to the confirmed Government servants and clause (h) which disturbs the seniority of confirmed candidates vis-a-vis other candidates while preparing the examinationwise list, be also struck down ;
- iii) The conditions laid down in para (b) of Circular dated 30.6.86 (Annex.A-1) affecting the seniority of a confirmed Government servant in the matter of transfer to other charge be struck down ;
- iv) The Clause (i) of Circular dated 12.2.87 (Annex.A-2) and its clarification that the transferred candidates should be put below all the candidates who have passed the Departmental Examination till the date of his joining, be struck down ;
- v) The seniority of the applicant who is a confirmed U.D.C. should be reckoned from 7.9.73 and all consequential benefits including further promotion etc. be granted ;
- vi) The promotion of the applicant to the cadre of Tax Asstt. be decided on the basis of seniority in the cadre of U.D. C. as on 7.9.73 and while preparing the list for promotion to the cadre of Inspector of Income-Tax, seniority of the applicant in the cadre of U.D.C. be reckoned as 7.9.73 and while preparing the Examination-wise list, the applicant be placed amongst the candidates who have passed the 1975 Departmental Examination and he be considered for promotion as Inspector Income-Tax according to his own seniority ;
- vii) The promotion of the applicant to the cadre of Tax Assistant be decided on the basis of seniority in the cadre of U.D.C. as 7.9.93 and while fixing the seniority from feeder cadre, the same may be taken into consideration as per the judgment dated 23.3.91 passed in TA No. 253/87 and

vii) The arrears of various promotional posts together with interest be granted to the applicant with costs.

2. The official respondents No. 1 to 5 have given their reply. However, except the respondent No. 7 none ~~of the private respondents~~ has preferred to file their reply to the application.

3. Applicant has filed rejoinder refuting the contentions of the respondents and reiterated his stand in respect of the reliefs claimed.

4. We have heard the learned counsel for the parties and gone through the records.

5. It is an admitted position that the applicant was initially appointed as U.D.C. in Poona charge under the respondent department on 6.10.70 and was confirmed with effect from 7.9.73 on the basis of seniority in that cadre. The applicant prayed for and was transferred on compassionate ground from Poona charge of the department to Nagpur charge of the Respondent Department vide transfer order dated 29.12.87 (Annex.A-3). He was relieved on 30.4.77 vide order dated 30.4.77 (Annex.A-9) and was directed to join at Nagpur charge. Consequent to this transfer, he joined at Nagpur charge on 2.5.77. This is also an admitted position that while the applicant was in Poona charge, he passed the Departmental Examination for promotion in the year 1975.

6. After the applicant joined at Nagpur charge, his seniority was reckoned from the date of his joining the new charge on transfer as per Condition 'G' of Annex.A

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and in the Examinationwise list, he was placed after the names of the candidates who passed the Departmental Examination in 1976. Thereafter, the promotion of the applicant was regulated treating his seniority as per the placement of his name as per the Conditions of Circular dated 12.12.69 (Annex.A). This placement of applicant's name and consequent subsequent consideration and promotion of the applicant has given rise to the present controversy.

7. The learned counsel for the applicant has argued that the conditions laid down in the Circular Annex 'A' are only applicable to the temporary departmental candidates who sought their transfer and not to the confirmed permanent employees like the applicant. Hence, his seniority in the new charge should be fixed amongst the confirmed candidates of the new charge. We have considered this argument and are unable to agree with the learned counsel for the applicant. Condition 'C' of Annex.A clearly lays down that ordinarily only non-permanent (temporary or quasi permanent) persons would be permitted to be transferred but there is no condition restricting the transfer of a permanent or confirmed person. Meaning thereby, that under the exceptional circumstances, even permanent employees can be transferred to another charge. Thus, it cannot be said that the conditions mentioned in this Circular are not applicable to the applicant. It is pertinent to note that applicant was transferred at his own request. He belongs to Chandrapur District of Nagpur Region and had prayed for his transfer due

to family circumstances i.e. to look after the aged parents, which was considered and he was transferred to Nagpur vide transfer order at Annex.A-3. In the transfer order, it was mentioned that the transfer was at his own request and the applicant was not entitled to transfer T.A., joining time and joining time pay. In the same letter, the applicant was also informed vide endorsement at Sl.No. 5 that "Shri Asutkar is hereby informed that his seniority in Nagpur charge will be reckoned from the date he joins duty in that charge and his name will be placed below all the U.D.Cs (whether permanent or temporary) in Nagpur charge on the date of his joining. The services rendered by him in Poona charge will not count towards the minimum service, if any, prescribed for promotion/appointment to any higher post/grade. His lien in Poona charge will be suspended under F.R. 14, and he will not be entitled to promotion/confirmation in this charge after his transfer."

8. This condition clearly shows that the applicant was to be reckoned juniormost amongst the UDCs (Whether permanent or temporary) of the Nagpur charge and services rendered by him in Poona charge will not count towards the minimum service prescribed for appointment or promotion to the higher post. The applicant joined at Nagpur Charge in spite of this very specific but adverse condition and did not object to it or raise any dispute at that relevant time. He continued to work in the Nagpur charge for a number of years and raised the dispute when he felt that he would be or has been adversely affected in the matter of his promotion. When

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the applicant was at Poona charge his one point programme was to get himself transferred to Nagpur charge. Soon after joining at Poona charge, he made requests for his transfer i.e. in April 1971 but since he had not completed three years in that charge, his prayer for transfer was rejected by the authorities (See Page 42, Para 4.2 of Annex.A-10). Thereafter, the applicant again pressed his claim for transfer after he was confirmed. At the time of applicant's transfer in 1976, Government of India Circular dated 12.12.69 (Annex.A-1) was in force and it had specifically superseded all previous instructions on the subject. In our opinion, the applicant is bound by the conditions mentioned therein. Therefore, after 17 or 18 years, the applicant cannot come round and say that the Circular was not applicable to him as he was a permanent employee at the time of transfer and all conditions affecting him adversely, should be quashed. Having carried out the transfer order to his home Division i.e. Nagpur charge in 1977, as per the conditions of the transfer order and circular ^{then} in force, the applicant cannot now go back from that situation and question the legality of those conditions after such a long time.

9. In continuation of Annex.'A', the department has issued another Circular Annex.A-1, dated 30.6.86 in which it is mentioned that the transferee will not be entitled to count the service rendered by him in the former charge/office for the purpose of seniority in the new charge/office and would be placed at the

bottom of the list of temporary persons of the concerned cadre. This also clarifies that the applicant's earlier placement as per the Government of India Circular dated 12.12.69, Annex'A', in the Nagpur charge was not wrong. The same position was clarified further vide Annex.A-2 dated 12.2.87, which the applicant has challenged before this Tribunal. We have considered this Circular and conditions mentioned therein, but we find no arbitrariness in these conditions mentioned in various Circulars. In fact, frequent prayers for inter-charge transfers or candidates calculating and jumping to an advantageous position in other charge, were to be checked and discouraged. By attaching these conditions, the department in fact has only tried to discourage such opportunist candidates who for their own benefits first wanted to go to their home District or Division and then claim benefits of seniority etc. over and above the candidates of that charge in which they were transferred. If any candidate had accepted inter-charge transfer in spite of these conditions, it would mean that his need to secure home charge was paramount. In other words, it can be said that one who wanted his home charge transfer, had to accept these conditions and would go on transfer only on those conditions. Therefore, in our view, it cannot be said that the conditions mentioned in these Circulars were arbitrary in nature and ineffective against the applicant.

10. The learned counsel for the applicant has argued that in view of the following two judgments delivered by the Central Administrative Tribunal in the past, the services rendered by the applicant in the Poona charge should be counted for the purposes of

consideration for promotion. The learned counsel has cited 1987 (3) AISIJ (CAT) 546, K.A.Balasubramaniam Vs. Union of India and Ors. and (1990) 13 ATC 798, V.K.Sexna Vs. Union of India and Ors. We have gone through the judgments. In our view, these rulings are distinguishable on facts and the ratio propounded therein, cannot be made applicable in the case in hand. The applicant was transferred from one charge to another at his own request and in his own interest and not in the interest of the administration, therefore, in our opinion, the past services rendered by the applicant cannot be counted for the purposes of promotion. The applicant cannot have a cake and eat it too. In our opinion the applicant cannot be given benefit as argued.

11. So far as the placement of the applicant in examination-wise list is concerned, it also cannot be said to be incorrect. The applicant had passed the Departmental Examination in 1975 while he was posted in Poona charge. The applicant was transferred vide order Annex.A-3 dated 29.12.76 and was relieved on 30.4.77 vide order Annex.A-9. Consequently, he joined at Nagpur charge on 2.5.77. As per Condition 'H' of Annex.'A' dated 12.12.69, the applicant could not have been placed just below the successful candidates of 1975 Departmental Examination because his transfer order was passed on 29.12.76 and was carried-out by the applicant on 2.5.77. There is nothing on record to show that examinations of the year 1976 were held on 30th or 31st December, 1976. Therefore, taking the date of transfer or joining, would hardly make

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any difference as in the instant case, the applicant has been placed just below the successful candidates of 1976 Departmental Examination. In view of the conditions mentioned in the above mentioned circular, placement of the applicant cannot be said to be wrong. Therefore, this argument also does not help the applicant.

12. In view of the foregoing discussion, in our opinion, the applicant deserves no relief. The O.A. deserves to be rejected.

13. The O.A. is, therefore, dismissed with no order as to costs.

D. K. M.
(A.K.Misra)
Member (J)

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

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