

(34)

04-11-2011

OA No. 10/2007

Mrs. Ashok Joshi, Counsel for applicant.

Mr. Gaurav Jain, Counsel for respondents.

Heard.

The O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

Anil Kumar

[Anil Kumar]

Member (A)

J. S. Rathore

[Justice K. S. Rathore]

Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 4th November, 2011

Original Application No.10/2007

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)
HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

S.K.Shukla
s/o Shri R.K.Shukla,
at present working as
Deputy Director of Income Tax,
(Head quarter),
r/o 47, Everest Colony,
Lal Kothi, Jaipur

.. Applicant

(By Advocate: Shri Ashok Joshi)

Versus

1. Union of India
through its Secretary.
Ministry of Finance,
Department of Revenue,
Central Board of Director Taxes,
Central Secretariat,
New Delhi.

2. Chairman,
Central Board of Direct Taxes,
Central Secretariat,
New Delhi.

3. Ms. Meera Srivastava
w/o Shri Arvind Srivastava,
District Collector,
D.C.Bunglaw,
Annatpur Road, Bellary,
at present working as
Dy. Commissioner, Income Tax,
Circle-I, Aaykar Bhawan,
Station Road,
Raichur (Karnataka)
4. Shri Sunil Gautam,
working as
Dy. Director of Income Tax (investigation),
Office of Director of Income Tax (Investigation),
Unit V(1), E-2, ARA Centre,
Room No. 274, 11nd Floor,
Jhandewalan Extension,
New Delhi.

.. Respondents

(By Advocate: Shri Gaurav Jain)

ORDER (ORAL)

This is second round of litigation. Previously, the applicant has filed OA No. 502/2004 which was allowed vide order dated 29.3.2005. The respondents challenged the aforesaid order dated 29.3.2005 by filing D.B. Civil Writ Petition No. 5885/2005, Union of India and Anr. vs. S.K. Shukla and Ors., and the same was dismissed by the Division Bench of the Hon'ble Rajasthan High Court vide order dated 1.11.2006 against which the Union of India and others preferred Special Leave to Appeal (Civil) No. 3087/2007 and the Hon'ble Supreme Court dismissed the same vide order dated 26.2.2007.



2. Facts of the case are that the applicant while working as Income Tax Officer in the respondent department was promoted on the post of Assistant Commissioner of Income Tax (ACIT) vide order dated 7.11.2001 and his name find place at Sl. No. 272 in the aforesaid order. The next promotional avenue to the post of ACIT (Junior Scale) is to the post of Senior Scale which is commonly known as Deputy Commissioner. The applicant averred that since the applicant had been granted promotion as ACIT from the post of Income Tax Officer against the vacancies of the year 2000 and thus, completed 4 years' regular service as Assistant Commissioner (Junior Scale) on 31.12.2003 and therefore, he became entitled for consideration to promotion on the post of Dy. Commission from 1.10.2003 as per Schedule-II Rule 7 (2 and 3).

3. The persons who were directly recruited on the post of Assistant Commissioner vide order dated 10.1.2000 whose names are - Ms. Meera Srivastava, S/Shri Naveen Gupta, S.B.Shukla, Sanjog Kapoor, Surjani Mohanty, Ashutosh Verma, Raja Shekhar, Naresh Shaka, P.V.P.Kumar and Sunil Gautam have not even completed 4 years requisite service for the purpose of promotion for the post of Dy. Commissioner.

4. It is also contended that Shri V.D.Dubey, joined as Assistant Commissioner (Junior Scale) on 12.1.2001, but he was given benefit of promotion on the post of Dy. Commission (Senior Scale) w.e.f. 1.10.2003 (Ann.A/2) vide order dated 3.8.2004 and similar benefit



has been extended in the case of Ms. Meera Srivastava (Direct Recruit).

5. The applicant equating his case with Shri V.D.Dubey and Ms. Meera Srivastava (Direct Recruits) submitted that applicant is appointee of the year 2000 and had also completed his four years regular service as Assistant Commissioner (Junior Scale) on 31.12.2003 but has not been granted benefit of the Note below the Rule and he ought to have been given promotion w.e.f. 1.10.2003 itself which has not been given to him and on the other hand vide order dated 6.12.2006 (Ann.A/1) he has been given promotion w.e.f. 1.1.2005, which action of the respondents is under challenge in the present OA.

6. The applicant referred the judgment passed in the previous OA, which was allowed by this Tribunal vide order dated 29.3.2005 and the respondents were directed to consider case of the applicant for promotion as Assistant Commissioner (Senior Scale)/Dy. Commissioner and in case he is found fit, he may be given promotion from due date with all consequential benefits within a period of three months from the date of receipt of copy of the order.

7. Without complying the order passed by this Tribunal, the Union of India preferred D.B. Civil Writ Petition No. 5885/2005 before the Rajasthan High Court and the Hon'ble High Court dismissed the



same vide order dated 1.11.2006 as the direction has been challenged on the ground that the respondent does not come within the zone of consideration as he has not completed four years of service on the feeder post i.e. Assistant Commissioner (Junior Scale) and was therefore not eligible. It was observed that the Tribunal has recorded categorical finding to the effect that there was no denial of the fact that the respondent has been granted promotion as Assistant Commission (Junior Scale) against the quota vacancies of the year 2000, and if that is so, it is plain that the respondent completed four years of requisite service on the feeder post in 2004 against vacancies of which the respondent is to be considered. Thus, the Hon'ble High Court did not find any substance and the Writ Petition was dismissed.

8. A Contempt Petition No.59/2005 was preferred by the applicant before this Tribunal. The said Contempt Petition was dismissed and notices issued were discharged by observing that it is expected that respondents shall implement the judgment within the time allowed by this Tribunal.

9. Another Contempt Petition No.42/2006 was filed by the applicant and the same was disposed of at admission stage observing that the applicant has filed the Contempt Petition against the violation of the order dated 22.11.2006 passed by this Tribunal in Contempt Petition No.59/2005 (OA No.502/2004). Alongwith the Contempt Petition the applicant has annexed copy



of the order dated 6.12.2006, perusal of which shows that the applicant has been promoted to officiate as Deputy Commissioner of Income Tax in the pay scale of Rs. 10000-15200 w.e.f. 1.1.2005 without prejudice to the stand taken by the respondents in the SLP against the order of Rajasthan High Court. The grievance of the applicant was that the judgment of this Tribunal had not been fully complied with inasmuch as he was entitled for promotion on the aforesaid post w.e.f. 1.10.2003 instead of 1.1.2005. Having considered the submissions made by the applicant this Tribunal observed that this is not a case where notice on Contempt Petition should be issued. In fact the applicant is aggrieved that he is entitled for promotion w.e.f. 1.10.2003 instead of 1.1.2005. It will be permissible for him to file substantive OA and certainly this Contempt Petition is not a proper remedy.

10. Pursuant to the direction given in the Contempt Petition No.42/2006, the present OA has been preferred by the applicant with the prayer that respondents be directed to consider case of the applicant for promotion on the post of Assistant Commissioner (Senior Scale) w.e.f. 1.10.2003 instead of 1.1.2005 and he may be promoted on the said post with all other consequential benefits. It is also prayed that the respondents may be directed to modify the order dated 6.12.2006 (Ann.A/1) wherein the date of promotion has been mentioned as 1.1.2005, it may be modified as 1.10.2003 for the purpose of promotion on the post of Dy. Commissioner with all consequential benefits.



11. It is not disputed that the applicant retired after attaining the age of superannuation during pendency of this OA. The applicant in support of his submissions referred to the documents annexed alongwith the OA to show that the Direct Recruits have been given promotion on the post of Dy. Commissioner having not completed even the requisite service of four years on the feeder post and thus, the applicant is also entitled to be given promotion w.e.f. 1.10.2003 instead of 1.1.2005.

12. Per contra, the learned counsel appearing for the respondents has strongly controverted the submissions made on behalf of the applicant and submitted that Shri V.D.Dubey whose date of appointment is 12.1.2001 was granted Senior Scale w.e.f. 1.10.2003 as his junior Smt. Ekta Vishnoi whose date of appointment is 20.9.1999 was granted Senior Scale w.e.f. 1.10.2003 after completion of four years regular service in the grade of ACIT. As per IRS Rules "If an officer appointed in any post in the service is considered for 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."

13. It is also submitted that the judgment of the Court that officer belongs to quota year of 2000 and hence completed 4 years of regular service is not based on facts. During the year 2000, there were only 585 number of posts in the grade of ACIT. During that period the officer was too junior to be eligible for promotion as ACIT.



However, during 2001, the department was restructured and 993 posts of ACIT were created out of which 50% i.e. 496 posts were for Direct Recruitment quota and 497 posts for Promotion quota. It was decided with the approval of the UPSC and DOP&T to divert the Direct Recruitment quota as one time relaxation into the Promotion quota. Consequently, 1072 officers were promoted as ACIT diverting the Direct Recruitment quota and thus, the quota was not available for the applicant. Further, the applicant belongs to 2000 batch and appointed as ACIT w.e.f. 7.11.2001 and allotted civil code No. 00768.

14. The respondents alongwith the additional affidavit placed photo copies of Rules and referred to Rule 7(3) of the Indian Revenue Service Rules, 1988 and submitted that the Juniomost Direct Recruit officer of 1999 batch Shri I.Kitto Zhimomi (Civil Code No.99045) having joined on 20.9.1999 and completed 4 years of regular service in September, 2003 and all the officers with Civil Code No. 99001 to 99045, including the promotee officers and the 12 Direct Recruit officers who may have joined later, but senior to Shri Zhimomi, were granted senior Scale w.e.f. 1.10.2003 as per the Note below Scheduel-II of the Rules.

15. With regard to the comparison drawn by the applicant with the case of Shri V.D.Dubey, the same is denied and it submitted that Shri Dubey belongs to 1999 batch with Civil Code No. 99501 and was granted Senior Scale w.e.f. 1.10.2003 as per Rules when his



immediate junior became eligible for the same and the applicant cannot claim to belong to the batch earlier than 2000 as is evident from the position of the applicant. The applicant is placed at Sl.No.1265 (Civil Code No. 00768) whereas Shri Dubey (00502) is at Sl.No. 903 who has since retired and was placed senior to Ms. Ekta Vishnoi (99501). Thus in view of the direction issued by this Tribunal as upheld by the Division Bench of the High Court, the case of the applicant has been considered vide order dated 6th December, 2006 and the applicant was promoted to the post of Dy. Commissioner w.e.f. 1.1.2005 which is per-se legal, just and proper and same requires no interference by this Tribunal.

16. We have heard the rival submissions of the respective parties and perused the previous orders passed by this Tribunal as well as the order of the Division Bench of the High Court and the Hon'ble Supreme Court. Clause (3) of Para 7 of Indian Revenue Service Rules, 1988 reads as under:-

"(3) Appointments in the Service to the posts of Assistant Commissioners of Income Tax (Senior Scale) and above shall be made by promotion from amongst the officers the next lower grade with the minimum qualifying service as specified in column (4) of Schedule-II"

In Schedule-II under Sl. No. 5 for Senior Scale method of recruitment is given i.e. by promotion on the basis of seniority-cum-fitness, and field of selection and the minimum qualifying service for promotion has been provided as officer in the Jr. Scale with not less



than 4 years' regular service in that grade. Under Note below Scheme-II it is provided that:-

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

17. In pursuance to the direction issued by this Tribunal in OA No. 502/2004 filed by the applicant for non-grant of promotion to the grade of Dy. Commission, order Ann.A/1 has been passed and in view of the judgment passed by this Tribunal as upheld by the Hon'ble High Court it is observed that the applicant is eligible for promotion w.e.f. 1.1.2005. As per rules, the applicant was actually eligible to be granted Senior Scale w.e.f. 1.1.2006, however, the applicant was granted the same w.e.f. 1.1.2005 in compliance of the order dated 29.3.2005 and order dated 22.11.2006 passed by this Tribunal.

18. Having considered the judgments and the documents filed by the respective parties, we are not convinced with the submissions made on behalf of the applicant that Ms. Meera Srivastava and Shri Sunil Gautam were junior to the applicant, as both officers being 1999 batch were arranged in accordance with their inter-se seniority in the cadre as per the details of their date of appointment as ACIT and grant of Senior Scale as has been mentioned in Ann.C filed alongwith the additional affidavit. Thus,



claim of the applicant that he was senior to Ms. Meera Srivastava and Shri Sunil Gautam is wrong and misconceived. As discussed hereinabove, as the applicant joined as ACIT on 7.11.2001 and was rightly assigned seniority of 2000 batch whereas Ms. Meera Srivastava and Shri Sunil Gautam who joined as ACIT on 10.1.2000 have been assigned the seniority of 1999 batch, thus in no way the applicant can be said to be senior to them.

19. We have also thoroughly examined and considered the eligibility condition for grant of Senior Scale as per Rule 7(3) of Indian Revenue Service Recruitment Rules providing that appointments in the service to the posts of Assistant Commissioners of Income Tax (Senior Scale) and above shall be made by promotion from amongst the officers the next lower grade with the minimum qualifying service as specified in column (4) of Schedule-II and in column (4), the method of recruit is by way of promotion on the basis of seniority-cum-fitness and minimum qualifying service is prescribed as four years in Junior Scale. However, exception to the Rule has been made vide Note below Schedule-II that if an officer appointed in 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. It is the seniority which is crucial and not the length of service. Thus, in our considered view we find no illegality in the order dated 6.12.2006 (Ann.A/1) and the respondents have complied with the direction



previously issued by this Tribunal as upheld by the Hon'ble High Court and the applicant has rightly been promoted w.e.f. 1.1.2005 as the applicant cannot equate himself with the direct recruits of 1999 batch.

20. Thus, we find no merit in this OA and the OA being bereft of merit fails and is hereby dismissed with no order as to costs.

Anil Kumar
(ANIL KUMAR)
Admv. Member

K.S. Rathore
(JUSTICE K.S.RATHORE)
Judl. Member

R/