

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 11th day of April 2005

CORAM:

HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. A.K. BHANDARI, ADMINISTRATIVE MEMBER

ORIGINAL APPLICATION NO. 440/2002

Smt. Kavita Yadav wife of Rajendra, aged 34 years working in the office of the Commissioner, Income Tax (Central) Hotel Jaipur Ashok Premises Bani Park, Jaipur resident of 1-C/6, Railway Quarter, Railway Colony, Opposite to the office of North western Railway, Jaipur.

....Applicant

By Advocate: Mr. C.B. Sharma.

VERSUS

- 1 Union of India through Secretary, Ministry of Finance, Government of India, New Delhi.
- 2 Chief Commissioner, Income Tax, Rajasthan, Central Revenue Building, Bhagwan Das Road, Jaipur.
- 3 Commissioner, Income Tax (Central) Hotel Jaipur Ashok Premises, Bani Park, Jaipur.
- 4 Giriraj Prashad Sharma, ITO (CIB), Office of the Chief Commissioner, Income Tax, Rajasthan, Central Revenue Building, Bhagwan Das Road, Jaipur.

....Respondents.

By Advocate : Mr. Gaurav Jain (Respondents nos. 1 to 3)
None present (Respondent No. 4)

ORIGINAL APPLICATION NO. 408/2003

Dhan Singh Meena S/o Sh Badri Lal, aged about 35 years, r/o R K Puram, Kota, presently posted as Inspector, in the office of ITO (CIB), Kota.

VERSUS

- 1 Union of India through Secretary, Ministry of Finance,

Government of India, New Delhi.

2 Chief Commissioner, Income Tax, Rajasthan, Central Revenue Building, Bhagwan Das Road, Jaipur.

✓ By Advocate - Mr. Ganesh Meena - for Applicant Respondents.
By Advocate : Mr. Gaurav Jain - for Respondents.

ORIGINAL APPLICATION NO. 102/2003

Bharat Lal Meena s/o Sh. Ram Lal Meena, aged about 35 years, r/o 1-N-B, Dadabari, Kota, Presently posted as Income Tax Inspector range-I, Income Tax Officer, Jhalawar.

VERSUS

1 Union of India through Secretary, Ministry of Finance, Government of India, New Delhi.

2 Chief Commissioner, Income Tax, Rajasthan, Central Revenue Building, Bhagwan Das Road, Jaipur.

✓ By Advocate - Mr. Ganesh Meena - for applicant Respondents.
By Advocate : Mr. Gaurav Jain for Respondents.

ORDER (ORAL)

Per MR. J.K. KAUSHIK, JUDICIAL MEMBER

Smt. Kavita Yadav, Sh. Dhan Singh Meena and Sh. Bharat Lal Meena have filed their individual OAs u/s 19 of the Administrative Tribunal's Act, 1985 wherein they have, inter alia, prayed for quashing the order or revised seniority list of Inspector of 23.9.2002 by way of modification to the extant of assignment of correct seniority list and for further direction for consideration of their cases for promotion to the post of Income Tax Officer with all consequential benefits. The claims are grounded on the same set of facts and an identical question of law is involved, hence they are being decided through a common order.

2 We have heard the learned counsel for both the parties and

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have very carefully perused the pleadings and the records of this case.

3 For the purpose of this decision, we are taking the facts of the OA No. 400/2002, as leading one. The factual matrix of this case, as is considered necessary for resolving the controversy involved herein, is that the applicant came to be appointed as a direct recruit to the post of Inspector on dated 19.9.1990 in the office of Commissioner of Income Tax, Bombay City. She joined her services at Bombay in March, 1991. She made a request for inter change transfer in accordance with the rules in force and vide letter dated 30.9.1992, in pursuance of which, the applicant was relieved to join at Jaipur Office. The said letter indicates that the applicant's name will be considered under direct recruitment quota and her services rendered at Bombay charge will not be counted in Rajasthan Charge for the purpose of seniority and she would be placed at bottom of the seniority of Inspectors in Rajasthan Charge. In this view, her seniority was to be reckoned w.e.f. 04.10.1992. It has been further averred that respondents have issued another seniority list of Inspector in the year 1994, wherein the applicant was placed below the batch of 1993 and a provisional seniority came to be issued in the year 1998 wherein the name of the applicant was shown at Sl. No. 127 and that of the private respondent No. 4, Shri Giriraj Prasad Sharma, at Sl. No. 114. Shri Giriraj Prasad Sharma joined his duties as Inspector in 1994 as a direct recruit, The applicant was appointed against the vacancy for the year 1991-

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1992 whereas the private respondent was appointed against the batch of 1993. There was further revision of seniority and finally the name of the applicant was shown at Sl. no. 148 and the name of the private respondent at Sl. No. 94. The applicant moved a representation protesting against the assignment of seniority to her. Finding no response, this OA has been filed on diverse grounds, mentioned in Para No. 5 & its sub paras.

3. The applicant in OA No. 408/2003, came to appointed to the post of Inspector at Bombay on dated 14.6.93. He was allowed own request transfer to Rajasthan and given posting at Jaipur where he joined on 5.8.94 on the condition that he shall be the junior most at the new place. He was at the first instance assigned correct seniority but subsequently he was placed below the candidates who were appointed and joined at a much later date than him as per the impugned seniority list. Similarly the applicant in OA No. 102/2003, came to appointed at Inspector on dated 30.7.1992 at Ahmedabad and allowed own request transfer to Jaipur where he joined on dated 1.2.94, on bottom seniority. Rest of the fate is the same.

4. The respondents have contested the case and filed detailed and exhaustive reply to each of the OA countering the facts and grounds raised therein. In OA No. 400/2002 a short rejoinder has been filed by the applicant refuting the defence version of the respondents.

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5. At the very outset, learned counsel for the applicant invited our attention to one of the judgements which came to be passed by the co-ordinate Bench of the Tribunal at Jodhpur in OA Nos. 270/2002 & Others, R.K. Bothra and three others vs. Union of India & Others. He contended that the controversy involved in the instant case has already been resolved in the said judgement and the same does not remain res-integra inasmuch as the whole issue has been adjudicated upon in detail and set at rest. Therefore, this OA may be decided on the similar lines.

6. Per contra, learned counsel for the respondents has submitted that in similar matter, the respondents have filed a DB Civil Writ Petition No. 787/2004 before the Hon'ble High Court of Rajasthan at Jodhpur, wherein their Lordships of the Hon'ble High court vide order dated 20.2.2004 have been pleased to stay the operation of the order of the Tribunal dated 08.09.2003 passed in R.K. Bothra (supra) until further orders and in this view of the matter it can be safely construed the matter is pending and sub-judice before the Hon'ble High court.

7. We have considered the rival contentions put forth by both the parties as far as the controversy involved in this case is concerned the same is fully resolved in the case of R K Bothra supra. The Para 12 of the judgement is illustrates the rule position and contents of the same are extracted as under:-

"12. For fixing the seniority of the persons who join on transfer from other Charge on their own request, the principle is contained in the Circular dated 14.5.1990 which has been

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referred to above. Clause (e)(f) and (g) of the said circular are reproduced hereunder:-

"Clause (e)

The direct recruits coming on transfers will be shown against direct recruitment quota and promotees against the promotion quota.

Clause (f).

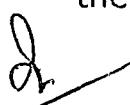
The service rendered in the old charge will not be counted in the new charge for the purpose of seniority. He/she will be placed at the bottom of the list of the employees of the concerned cadre in the new charge. Seniority in the cadre in the charge to which person is transferred will start from the day that person reports for duty in that charge. However, he will not rank senior to any official who belongs to a batch selected on merit, whose interse seniority is not regulated by date of joining.

Clause
Charge (g)

On transfer the transferee will forfeit all claims for promotion/confirmation in the old charge. He/She will be eligible for promotion/confirmation only in the new charge in accordance with the seniority allotted to him on transfer.

A reading of the paras makes it crystal clear that in the matter of transfer from one charge to another charge, the criteria for fixation of seniority is the date of joining in the new charge to which the person is transferred."

8. We also find that the respondents side, there is no serious dispute as far as the factual aspect of the judgement is concerned. However it is submitted that respondents certainly have some reservation on the legal aspect of the matter inasmuch as they have challenged the very judgement before the Hon'ble High court and the whole controversy shall be settled



by the Hon'ble High court decides the matter. Since the matter has already been adjudicated by the coordinate bench of this Tribunal at Jodhpur, there is hardly any adjudication required at this end. We have no hesitation in deciding this case on similar lines as has been done by the co-ordinate Bench of Jodhpur in cases of R.K. Bothra and three others (supra).

9. We cannot loose sight of the fact that in case of Shri R K Bothra, supra, no doubt the principle of law has been amplified regarding the assignment of seniority which fully applies to the cases of applicants, but in those cases there was no applicant whose matter relating to inter charge transfer was involved and therefore, the writ petitions filed before Hon'ble High court would not be against any such similarly situated employees as that of applicants. There, the matter is regarding the assignment of seniority between promotees and the direct recruits. In this view of the matter no case can be said to be sub-judice or pending in the same matter. If that be so, there is no impediment in deciding this case finally by applying the principle of law laid down in the case of R K Bothre supra.

10. We may hasten to add that in cases where the inter charge transfer is permitted, one knows one's seniority position at the time of transfer and if the same is to remain uncertain and can be allowed to change in future by placing the candidates who belong to subsequent batches as well join their duties at subsequent dates than that of such tranferees, the matter

becomes unpredictable and by that time the position of the incumbent becomes irreversible. The impugned order offends the doctrine of predictability which is one of the celebrated principles of rule of law and the same can not be sustained on this count as well. We find support of the same from the verdict of Apex court in case of **S. G. JAISINGHANI V. UNION OF INDIA AND ORS.(With Connected Writ Petition) AIR 1967 SC 1427**. The contents of relevant portion is extracted as under:

"In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the rule of law. (See Dicey- "Law of the Constitution"-Tenth Edn., Introduction ex). "Law has reached its finest moments", stated Douglas, J. United States v. Wunderlick(1), "when it has freed man from the unlimited discretion of some ruler..... Where discretion ; absolute, man has always suffered". It is in this sense that the rule of law may be said to be the sworn enemy of caprice. Discretion, as Lord Mansfield stated it in classic terms in the case of John Wilkes(2), "means sound discretion guided by law. It must be governed by rule, not by humour : it must not be arbitrary, vague and fanciful."

11. Besides the aforesaid, there is one more point to be taken note of is that one can not be assigned seniority from a date

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when one was not even in service. If the action of the official respondents was to be endorsed, such result would be inevitable. However, the Hon'ble Tribunal has in an unequivocally held in R K Bothra's case supra that one could be assigned seniority only from the date of one's joining and we are in full agreement with the reasoning adduced therein.

12. In the result, this OA is allowed. The impugned seniority list dated 23.9.2002 showing the position of the applicants and the candidates who were appointed/joined in Rajasthan later than the applicants is hereby quashed. The official respondents shall revise the seniority of the applicants above such candidates in the light of the observations made in Para No. 12 in R.K. Bothra & three others (supra). It is further directed that on revising the seniority, if the applicants are found suitable for promotion, they should be promoted from the date their immediate junior was so promoted with all consequential benefits. This order shall be complied with within a period of three months from the date of communication of this order.. No costs.

(A.K. BHANDARI)

ADMN MEMBER

AHQ

(J.K. KAUSHIK)

JUDICIAL MEMBER