

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 18th day of July, 2011

Original Application No.111/2007

With MA No.95/2007

CORAM:

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

Kashi Nath Purohit
s/o late Dr. Kalyan Bux Purohit,
r/o 50-A Shriram Colony,
Hawa Sarak,
Jaipur

.. Applicant

(By Advocate: Shri Anupam Agarwal)

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. The Chairman,
CBDT, North Block,
New Delhi.
3. The Joint Secretary (Administration),
CBDT, North Block,
New Delhi.
4. The Director of Income Tax (Systems),
ARA Building,
Jhandewalan Extn.,
New Delhi.
5. The Chief Commissioner of Income Tax,
NCR Building, Statue Circle,
Jaipur

6. Director General (Systems),
ARA Building,
Jhandewalan Extn.,
New Delhi.

.. Respondents

(By Advocate: Shri Gaurav Jain)

ORDER (ORAL)

The applicant in the present Original Application claims relief pursuant to the judgment rendered in the case of S.R.Gautam and ors. vs. UOI and ors., OA No.2516/2000 decided on 19.4.2001 by the Principal Bench of Central Administrative Tribunal. The said OA was filed by the employees of the Department of Revenue who were seeking interpretation on the point whether services rendered during the period of deputation till the date of absorption can be counted for considering the eligibility of the applicants for promotion from the post of Programme Assistant/Console Operator (Data Processing Assistant Grade-A) to that of Programmer/Assistant Director (systems). After relying on the judgment of the Hon'ble Supreme Court in the case of K.Madhavan and Another vs. Union of India and ors., reported at (1982) 4 SCC 566 and further relying upon the judgment of the Central Administrative Tribunal in the case of Sridhar Prakash vs. Union of India and anr (OA No.871/95 decided on 5.9.1995), the Principal Bench came to the conclusion that the service rendered as Programme Assistant/Console Operator from initial deputation to the date of absorption has to be treated as regular service for the



purpose of being considered for promotion as Programmer/Assistant Director (systems).

2. The applicant also placed reliance on the judgment passed by this Bench of the Tribunal in OA No.532/2002 dated 18.11.2004 in the case of Rajendra Singh Rana vs. UOI and ors. wherein this Tribunal observed as under:-

"5.2 We have given due consideration to the submissions made by the applicant. We are of the view that the applicant is also entitled to the benefit of the judgment as rendered by the Principal Bench in the case of S.R.Gautam (supra). Accordingly, the respondents are directed to treat the service rendered by the applicant as Programme Operator/Console Operator from the date of his initial deputation to the date of his absorption as regular service for the purpose of considering him for promotion to Programmer Grade-A/Assistant Director (system). The respondents are further directed to consider the applicant for promotion as Programmer Grade-A/Assistant Director (system) from the due date and promote him as such from the said date, if found fit by the DPC/review DPC, with all consequential benefits. It is made clear that such promotion will be subject to decision to be rendered by the Principal Bench in OA No.2412/2002, Jayant Barua vs. Union of India and ors., where promotion of Shri S.R.Gautam and others are under challenge. Such exercise shall be undertaken by the respondents within a period of two months from the date of receipt of a copy of this order."

3. Per contra, the learned counsel appearing for the respondents has controverted the submissions and submitted that the present OA is time barred as the cause of action was made available to the applicant in the year 2005 when notice for demand of justice dated 16.6.2005 has been submitted by the applicant whereas the applicant approached this Tribunal by way of the present OA in the year 2007 i.e. after the lapse of the



prescribed limitation of one year and prayed that the OA deserved to be dismissed on this count alone.

4. Respondents further submitted that the applicant joined the department as Upper Division Clerk on 6.2.1978 and was appointed as Console Operator/Assistant Programmer on deputation from 1990 to 1993 and reverted to his parent cadre in 1993. Further the applicant was appointed as Programme Assistant/Console Operator on transfer/deputation basis in the month of October, 1995. At the relevant point of time, the applicant was holding the post of UDC in the department as substantive and accordingly by virtue of his seniority in the cadre of UDC his name was considered by the DPC which met on 21.8.1996 and found him fit for promotion to the cadre of Head Clerk. The applicant was appointed as Console Operator/Programme Assistant on deputation basis and later on absorbed on the same post on 24.3.2000. As per Recruitment Rules 2001, the Data Processing Assistant Grade-B with 5 years regular service in the grade, failing which combined regular service of 8 years in the grade of Data Processing Assistant Grade 'A' and 'B' with a minimum of 2 years regular service should be in the grade of Data Processing Assistant Grade 'B' are eligible for consideration for promotion to the post of Assistant Director (system).

5. The applicant has filed a Misc. Application for condonation of delay. We have considered the facts and circumstances of the case and the explanation given by the applicant for seeking condonation of delay and we are fully satisfied with the reasons



stated in the application for condonation of delay, as such, the same is allowed and delay in filing the OA is condoned.

6. It is not disputed by the parties that the Writ Petition filed against the judgment rendered by the Principal Bench by the respondents before the High Court of Delhi has been dismissed by the High Court and respondents are not in a position to state whether any SLP is preferred against the judgment of the Delhi High Court.

7. Further, the Full Bench of the Central Administrative Tribunal, Principal Bench in OA No.1343/2007 decided on 2nd June, 2011 has also decided a similar controversy and the respondents were directed to fix the seniority of the applicant therein by taking into account his past service in analogous post in his parent department.

8. We have given due consideration to the submissions made by the respective parties and we are of the view that the applicant is also entitled to the benefit of the judgment rendered by the Principal Bench of this Tribunal in the case of S.R.Gautam (supra) as the judgment rendered by the Principal Bench is in rem and not in persona and accordingly, the respondents are directed to treat the service rendered by the applicant as Programme Operator/Console Operator from the date of initial deputation to the date of absorption as regular service for the purpose of considering him for promotion as Programmer Grade-A/Assistant Director (system) from the due date and promote him as such from



the said date, if found fit by the DPC/Review DPC with all consequential benefits.

9. As discussed hereinabove, the respondents are not aware about pendency of any SLP against the judgment of the Delhi High Court, in such circumstances, we want to make it clear that promotion of the applicant will be subject to the decision by the Hon'ble Supreme Court in SLP, if any, filed by the respondents.

10. With these observations, the OA as well as MA for condonation of delay stands disposed of with no order as to costs.

Anil Kumar

(ANIL KUMAR)
Admv. Member

K. S. Rathore

(JUSTICE K.S.RATHORE)
Judl. Member

R/