

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

**ORIGINAL APPLICATION NO.750/2013
WITH
MA No.291/00480/2014**

Order reserved on : 13.2.2015
Date of Order: 31.3.2015

CORAM

**HON'BLE MR.ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MRS. CHAMELI MAJUMDAR, JUDICIAL
MEMBER**

1. Praveen Kumar Benewal S/o Shri Ram Prasad Benewal, Age 32 years, R/o Plot No.C-498, Mahesh Nagar, Tonk Phatak, Jaipur presently working as Tax Assistant, in the office of Chief Commissioner of Income Tax, Statue Circle, Jaipur.
2. Banwari Lal Sharma S/o Babu Lal Sharma, Age 33 years, R/o Keshav Katla, VPO Khirni, Tehsil Malarna Doongar, District Sawai Madhopur, Rajasthan presently working as Tax Assistant, in the Office of Income Tax Officer(TDS-II), Income Tax Office, Statue Circle, Jaipur.
3. Rishabh Kumar Jain S/o Shri Paras Kumar Jain, Age 31 years, R/o Ward No.9, Nai Mandir Gali, Indergarh, District Bundi, Rajasthan presently working as Tax Assistant, in the Office of Income Tax Officer, Income Tax Office, Bundi.
4. Imran Khan S/o Shri Umrao Khan, Age 33 years, R/o Plot No.117, Painter Colony, Nahri Ka Naka, Jaipur, Rajasthan presently working as Tax Assistant in the office of Chief Commissioner of Income Tax, Statue Circle, Jaipur.
5. Sunil Kumar Kankhedia S/o Shri Dhanpat Lal, age 34 years, R/o Plot No.63, Shri Kalyan Nagar, Kartarpura, Jaipur presently working as Tax Assistant, in the office Commissioner of Income Tax-I, Statue Circle, Jaipur.

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6. Mukesh Kumar S/o Shri Rampal, Age 31 years, R/o Plot No.B 4/156, Bal Nagar, Kartarpura, Jaipur presently working as Tax Assistant, in the office of Income Tax Officer, Ward No.2(1), Statue Circle, Jaipur.
7. Rekha Luniwal W/o Shri Ashutosh D/o Shri Jairam Luniwal, Age 29 years, R/o Q. No.36/Type-III, Income Tax Colony, Calgiri Road, Near Rungta Hospital, Malviya Nagar, Jaipur presently working as Tax Assistant in the office of Income Tax Officer(MSTU), Income Tax Colony, Calgiri Road, Near Rungta Hospital, Malviya Nagar, Jaipur.
8. Mahesh Kumar S/o Shri Nattholi Ram, Age 29 years, R/o Quarter No.176/II, Income Tax Colony, Calgiri Road, Malviya Nagar, Jaipur presently working as Tax Assistant in the office of Commissioner of Income Tax-I, Jaipur, Statue Circle, Jaipur.
9. Kamlesh Kumar Sharma S/o Shri Ram Narayan Sharma, Age 32 years, R/o Plot No.43/3, Parasram Nagar, Dher Ka Balaji, Sikar Road, Jaipur presently working as Tax Assistant in the office of Commissioner of Income Tax-I, Jaipur, Statue Circle, Jaipur.

.....Applicants

(By Advocate Mr. R.P.Tiwari)

VERSUS

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi.
2. Chief Commissioner of Income Tax, Central Revenue Building, Bhagwan Das Road, Statue Circle, Jaipur.
3. Chairman, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, North Block, New Delhi.
4. Director (Ad. VII), Ministry of Finance, Department of Revenue, CBDT, 469, Hotel Samrat, Chankyapuri, New Delhi-110021.
5. Shri Ram Kishan Phulwaria S/o Shri Jhиту Lal Phulwaria, working as Sr. Tax Assistant, Income Tax Office, Behind

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Collectorate, Shekhawat Colony, Churu residing at Type II, Quarter, attach to Income Tax Office, Behind Collectorate, Shekhawat Colony, Churu.

6. Shri Mukesh Meena S/o Shri Sanvar Mal, presently working as Sr. Tax Assistant in the office of Director General of Income Tax (Investigation), NCR Building, Statue Circle, Jaipur residing at 24, Meeno Ki Dhani, Biharpura, Jahota, Tehsil Amber.

.....Respondents

(By Advocate Mr. Gaurav Jain)

ORDER

(Per Hon'ble Mr. Anil Kumar, Administrative Member)

In the present OA the applicants have prayed for the following reliefs:-

8.(i) To pass any order or direction whereby the promotion order dated 10.10.2013 and 24.4.2012 be quashed and set aside.

(ii) To pass any order or direction whereby the respondents be directed to promote the applicants on the post of Senior Tax Assistant against the recruitment year 2012-13 with all consequential benefits and arrears be paid immediately.

(iii) To pass any order or direction whereby official respondents be directed to count the past service rendered by the applicants at their old region for the purpose of determining eligibility for the purpose of promotion.

(iv) To pass any order or direction whereby official respondents be directed to convene the review DPC for the post of Sr. Tax Assistant for the year 2012-13 and 2013-14 respectively, in light of prayer sought above.

(v) To pass any order or direction whereby letter dated 27.3.2012 be quashed and set aside.;

(vi) Any other appropriate order or direction which the Hon'ble Tribunal may consider just and proper in the facts and circumstances of the case may also kindly be passed.

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2. The brief facts of the case as stated by the learned counsel for the applicants are that the applicants are presently working on the post of Tax Assistant at various places in Rajasthan Region of the Income Tax Department. In the OA the facts with regard to the applicant No.1 have been taken for ready reference whereas the facts and other necessary service details of other applicants are enumerated in the following table:-

Sl. No	Name of candidate	Post	Dt.of 1 st apptt. In the Deptt.	Region where initially appointed.	Dt.of promotion on Sr. T.A. in old region	Dt.of joining at Jaipur Region
1.	Praveen Kumar Benewal	Tax Astd.	12.11.2007	Chennai	16.6.2011	11.7.2011
2.	Banwari Lal Sharma	Tax Astd.	31.1.2008	Chennai	28.4.2011	11.7.2011
3.	Rishabh Kumar Jain	Tax Astd.	14.11.2007	Chennai	N.A.	11.7.2011
4.	Imran Khan	Tax Astd.	16.3.2009	NWR Chandigarh	N.A.	27.1.2011
5.	Sunil Kumar	Tax Astd.	19.11.2007	Gujarat	16.6.2011	19.11.2012
6.	Mukesh Kumar	Tax Astd.	25.10.2007	Gujarat	16.6.2011	13.1.2012
7.	Rekha Luniwal	Tax Astd.	15.11.2007	Chennai	16.6.2011	11.7.2011
8.	Mahesh Kumar	Tax Astd.	20.11.2007	Kochi(Kerala)	N.A.	17.1.2011
9.	Kamlesh Kumar Sharma	Tax Astd.	10.7.2009	Gujarat	N.A.	1.3.2011

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3. That the applicant No.1 was initially appointed on the post of Tax Assistant vide order dated 12.11.2007 and was allotted Chennai Region. That the applicant moved for inter charge transfer. The applicants were transferred from different regions to Rajasthan Region. The copy of the guidelines dated 14.5.1990 has been annexed as Annexure A/6.

4. In pursuance to the inter charge transfer orders, all the applicants joined Rajasthan Region on the post of Tax Assistant. The applicants were asked to abide with the terms and conditions of the inter charge transfer guidelines dated 14.5.1990 read with Central Board of Direct Taxes letter dated 23.1.2003.

5. That the applicant No.1 who was working on the post of Senior Tax Assistant was reverted to the post of Tax Assistant before his joining at Chief Commissioner of Income Tax Office, Jaipur. Consequently, the applicant No.1 joined at Jaipur Region on 11.7.2011 on the post of Tax Assistant. Past service rendered by the applicant was not considered or given weightage by the official respondents for the purpose of promotion on the post of Senior Tax Assistant.

6. The Ld. Counsel for the applicants further submitted that the applicants were aware of the facts that because of inter charge transfer, as per the undertaking furnished by them, they have to lose their seniority. The Ld. Counsel for

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the applicants submitted that loss of seniority at Rajasthan Region may not be confused with qualifying service required in a particular Grade for promotion to the post of Senior Tax Assistant. The post of Sr. Tax Assistant is to be filled up 100% by promotion amongst Tax Assistants who have rendered a minimum regular service of 3 years in the Grade and have qualified the prescribed departmental examination for ministerial staff. Thus the rules of 2003 are very clear in prescribing the eligibility criteria for promotion to the post of Senior Tax Assistant. The rules of 2003 nowhere mentions that an employee needs to render minimum required service of 3 years in the Grade in a particular region. However, respondents in the present case are implementing the recruitment rules 2003 in the manner that for promotion on the post of Senior Tax Assistant an employee is required to have 3 years minimum service in particular Grade in a particular Region. This implies that the service rendered by the applicants in different regions before coming to Rajasthan Region are being totally ignored.

7. The learned counsel for the applicants submitted that as regards to inter charge employees, despite of pushing them down in the seniority list their past service in a particular Grade at old region is taken into consideration for promotion on the post of Senior Tax Assistant. He submitted that this controversy is no more rest integra, as

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the Hon'ble Principal Bench of Central Administrative Tribunal in OA No.2406/2005(Ann.A/12) and in OA No.2732/2009 (Ann. A/12) has decided the issue involved in the present OA. That the applicants submitted the representation to the respondents to this effect but they did not consider the representation of the applicants in the right perspective and issued promotion order dated 24.4.2012 to the post of Sr. Tax Assistant against the vacancy year 2012-13. The applicants were treated to be ineligible for not having 3 years service on the post of Tax Assistant at Rajasthan Region. It was informed that the applicant No.1 would be eligible for promotion to the post of Sr. Tax Assistant only against the recruitment year 2015-16.

8. Further, the Hon'ble Central Administrative Tribunal, Jodhpur Bench has allowed the Original Application No.522/2011 titled Ramesh Kumar Panwar Vs. Union of India vide order dated 9.8.2012 and issued directions to the respondents stating inter alia that service rendered by the applicant from the date of his initial recruitment in Gujarat Region from 24.10.2007 till the date of DPC i.e. 29.6.2011 be considered and for conducting review DPC and to consider the name of the applicant for promotion to the post of Sr. Tax Assistant(Ann.A/12).

9. The learned counsel for the applicant, therefore, submitted that the respondents be directed to promote the

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applicants on the post of Sr. Tax Assistant against the recruitment year 2012-13 with all consequential benefits by counting the past service rendered by the applicants at their old region for the purpose of determining the eligibility for promotion. The respondents may also be directed to convene the review DPC for the post of Sr. Tax Assistant for the year 2012-13 and 2013-14 respectively and to quash the letter dated 27.3.2012 (Ann. A/3).

10. On the other hand, the respondents have filed their written reply. In their written reply the respondents have stated that the applicants when they were transferred from other region to Rajasthan Region were required to give a written undertaking to abide by the terms and conditions for the inter charge transfer guidelines as contained in the letter dated 14.5.1990 read with CBDT letter dated 23.1.2003.

11. The respondents have stated that the primary condition for promotion from Tax Assistant to Sr. Tax Assistant is that the post of Sr. Tax Assistant is to be filled up 100% by promotion from amongst Tax Assistants who have rendered a minimum regular service of 3 years in the Grade and have qualified the prescribed departmental examination for ministerial staff. As per the policy, services rendered by the applicants in other region are not counted towards minimum service, if any, prescribed for promotion/appointment/confirmation to any higher

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post/grade/cadre. It has been specifically mentioned in the guidelines that on transfer the services rendered in 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 employees of the concerned cadre in the new charge. Seniority in the cadre in the charge to which the person is transferred will start from the date that person reports for duty in that charge.

12. The learned counsel for the respondents submitted that as the applicant No.1 has not rendered 3 years continuous service on the post of Tax Assistant in Rajasthan Region (New Region), therefore, his name was not considered for promotion when the DPC met on 29.6.2011.

13. With regards to order passed by the Central Administrative Tribunal, Jodhpur as relied upon by the learned counsel for applicants it has been decided to file a Writ Petition before the Hon'ble High Court of Rajasthan in view of the Hon'ble Supreme Court's order in SLP No.140444 of 2006 in the case of Union of India and others Vs.Murali Dhar Menon & others (Ann.R/3).

14. The respondents have further stated that as per Board's letter dated 14.5.1990, the applicant cannot be given benefit of past service rendered in the earlier region. The Hon'ble Supreme Court in the case of Union of India and others Vs. Murali Dhar Menon and others (Supra) have

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clearly mentioned that the employee did not have any legal right to be transferred from one charge to another charge since the seniority of the LDC/UDC (Tax Assistant in the present OA) is maintained chargewise. The orders passed by the Central Administrative Tribunal, Jodhpur in OA No.522/2011 have been challenged by the department before the Hon'ble High Court of Rajasthan by way of filing the Writ Petition along with stay petition. As such the matter is subjudice before the Hon'ble High Court, Rajasthan. At this juncture no further action can be taken in the matter,

15. With regard to the order dated 14.2.2013 of CAT, Lucknow Bench in OA No.315/2014, it has been stated that it is to be challenged before the Hon'ble High Court of Uttar Pradesh at Lucknow Bench. The respondents have submitted in their reply that Shri Dinesh Kumar Meena an inter charge transferee was wrongly promoted as Sr. Tax Assistant on 18.9.2009 and he has since been reverted back on the post of Tax Assistant. (Ann.R/5).

16. Therefore, respondents have submitted that the present OA has no merits and it should be dismissed.

17. The applicants have filed the rejoinder.

18. Heard the learned counsel for parties, perused the documents on record and the case law as referred to by the parties.

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19. It is not disputed by the respondents that the controversy involved in the present OA is covered by the order of CAT, Jodhpur Bench in the case of Ramesh Kumar Panwar (Supra) though the respondents have also stated that they have filed writ petition against this order before the Hon'ble High Court of Rajasthan which is pending consideration. On the other hand, the learned counsel for the applicants submitted that the respondents have failed to appreciate thin line of difference between loss of seniority and counting of service rendered in the old charge for the purpose of promotion. He submitted that according to the provisions the applicants may be placed at the bottom of the seniority. But the services rendered by them in old charge would be counted for the purpose of eligibility. He argued that seniority and criteria for eligibility are two different and distinct things. If the applicants service in the past charge is counted then they would be eligible for promotion to the post of Sr. Tax Assistant. He argued that the CAT, Jodhpur Bench have considered all aspects and vide order dated 9.8.2012 in OA No.522/2011 directed the respondents to consider the case of the applicant of that OA for promotion to the post of Sr. Tax Assistant by considering the service of the applicant from the date of initial appointment in Gujarat Region till the date of DPC. He argued that the present OA is squarely covered by this order of CAT, Jodhpur Bench.

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20. We have carefully perused the order of the CAT, Jodhpur Bench passed in OA No.522/2011 (Ann.A/11)(Supra) and we are of the opinion that the facts of the present OA are squarely covered by the facts of OA No.522/2011 as decided by the CAT Jodhpur Bench. The Jodhpur Bench while deciding the OA has also considered the orders passed by the Principal Bench of the Tribunal in OA No.2406/2005 in the case of Pramod Kumar Vs. Union of India & ors. decided on 24.8.2006. The said decision was rendered by the Principal Bench relying upon the various decisions of the Hon'ble Supreme Court in the case of Renu Mallick Vs. Union of India reported in 1994 1 SCC 373, Scientific Advisor to Raksha Mantri & Anr. Vs. V.M.Joseph reported in 1998(5)SCC 305; and Union of India & Anr. Vs. V.N.Bhatt reported in 2003 (8) SCC 714.

21. The CAT, Principal Bench vide order dated 24.6.2006 had cancelled the Board's decision dated 14.5.1990.

22. We are inclined to agree with the arguments of the learned counsel for the applicants that there is difference between the seniority and the length of service for eligibility. We have carefully perused the recruitment rules placed at Annexure A/9 by the applicants. Para 12 of the said Recruitment Rules is quoted below:-

12.	Grade from which recruitment	100% by promotion from amongst Tax Assistants who
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<p>promotion/deputation/absorption/short term contract re-Employment is to be made.</p>	<p>have rendered a minimum regular service of three years in the grade and have qualified the prescribed departmental examination for Ministerial Staff.</p> <p>Note 1: Promotee Tax Assistant will not be eligible for promotion as Senior Tax Assistant till they qualify the departmental examination for data entry skills of 5000 key depressions per hour.</p> <p>It is provided that: If a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation.</p>
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The proviso of this rule clearly specify that a junior person is considered on promotion on the basis of his completing the prescribed qualifying period of service in that grade, all the persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in the Grade but have completed successfully the prescribed period of probation. This provision implies that if applicants being junior are considered on the basis of completing the

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prescribed qualifying period of service (3 years) then all persons senior to the applicants in that grade would also be considered even though they may not have completed the prescribed qualifying period of service in that Grade. The only condition is that such persons should have completed successfully the prescribed period of probation.

23. Under the facts and circumstances, the present OA is disposed of in terms of the order passed by the CAT, Jodhpur Bench in OA No.522/2011 with MA No.64/2012 vide order dated 9.8.2012 (Ann.A/11) and the following directions are issued to the respondents:-

1.Respondents are directed to consider the service of the applicants from the date of initial appointment in their respective region till the date of DPC when the applicants completed 3 years of regular service.

2. The respondents are directed to obtain vigilance clearance, conduct review DPC and consider the names of the applicants for promotion to the post of Sr. Tax Assistant within a period of 3 months from the date of receipt of the copy of this order.

3. We are inclined to quash the impugned order dated 27.3.2012 (Ann. A/3) as it is violative of recruitment rules of 2003.

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4. It is made clear that these orders will be subject to the orders passed by the Hon'ble High Court of Rajasthan in the Writ Petition filed by the respondents against the order of CAT, Jodhpur Bench in OA No. 522/2011.

24. With these observations and directions the OA is disposed of with no order as to costs.

25. In view of the orders passed in the OA, there is no need to pass separate orders in the MA No.291/00480/2014 filed by the applicants for interim prayer in the OA and hence it is disposed of accordingly.

Chameli Majumdar
(MRS. CHAMELI MAJUMDAR)
JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Adm/