

16

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

O.A. No.060/00004/2014

Decided on: 02.07.2014

**Coram: Hon'ble Mr. Sanjeev Kaushik, Member (J)
Hon'ble Mr. Uday Kumar Varma, Member (A)**

Amrik Chand S/o Sh. Puran Chand presently working as Deputy Commissioner of Income Tax, ITAT, Aayakar Bhawan, Makbool Road, The Mall, Amritsar.

.....Applicant

Versus

1. Union of India, through Secretary to Government of India, Ministry of Finance, New Delhi.
2. Central Board of Direct Taxes, North Block, New Delhi -110001 through its Chairman.
3. Chief Commissioner of Income Tax, North West Regional, Central Revenue Building, Sector 17-E, Chandigarh.

.....Respondents

Present: Mr. Madan Mohan, proxy counsel for the applicant
Mr. K.K. Thakur, counsel for the respondents

Order (oral)

By Hon'ble Mr. Sanjeev Kaushik, Member(J)

1. This O.A. has been filed by the applicant challenging the action of the respondents in not considering him for promotion to the post of JCIT, Income Tax viz.a.viz his junior namely Mr. B. Yogalingam, in pursuance to the order No. A-12018/1/2013-AVI dated 24.09.2013 read with order of even number dated 01.10.2013. He has sought
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issuance of a direction to the respondents to restore/assign him the correct seniority viz-a-viz his above named junior.

2. Pursuant to notice, Mr. K.K. Thakur, learned counsel put in appearance on behalf of the respondents. On 12.05.2014, learned counsel for the respondents produced a copy of order dated 31.03.2014 whereby the applicant was promoted to the post of JCIT with immediate effect and not from the date when his immediate junior had been promoted, which was objected by the learned counsel for the applicant. Learned counsel for the respondents sought and was granted time to get the modified order granting promotion to the applicant from due date.

3. Today, learned counsel for the respondents has filed written statement in the Registry and produced a copy of modified order dated 27.06.2014 whereby the respondents have rectified their mistake and promoted the applicant from 01.10.2013 i.e. the date his immediate junior Mr. B. Yogalingam had been promoted, which is taken on record. However, the respondents have not explained any reasons as to why they had not given promotion to the applicant in time. From the above, we draw an inference that the attitude of the respondents is of total go by to the rules and settled law. This can also be seen from the fact that on 06.01.2014, this Court directed the respondents to file reply within two weeks failing which they shall stand restrained from making further promotion to the post of JCIT but they did not bother to file

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reply and made promotion of juniors of the applicant to the post of JCIT, ignoring the rightful claim of the applicant to that post. Taking cognizance of that fact, we had passed the following order on 26.01.2014.

" When the matter came up for preliminary hearing on 06.01.2014, this Tribunal after noticing the facts, issued notice to the respondents. They were directed to file reply within 15 days, failing which, it was ordered, that further promotion to the post of JCIT, if any, would be stayed. That was for two counts, firstly that the applicant was going to retire on 31.03.2014 and secondly we wanted a reply from the respondents to ascertain whether they were actually considering the persons junior to the applicant for promotion to the post of JCIT or not. Consciously, we did not pass any order restraining the respondents from conducting the DPC for promotion to the post in question. That was also for one of the reason that the promotion cannot be claimed as a matter of a right, but consideration for promotion is definitely a right. No written statement was filed within the time granted. On their request further time was also granted for the purpose.

As per the order dated 06.01.2014, for not filing written statement within the time, further promotion to the post of JCIT stands stayed. However, despite that persons junior to the applicant were promoted though on adhoc basis without considering his right.

In M.A. for stay filed by the applicant notice was issued, but respondents chose not to file reply to the M.A. what to talk of the O.A.

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Today, again Sh. Thakur, learned counsel for the respondents seeks further time to file written statement on the pretext that they have received a letter from the respondent no. 1 to seek further time. We can take judicial notice of the fact that despite the order passed by this Tribunal, staying the further promotions for the post in question, the respondents have promoted persons junior to the applicant and as such we can initiate suo moto contempt proceedings. However, we restrained ourselves from initiating the contempt proceedings at this stage. But, in the interest of justice to both the parties we are left with no other option, but to direct the respondents to keep the promotion order dated 03.02.2014 in abeyance till the next date of hearing.

Learned counsel for the respondents is directed to file an affidavit by way of compliance report of this order within 3 days from today for which purpose this case will be listed on 12.03.2014 and thereafter for filing written statement on 21.03.2014. "

4. Despite the above, the respondents did not file the necessary affidavit in pursuance to the orders of this Court and the matter was adjourned several times. From the above narration of the facts, we can conclude that the applicant has been victimized by the respondents in not promoting him from the date when his junior was promoted. Though promotion cannot be claimed as a matter of right but consideration therefor has been held to be a fundamental right. The respondents cannot be allowed to act in an arbitrary manner and withheld promotion without any valid reason. It is held by the Lordship

of the Hon'ble Apex Court in 1999 (7) SC209 – Ajit Singh-II Vs. State of Punjab & Others and 2010(2) SCC 301 – Union of India Vs. Gopal Chandra Mishra & Others, that the right to be considered for promotion and the seniority attached to such promotion is an important facet of fundamental right guaranteed under Article 16(1) of the Constitution of India. On the first instance during the pendency of the present O.A. the respondents considered and promoted the applicant from a date later than when his named junior was promoted. When respondents were directed to give explanation for deviation, today they have produced an order dated 27.6.2014 where by they have changed the date of promotion of the applicant and made it effective from 01.10.2013, the date when his junior Shri B. Yogalingam was so promoted. These facts lead us to conclude that the respondents have acted in an arbitrary manner.

5. Be that as it may, now the applicant has indeed been promoted to the post of JCIT with effect from the date his junior had been so promoted vide order dated 27.06.2014, the O.A. has been rendered infructuous and stands disposed of as such. No costs.

(UDAY KUMAR VARMA)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

PLACE: Chandigarh
Dated: 02.07.2014

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