

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
(Reserved on 10.12.2015)

O.A No. 060/01163/2014

Date of decision - 17.12.2015

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)**

Basant Kumar son of Sh. Inder Bhan, aged about 42 years, Senior Tax Assistant, Office of the Tax Recovery Officer-2, Mohali.

...APPLICANT

BY ADVOCATE: Sh. V.K. Sharma.

VERSUS

1. Union of India through the Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. Commissioner of Income Tax-2, Chandigarh.
3. Additional Commissioner of Income Tax (Audit)-cum-Disciplinary Authority, Chandigarh.

...RESPONDENTS

BY ADVOCATE: Sh. Sanjay Goyal.

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The applicant has invoked the jurisdiction of this court under Section 19 of the Administrative Tribunals Act, 1985 seeking quashing of charge-sheet dated 14.02.2007 with prayer to direct the respondents to consider the case of the applicant for promotion to the post of Senior Tax Assistant and Inspector from the date when juniors to him have been promoted as such with all the consequential benefits of arrears of pay and allowances with interest @ 18%.

2. The facts which led to the filing of the present O.A are that the applicant joined the respondent -Income Tax Department as Lower Division Clerk on 19.09.1995 and came to be promoted as Tax Assistant in 2001. Next promotion in the hierarchy is to the post of Senior Tax Assistant which is governed by Income Tax Department (Group 'C') Recruitment Rules, 2003 as per which the posts were to be filled up 100% by promotion by non-selection method. A Tax Assistant having 3 years of service as such was eligible for promotion after passing of prescribed departmental examination for Ministerial Staff. The next promotional post thereafter is of Inspector which is governed by Income Tax Department (Inspector) Recruitment (Amendment) Rules, 1986. The applicant was due for consideration for the post of Senior Tax Assistant against the vacancies of 2007-08. Unfortunately, the applicant was charge sheeted on 14.02.2007 & an inquiry was conducted under Rule 14 of CCS (CCA) Rules, 1965 and ultimately, vide order dated 27.03.2009 a penalty of withholding of three increments of pay with cumulative effect was imposed upon the applicant and appeal against that order was rejected vide order dated 09.07.2009. Both the orders were subject matter in O.A No. 590/PB/2009 which was allowed on 12.11.2010 and the order of punishment was set aside and the respondents were given liberty to proceed afresh in the matter, if they were so inclined. That order was challenged before the Hon'ble High Court in CWP No. 24300/2011 at the hands of the respondents which was dismissed on 23.12.2011 and order had attained finality as same was not challenged before Apex court. In the meantime time, the respondents conducted DPC for promotion to the post of Senior Tax Assistant for the years 2009-10, 2010-11 and 2011-12 on 03.05.2012 and being found fit the applicant

was promoted vide order dated 11.05.2012. He was assigned year of promotion as 2009-10 and placed in the Seniority No. 0/3102. Thereafter, the respondents conducted DPC for promotion of Senior Tax Assistants to the post of Income Tax Inspectors for the recruitment year 2013-2014 and they have promoted persons junior to the applicant and ignored the applicant. Subsequent to that review DPC meeting was held for promotion to the post of Inspector for the year 2013-2014 but again the applicant was not considered and persons junior to him were promoted. Against the action of the respondents in not promoting the applicant from due date, he made a representation dated 28.11.2014 followed by another representation on 03.12.2014 but to no avail. Hence, the O.A.

3. The respondents have filed a detailed written statement wherein they have contradicted the factual accuracy of averments made in the O.A. It is submitted that the applicant was in the consideration zone for promotion as Senior Tax Assistant in the DPC meeting held for recruitment year 2008-2009. However, his name was deferred as decision on unauthorized leave of applicant was pending. Subsequent to that, the charge sheet was quashed but in view of the liberty given by this Tribunal as affirmed by the Hon'ble High Court, the respondents decided to initiate departmental proceeding once again against the applicant vide order dated 02.11.2012 and thus case of the applicant was not considered as he was not given vigilance clearance due to pendency of departmental proceeding.

4. The applicant has also filed a rejoinder wherein apart from contradicting the averments made in the written statement, it has been submitted that the decision taken by the respondents for initiating departmental proceeding, vide order dated 02.11.2012, has

never been communicated to the applicant, thus, same is liable to be set aside and also that after the year 2005, the respondents took almost five years to make up their mind to start proceeding which is not permissible.

5. We have heard Sh. V.K. Sharma, learned counsel for the applicant and Sh. Sanjay Goyal, learned counsel for the respondents.

6. Sh. V.K. Sharma, learned counsel for the applicant vehemently argued that action of the respondents in not promoting the applicant, despite there being nothing against him, is totally arbitrary, illegal and their action is liable to be declared as invalid. To substantiate his arguments, he further submitted that once the charge sheet was quashed by the competent court of law and affirmed by the Hon'ble High court and the respondents did not initiate departmental proceeding in view of the liberty granted by this court within a reasonable time and then have rejected his case solely on the ground that departmental proceedings were pending is illogical. It is also submitted that for the first time they have come up with the order dated 02.11.2012 in their written statement, which has never been communicated to the applicant whereby the authorities have appointed the Inquiry Officer and Presenting officer, which is nothing but colourable exercise of power by the respondents. Thus, the action of the respondents is liable to be set aside and the applicant may be promoted as Senior Tax Assistant and Inspector from the due date when his juniors have been so promoted. To buttress his submission, he placed reliance upon the judgment passed by the Hon'ble Supreme Court in case of State of Punjab & Ors. Vs. Chaman Lal Goyal, 1995 SCC (L & S) 541, to indicate that if there is unreasonable delay in the disciplinary proceedings employee is entitled to promotion.

7. Per contra, Sh. Sanjay Goyal, learned counsel for the respondents submitted that in terms of the liberty granted by this Court to start a fresh inquiry, the respondents have already initiated the inquiry vide order dated 01/02.11.2012. Due to pendency of the departmental proceeding, case of the applicant was not considered for further promotion, therefore, O.A may be dismissed.

8. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record.

9. The order of punishment, pursuant to the impugned charge sheet dated 14.02.2007, was set aside by this court in O.A No. 590/PB/2009 vide order dated 12.11.2010 and they were granted liberty to proceed a fresh enquiry, if they were so inclined. Above order was affirmed by Hon'ble High Court by dismissing the writ petition moved at the hands of the respondents, vide order dated 23.12.2011. Despite the dismissal of writ petition, though the respondents have come up with a plea that they have already decided to start the departmental proceeding vide letter dated 01/02.11.2012 (Annexure R-2) against the applicant but till date the respondents have failed to show any documentation as to what happened thereafter. Sh. Goyal, learned counsel for the respondents was also not in a position to rebut the submission advanced by the applicant that above letter was ever communicated to the applicant or that the respondents are continuing with the departmental proceeding against the applicant as there is a positive averment by the applicant that he was never called by Inquiry Officer in an inquiry emanating from the above charge sheet. Even the respondents have not produced any record to satisfy this court as to whether they are continuing with the departmental proceeding and they have recorded the statements of

witnesses etc. In absence of the counter by the respondents to the above, submission advanced by the applicant that this letter has not been forwarded to him till date, we are in agreement with the submission made by the learned counsel for the applicant that this impugned charge sheet cannot sustain in the eye of law and is being used merely to deprive the applicant of his valuable right of consideration for promotion. Accordingly, we are of the view that merely due to pendency of departmental proceeding against the applicant in the above charge sheet, the respondents cannot withhold the promotion of the applicant and they can pass the order of promotion which shall obviously be subject to the outcome of the departmental proceedings. Needful be done within a period three months from the date of receipt of a certified copy of the order. This view also finds support from the view taken in the case of Chaman Lal Goyal (supra). O.A is disposed in above terms.

10. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Dated: 17.12.2015

'jk'

FORMA ON 15/12/16

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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, SECTOR-17,
CHANDIGARH.

SUBJECT:- Particulars of orders challenged in the Hon'ble High COURT
OF PUNJAB AND Haryana Chandigarh.

PUC is a notice received from the Hon'ble High Court of Punjab and Haryana, Chandigarh in C.W.P.No. 11154/2017 title Commissioner of TOLWAT Versus CAT & Amy. filed against the CAT order dated 17/12/15 in O.A.No 60/1163/2014 passed by the Hon'ble Bench consisting of Hon'ble Mr. Sanjeev Krishan Member (J) and Hon'ble Mrs. Rajivant Sodhi Member (A).

CAT has been impleaded as a party simply because the order under challenge was passed by it. No relief has been claimed against the CAT. No action is, therefore, required to be taken by CAT. We may file it.

Submitted for order please.

4/16/17

Ph.Dw
4/18/2017
RECORDED IN CHARGE.

DEPUTY REGISTRAR

dyr
4/18/17

REGISTRAR

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4/18/17

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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OA 060/1163/2014
Dt. 12/12/2015 M/s. Sh. R.S.

CIVIL WRIT JURISDICTION

Dasti/W-11

CWP NO. 11154 OF 2017

THE COMMISSIONER OF INCOME-TAX-2,
CHANDIGARH

Petitioner(s)

versus

CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH AND ANOTHER

Respondent(s)

NOTICE OF MOTION re: stay

To

Respondent#1 CENTRAL ADMINISTRATIVE TRIBUNAL CHANDIGARH BENCH
THROUGH ITS REGISTRAR UT-CHANDIGARH Chandigarh

Whereas a petition under article 226/227 of the constitution of India, wherein you have been joined as respondent and of which a copy is enclosed/copy already has been sent to you with this Court's letter No.

/Writes, dated _____ has been presented to this court.

You have been informed that the said petition has been fixed for hearing on 08/08/2017 (Actual) and that if you wish to argue anything in reply to the petition, you may appear in this court on that date, and file your written statement 3 days before that day either in person or through advocates duly instructed.

Take notice that in default of your appearance on the date aforementioned the case shall be heard and decided in your absence.

Given under my hand and the seal of the court this 20-JUL-17.

BY ORDER OF THE HIGH COURT OF PUNJAB AND HARYANA

ASSISTANT REGISTRAR(Writs).

Note: In case hard copy of order is required please contact concerned judicial branch.

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