

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.808/2017

New Delhi, this the 29th day of August, 2017

Hon'ble Mr. V. Ajay Kumar, Member(J)
Hon'ble Ms. Nita Chowdhury, Member(A)

Raj Kumar Sapra, Tax Assistant (C),
Aged about 36 years,
S/o Shri Inder Pal Sapra,
R/o 249/A/2, DDA Colony, Phase-I,
Ashok Vihar, Delhi.

....Applicant

(By Advocate: Shri M.K. Bhardwaj)

Versus

Union of India & Ors.

1. The Secretary (Revenue),
Ministry of Finance,
North Block,
New Delhi.
2. The Chairperson,
Central Board of Direct Taxes,
North Block, New Delhi.
3. The Principal Chief Commissioner of Income Tax,
(CCA),
Delhi, CR Building,
I.P. Estate,
New Delhi-110002.

...Respondents

(By Advocate: Shri Gyanendra Singh)

ORDER (ORAL)

Mr. V. Ajay Kumar, Member (J)

Heard both sides.

2. The applicant, who is presently working as Tax Assistant in Delhi Region under the respondent No.3, has filed the instant OA seeking the following reliefs:-

- “(i) To declare the action of the respondents in not considering the applicant’s claim for promotion to the post of Inspector Income Tax in the scheduled DPC by counting past regular service as Tax Assistant as illegal, arbitrary and unconstitutional.
- (ii) To direct the respondents to consider and promote the applicant to the post of Inspectors Income Tax by counting his past service rendered in the old region as Tax Assistant with all consequential benefits from due date.
- (iii) To direct the respondents to extend the benefits of judgment dated 23.07.2015 in OA No.2531/2014 and consider the applicant’s claim for promotion with applicants in aforesaid OA.
- (iv) To allow the OA with exemplary costs on the respondents.
- (v) Any other or further relief which the Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

3. The applicant is aggrieved by the action of the respondents in not counting his past service rendered in Pune Region before his transfer to the present Region of Delhi for promotion to the post of Sr. Tax Assistant/Income Tax Inspector. It is submitted that the issue of counting the past service of an employee who was transferred to a new Region on Inter Commissionerate Transfer (ICT)

is already decided by various Benches of this Tribunal and upheld by Hon'ble High Courts, in favour of the applicant. The SLPs filed by the Department against the said decisions are still pending. The relevant part of the counter filed by the respondents in this regard, reads as under :-

"4.8-4.9 ...it is submitted that the Department has filed SLP CC(C) No.9643/2016 in the Hon'ble Supreme Court against the order of Hon'ble High Court of Delhi in WP(C) No.6368/2015 in the matter of Chet Ram Meena & Ors. and is in the process of filing Writ Petition in the Hon'ble High Court of Delhi against the orders of the Hon'ble CAT in the matters of Subodh Kumar & Ors. (OA No.2531/2014) and Manglalzom Gangte & Ors. (OA No.4547/2015)."

4. In ***Scientific Advisor to Raksha Mantri and another Vs. V.M. Joseph*** (1998) 5 SCC 305, it was held that :-

"Where an employee transferred from one Unit to another on compassionate ground and is placed at the bottom of the seniority list, the service rendered by him at the earlier place from where, he has been transferred being regular service has to be counted towards experience and eligibility for promotion."

5. Following the aforesaid decision, this Tribunal in OA No.2064/2014 (***Chet Ram Meena & Others Vs. Secretary, Ministry of Finance & Others***) by its judgment dated 15.10.2014, held as under :-

“On perusal of the above judgment, we are convinced that the settled position is not on inter-zonal transfers on their own request while the employees accept bottom seniority they do not forgo the earlier service rendered by them before such transfer. Such service should, therefore, be counted while considering their cases for promotion provided they are falling within the zone of consideration as per their position in the seniority list.”

6. It is seen that the respondents have complied with the orders of this Tribunal as confirmed by the concerned High Court in respect of **Chet Ram Meena & Others** (supra). It is also seen that certain identical OAs have been disposed of with similar directions, however, by making the same subject to result of the pending SLPs.

7. This Tribunal while issuing notice in this case to the respondents directed them to consider the case of the applicant provisionally for promotion to the post of Inspector (Income Tax), if he was otherwise eligible for the same, along with others in the DPC to be held on any future date and the result of the applicant would not be declared until further orders.

8. Learned counsel for respondents while not disputing the fact of passing of certain orders as referred by the applicant's counsel supporting their claim, and that the applicants in the instant OA are similarly placed like the applicants in **Chet Ram Meena** case (supra), however, submits that since the applicants while accepting

Inter Commissionerate Transfer (ICT) undertaken not to claim seniority in the new Region, they are not entitled for the relief claimed in the OA. The relevant submission in the counter is as under :-

“It is submitted that the applicant was considered for Inter Charge transfer from Pune Region to Delhi after due consideration of the letter issued by CBDT vide F.No.22020/76/89-Ad.VII dated 14.5.90 **(Annexure-R1)**. Some of the relevant paras of the letter are reproduced here:

- 2(c) “No request for inter charge transfer shall be entertained from a person (who may otherwise be eligible to make such a request under (b) above) unless he or she has put in at least three years of service in that grade.
- 2(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 inter-se-seniority is not regulated by date of joining.

5. A written undertaking to abide by the requisite terms and conditions should be obtained from the employees seeking inter-charge transfer in the enclosed proforma before the transfers are actually affected.”

It is also submitted that the applicant has submitted undertaking/declaration dated 10.11.2014 before his transfer to Delhi Region as well as after transfer on the date of joining in Delhi charge (27.06.16).”

9. It is also relevant that the respondents themselves vide Annexure/R1 order dated 03.08.2017 with regard to the implementation of identical orders in respect of Excise Department observed as under:-

“3. The CAT order was challenged in the Hon’ble High Court of Punjab and Haryana at Chandigarh by way of filing WP(C) No.25662/2012. The Hon’ble High Court vide order dated 21.01.2013 dismissed the Writ Petition. The order of the Hon’ble High Court dated 21.01.2013 was challenged in the Hon’ble Supreme Court by way of Special Leave Petition No.5408-5409/2014. The Hon’ble Supreme Court vide its order dated 23.02.2017 dismissed the SLP.

4. The matter has been examined in the Board in consultation with DOP&T. After dismissal of SLP, the matter has attained finality. It has, therefore, been decided with the approval of competent authority to implement CAT, Chandigarh Bench order dated 03.08.2012 in OA No.338/PB/2012 in respect of all concerned (petitioners and non petitioners) under Central Board of Excise & Customs.

5. You are requested to take further follow up action in the matter.”

10. In the circumstances, and for parity of reasons and in view of the aforesaid decisions of this Tribunal, as upheld by the concerned High Courts, the OA is allowed. Respondents are directed to take into account the applicant’s past service as Tax Assistant rendered in the region of his joining for the purposes of his eligibility for promotion to the post of Sr. Tax Assistant/Income Tax Inspector.

However, the consideration of the case of the applicant for promotion and the consequential benefits, if any, are subject to the result of the SLPs mentioned in aforesaid paras. The Respondents shall pass appropriate orders within sixty days from the date of receipt of a certified copy of this order. No costs.

(Nita Chowdhury)
Member (A)

(V. Ajay Kumar)
Member (J)

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