

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

**OA NO.1143/2016
MA NO.1146/2016**

Order reserved on 21.03.2017
Order pronounced on 27.03.2017

HON'BLE MR SHEKHAR AGARWAL, MEMBER (A)
HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)

1. Shri Arun Sheel Anand,
Aged about 35 years,
S/o Shri Bhagwan Singh,
R/o B-9/171, Bhajan Pura,
Delhi-110051.
(Working as Inspector in Income-tax
Department).
2. Shri Kumar Gaurav,
Aged about 37 years,
S/o Shri Dharam Bir,
R/o H.No.426, Jatav Mohalla,
Bijwasan Village,
New Delhi.
(Working as Inspector in Income-tax
Department)

...Applicants

(By Advocate: Shri S.K. Gupta)

VERSUS

1. Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
3. Pr. Chief Commissioner of
Income-tax (CCA),
Department of Revenue,

Ministry of Finance,
C.R. Building, I.P. Estate,
New Delhi.

...Respondents

(By Advocate: Shri Hanu Bhaskar)

:ORDER:

DR BRAHM AVTAR AGRAWAL, MEMBER (J):

MA No.1146/2016

The MA filed under rule 4(5)(a), CAT (Procedure) Rules 1987 stands allowed.

OA No.1143/2016

This is the second round of litigation by the two applicants, working as Income-tax Inspectors and craving their promotion as Income-tax Officers. They, along with two others, had first filed the OA No.3746/2015 seeking benefit of this Tribunal's decision dated 15.10.2014 in the OA No.2064/2014 [Chet Ram Meena & Ors. Vs. UOI & Ors.] (Annexure A-8), the WP(C) No.6368/2015 whereagainst was dismissed by the Hon'ble High Court of Delhi, vide its judgment dated 29.10.2015 (Annexure Rej-2). The said OA was disposed of by this Tribunal at the admission stage itself by its order dated 26.11.2015 (Annexure A-11) with the liberty to the applicants to make a representation to the respondents within one week and the direction to the respondents to decide the same within four weeks.

1.2 The respondent no.3's communication dated 28.12.2015

(Annexure A-1 colly) is the outcome, which reads as under:

"Kindly refer to your representation dt. 26th November 2015 duly forwarded by the O/o Pr. CIT Delhi-12, New Delhi received in this office on 27th November 2015 on the captioned subject.

After considering your representation along with the directions of the Hon'ble CAT dt. 26.11.2015, I have been directed to inform you that your request for giving the benefit of past service rendered before transfer to Delhi (Inter Charge Transfer) for the purposes of determining eligibility for promotion to the post of Income Tax is under consideration and would be disposed off after the outcome of SLP filed by the Department against the dismissal of WP No.6368/2015 in the case of Chet Ram Meena & Ors."

(sic)

1.3 Through the present OA, the applicants pray that the aforesaid communication (Annexure A-1 colly) be set aside and that the respondents be directed to consider the applicants for promotion to the post of Income-tax Officer through review DPC by extending to them the benefit of the decision in *Chet Ram Meena*.

2. In *Chet Ram Meena*, the question involved was as to whether, towards eligibility for promotion to the post of Income-tax Officer, an Income-tax Inspector was entitled to count his past service in the old region rendered before his request-transfer to the new region, and it was held that he was so entitled. After taking note of various precedents it was held that one is entitled to be considered for promotion after taking into account his past service rendered in the previous region despite his bottom seniority in the region of his request. On inter-region transfers

on their requests, 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 towards eligibility while considering their cases for promotion provided they are falling within the zone of consideration. While seniority is lost, the length of service is not.

3. We have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given our thoughtful consideration to the matter.

4. It has been contended by the learned counsel for the applicants that *Chet Ram Meena* has not only been followed in many other cases but also implemented by the respondents themselves, that the case of the applicants herein is squarely covered by *Chet Ram Meena*, that the respondents' SLP has not been even listed, that as of now the holding of the Tribunal and the Hon'ble High Court of Delhi in *Chet Ram Meena* shall govern the field until a different view is propounded by the Hon'ble Supreme Court, and that if a different view is later taken by the Hon'ble Supreme Court promotions granted by applying *Chet Ram Meena* may be reversed.

5.1 Per contra, the contention of the learned counsel for the respondents is that besides that their SLP in *Chet Ram Meena* is before the Hon'ble Supreme Court, the Hon'ble Supreme Court on

01.02.2016 in their another SLP [UOI & Ors. Vs. Ramesh Kumar Panwar] has stayed operation and implementation of the Hon'ble Rajasthan High Court's judgment dated 26.05.2015 in the DB CWP No.5148/2013 dealing with a similar situation, and that, therefore, this matter may be deferred until a decision is taken by the Hon'ble Supreme Court in their SLP in *Chet Ram Meena*.

5.2 Ramesh Kumar Panwar concerned promotion of Tax Assistants as Senior Tax Assistants and the Hon'ble Rajasthan High Court held a view similar to that in *Chet Ram Meena*.

6. We see substance in the submissions made on behalf of the applicants. *Chet Ram Meena* holds the field today. It has also been implemented by the respondents vis-à-vis the applicants therein, may be under the threat of contempt, as contended by the learned counsel for the respondents. The applicants herein are identically placed. They should today not be denied the benefit of *Chet Ram Meena*.

7. Further, the learned counsel for the applicants has also relied on a judgment of a Full Bench of this Tribunal (PB), i.e., the judgment dated 13.02.1991 in the OAs Nos.184, 273, 851 & 135/1990 (Ganga Ram & Ors. Vs. UOI & Ors.). It has been held therein that a non-speaking interim order of the Hon'ble Supreme Court staying operation of the impugned judgment is not binding under article 141 of the Constitution and the impugned judgment

remains effective; the only effect of the stay order is that the respondents are not bound to implement the same.

8. In the light of the above, we are of the view that the instant OA deserves to succeed. Accordingly, we hereby set aside the decision contained in the impugned communication (Annexure A-1 colly) and direct the respondents to hold review DPC for considering the applicants for promotion as Income-tax Officers by extending the benefit of *Chet Ram Meena* and, if found fit, grant them promotion with all consequential benefits. This shall be done within six weeks from the date of receipt of a copy of this Order. However, it is made clear that such promotions, if any, shall be subject to the final outcome of the SLP in *Chet Ram Meena*.

9. The OA is allowed accordingly. No order as to costs.

(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)

(SHEKHAR AGARWAL)
MEMBER (A)

/JK/