

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA No.425/2008
M.A. No. 1844/2017
M.A. No.2059/2016**

Reserved On:04.10.2018

Pronounced On:09.10.2018

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. A.K. Bishnoi, Member (A)**

1. Mr. Gali Chand Sharma
(Retd. Senior Hindi Translator)
B-2, Civil Lines, Palwal,
Haryana, Presently in Delhi
Age: 61 years.
2. Mr. Arvind Kumar
(Senior Hindi Translator)
Directorate General of
Income Tax (Inv.)
2nd Floor ARA Centre,
E-2 Jhandewalan Extension, New Delhi
Age: 46 years. **Deleted vide
Order dated 20.11.2017 in
MA No.4245/2017**
...Applicants

(By Advocates: Ms. Jasvinder Kaur with Shri Soumya Swaroop)

Versus

1. Union of India,
Through Secretary to the Govt. of India,
Ministry of Finance,
Shastri Bhawan,
New Delhi 110001.
2. Chairman,
Central Board of Direct Taxes,
North Block,
Delhi 110001.
3. The Principal Chief Commissioner of Income
Tax (Admin)
Delhi
Central Revenue Building,
Indra Prastha Estate,
New Delhi 110002.

4. Shri Sanjay Kaushish
(Senior Hindi Translator)
Central Revenue Building
Indra Prastha Estate,
New Delhi-110002.

5. Mrs. Bhavana Krishna
(Senior Hindi Translator)
Central Revenue Building
Indra Prastha Estate,
New Delhi-110002.

6. Shri Bimal Raj
(Senior Hindi Translator)
Central Revenue Building
Indra Prastha Estate,
New Delhi-110002.

7. Shri Surender Kumar Rai
(Senior Hindi Translator)
Central Revenue Building
Indra Prastha Estate,
New Delhi-110002. ...Respondents

(By Advocate: Shri Vikrant Narayan Vasudeva for Respondents No.1 to 3
Shri K.K. Makhija for Respondents No.4 to 7)

ORDER

By Hon'ble Mr. V. Ajay Kumar, Member (J)

Originally the instant OA No.425/2008 was filed by 2 applicants, namely, Shri Gali Chand Sharma and Shri Arvind Kumar, both were working as Junior Hindi Translators under the 3rd respondent-Principal Chief Commissioner of Income Tax (Admin), Delhi, seeking the following reliefs:-

“8.1 That this Hon'ble Tribunal may be graciously pleased to direct the respondents to absorb the applicants from the date when they completed three years of service.

8.2 This Hon'ble Tribunal may be further pleased to allow this application and direct the respondents to immediately withdraw the existing seniority list and issue

a fresh seniority list removing the anomaly. Thereby declaring the present applicants at serial No.1 and 2.

8.3 This Hon'ble Tribunal may be pleased to pass any such other or further order as this Hon'ble Tribunal may deem fit and proper in the interest of justice".

2. By order dated 29.02.2008, this Tribunal dismissed the instant OA in limine.

3. Thereafter, the applicants filed OA No.2803/2008 which was dismissed as withdrawn on 24.12.2008. Then the applicants challenged the order dated 29.02.2008 in OA No.425/2008, before the Hon'ble High Court of Delhi, by filing the Writ Petition (C) No.423/2009. The said W.P. (C) was disposed of by order dated 18.09.2014, as under:-

"7. Being an arguable case, we are of the opinion that the CAT ought not to have rejected the application in the manner that it did. There was, of course, weight in its reason that the parties likely to be affected were not impleaded before it. However, the CAT could have easily remedied it by providing opportunity to the petitioners to amend the application itself. That the petitioners - in the immediately following proceedings sought to implead other parties in another application, and later were constrained to withdraw it, in our view, cannot be a barrier for their maintaining the present petition. The issue raised by the petitioners has not received consideration on merits by any forum.

8. In these circumstances, the matter is remitted to the CAT, which shall now proceed to decide O.A. No.425/2008 on the merits after ensuring that the parties likely to be affected are duly impleaded by the petitioners. The parties are directed to be present before the CAT on 13.10.2014, which is requested to decide the application expeditiously on its own merits within six weeks.

9. The writ petition is disposed of in the above terms".

4. Accordingly, the instant OA is re-opened for fresh hearing and for impleading all the necessary parties. Consequently, the private respondents No.4 to 7 were impleaded in the OA.

5. The applicants in the OA filed MA No.1844/2017 seeking amendment of the prayer of the OA, as under:-

“(1) May quash and set aside the impugned O/O dated 20.12.2007 whereby the respondents have rejected the objections of the applicants and have accorded wrong seniority to the applicants.

(2) May direct the respondents to assign correct seniority on the basis of date of deputation as the applicants were appointed as Junior Hindi Translator on deputation as per recruitment rules.

(3) May direct the respondents to antedate the promotion of applicants as Sr. Hindi Translator to the date on which the vacancy for the post of Sr. Hindi Translator accrued after the date of absorption, i.e., 19.02.2001 OR in alternative after completion of 5 years regular service as Junior Hindi Translator as per RRs for the post of Sr. Hindi Translator.

(4) Direct the respondents to pay the arrears of pay and allowances in view of relief sought at serial No.(2) to the applicants.

(5) May pass such other further orders/directions deem fit and proper in the facts of the case”.

6. Thereafter, the 2nd applicant in the O.A., i.e., Shri Arvind Kumar, filed MA No.4245/2017 seeking to withdraw from the OA and the same was allowed by order dated 20.11.2017.

7. The dispute in the OA is about the seniority between the sole applicant, vis-à-vis the private respondents No.4 to 7 in the category of Junior Hindi Translators in the respondent-Department of Income Tax.

8. As per the Central Board of Direct Taxes (Attached and Subordinate Offices) (Junior Hindi Translator) Recruitment Rules, 1991, issued under the proviso to Article 309 of the Constitution of India, the posts of Junior Hindi Translators shall be recruited by

transfer on deputation/transfer, failing which by direct recruitment. In pursuance of the said rules, the official respondents have called for applications for filling up the vacancies of Junior Hindi Translator on deputation basis in the pay scale of Rs.1400-2300. The applicant, who was working as Postal Assistant (Clerk) in the pay scale of Rs.1200-2400 in the Department of Posts applied in response to the said advertisement and accordingly, he was appointed as Junior Hindi Translator, on deputation in the pay scale of Rs.4500-7000, with effect from 01.01.1997, vide order dated 01.12.1997. The applicant, who was originally appointed at Udaipur, later got Inter Charge Transfer to Delhi, and joined as such, on 06.09.1999, at Delhi. Thereafter, the applicant was absorbed on the post of Junior Hindi Translator, with immediate effect, vide order dated 31.08.2001.

9. The private respondents No.4 and 5, who were already working in the respondent-Income Tax Department, though in the lower category, but on being qualified for appointment as Junior Hindi Translators were appointed as such, by transfer on 06.02.2001 and 05.02.2001 respectively. Similarly, the respondent No.6, who was working in the Ministry of Defence was also appointed as Junior Hindi Translator, on deputation basis and accordingly joined at Delhi Charge, on 20.02.1998. Respondent No.7 was also appointed, as Junior Hindi Translator, by way of deputation.

10. The respondents after considering the representations made by the concerned, with regard to the proposed seniority list of Junior Hindi Translators, issued Office Memorandum dated 20.12.2007. In the said Office Memorandum dated 20.12.2007, the names of the applicant and three others, i.e., Arvind Kumar, who originally filed the OA along with the applicant and later withdrawn from the OA and private **respondents** No.6 and 7 Bimal Raj and Surender Kumar Rai were shown and it was observed as under:-

“In case of all the four officials who were taken first on deputation from outside the Department and absorbed later on, were not holding the equivalent grade on regular basis in their parent organizations. As such, their seniority could be counted only from the date of their absorption. The contention of the officials that those who were already on deputation should be considered for absorption prior to those who joined on deputation after these candidates is valid. Therefore, Shri Gail Chand Sharma and Shri Arvind Kumar should have been absorbed at the most on 19th February, 2001 i.e., the date on which the first deputationist (Shri Bimal Raj) was absorbed. Accordingly, the seniority of these two officials would also be reckoned from 19th February, 2001.

3. The individual particulars would be corrected as per records.

This disposes off all the representations on the subject matter. This issues with the approval of Chief Commissioner of Income Tax, Delhi, New Delhi. ”

11. To a specific query put to all the counsels, none of them was able to state or show any other order other than the Office Memorandum dated 20.12.2007 with regard to the date of absorption of the applicant as 19.02.2001, as originally the absorption order dated 13.08.2001 of the applicant states his date of absorption was with immediate effect, i.e., with effect from 31.08.2001. As a result, the respective dates of absorption, as

Junior Hindi Translators of the parties, i.e. the applicant and Shri Arvind Kumar, who was withdrawn from the OA, and the private respondents No.4 to 6 are as under:-

S1.No.	Name	Date of absorption
1.	Sanjay Kaushish (Respondent No.4)	01.02.2001
2.	Bhavna Krishan (Respondent No.5)	01.02.2001
3.	Arvind Kumar (Applicant No.2)	19.02.2001
4.	Bimal Raj (Respondent No.6)	19.02.2001
5.	Gail Chand Sharma (Applicant No.1)	19.02.2001

12. Heard Ms. Jasvinder Kaur with Shri Soumya Swaroop, learned counsel for the applicant, Dr. Vikrant Narayana Vasudeva with Shri Sanjeev Gupta, learned counsel for respondents No.1 to 3 and Shri K.K. Makhija, learned counsel for respondents No.4 to 7 and perused the pleadings on record.

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13. In the circumstances and in the interest of justice, the MA filed for impleadment is allowed.

14. The applicant either through original OA relief or through the amended OA relief, not challenged the action of the official respondents, in absorbing the private respondents from their respective dates of absorption. The fixation of seniority of absorptionists, shall be based on their respective dates of absorption. Admittedly, the date of absorption of the private respondents other than the private respondent No.6 is prior to the

date of absorption of the applicant. Hence, the challenge made by the applicant with regard to the seniority of the private respondents No.4 and 5 is liable to be dismissed and accordingly we do so.

15. However, the date of absorption of the private respondent No.6 as well as the applicant is the same, i.e., both of them were absorbed with effect from 19.02.2001. However, the applicant was appointed on deputation as Junior Hindi Translator on 01.09.1997 at Udaipur and whereas the private respondent No.6 was appointed, on deputation, on 20.02.1998, i.e., subsequent to the joining of the applicant. Hence, Ms. Jasvinder Kaur, learned counsel appearing for the applicant submits that the date of absorption of both the applicant and the private respondent No.6, being the same, i.e., on 19.02.2001 and since the applicant joined, on deputation, as Junior Hindi Translator prior to the private respondent No.6, he should be placed above private respondent No.6.

16. On the other hand, Dr. Vikrant Narayan Vasudeva and Shri K.K. Makhija, learned counsel appearing for the respondents while not disputing the fact that both the applicant and private respondent No.6 were absorbed on the same date, i.e., 19.02.2001, however, submit that since the private respondent No.6 joined on deputation on 20.02.1998, at Delhi and whereas the applicant, who was originally appointed on deputation on 01.09.1997 at Udaipur, later got transferred to Delhi Charge, on his own request and

accordingly joined at Delhi on 06.09.1999, and as a result lost his original seniority and thereby placing him below the private respondent No.6 is in accordance with the rules.

17. When a specific query was put to both the respondents' counsel, that whether an employee who is on deputation also loses his seniority if he was transferred from one charge to another charge, before the date of his absorption, they failed to give any satisfactory answer. However, they submit that in respect of Shri Arvind Kumar, who initially filed the OA as applicant No.2, was placed above the private respondent No.6, as he joined at Delhi even prior to the date of joining of the private respondent No.6, though their date of absorption is one and the same, i.e., 19.02.2001 and the same analogy is followed, in respect of the applicant also.

18. It is not in dispute that the applicant, Shri Arvind Kumar (applicant No.2, who withdrew from the OA) and the private respondent No.6 were absorbed on the same date, i.e., with effect from 19.02.2001 and the said Shri Arvind Kumar was placed above the private respondent No.6 as he had joined on deputation at Delhi Charge prior to the private respondent No.6 and following the same analogy, the official respondents placed the private respondent No.6 above the applicant. In these peculiar circumstances, we do not find any illegality in the action of the respondents in fixing the seniority among the persons who were absorbed on the same date.

19. In the circumstances and for the aforesaid reasons, the OA is dismissed being devoid of any merits. No costs.

20. MA No.2059/2016 was filed by private respondents No.4 & 5 under Section 193 of IPC, is also dismissed in the circumstances.

(A.K. Bishnoi)
Member(A)

(V. Ajay Kumar)
Member (J)

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