

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

**CP-789/2017 in  
OA-3460/2015  
MA-792/2018**

**Reserved on : 23.05.2018.**

**Pronounced on : 30.05.2018.**

**Hon'ble Mrs. Jasmine Ahmed, Member (J)  
Hon'ble Ms. Praveen Mahajan, Member (A)**

Sh. Rajeshwar Prasad,  
56 years  
S/o Sh. Rishi Deo,  
Superintendent,  
Central Excise & Service Tax,  
Central Excise & Service Tax Commissioner,  
Hapur, UP.  
R/o D-1/304, Vibhav Khand, Gomti Nagar-II,  
Lucknow, UP.

.... Petitioner

(through Sh. Gaya Prasad, Advocate)

Versus

Sh. Hasmukh Adhia,  
Secretary (Finance),  
Ministry of Finance,  
Deptt. of Revenue,  
North Block,  
New Delhi-110001.

.... Respondent

(through Dr. Ch. Shamshudin Khan, Advocate)

**O R D E R**

**Ms. Praveen Mahajan, Member (A)**

The applicant has filed the current Contempt Petition for non-implementation of the order passed by CAT, Principal Bench in OA-

3460/2015 on 18.07.2017. The operative part of the said order reads as under:-

"2. In the circumstances, we dispose of this MA and OA by permitting the applicant to make an appropriate representation to the respondents bringing the decision of the Hon'ble Supreme Court and other facts of his case to the notice of the respondents within two weeks from the date of receipt of a certified copy of this order and on receipt of the said representation from the applicant, the respondents shall consider the same and pass appropriate reasoned and speaking orders by duly keeping in view the orders of Hon'ble Apex Court in SLP No. 5408-5409/2014 dated 23.02.2017 within 90 days therefrom, in accordance with law. No costs."

2. In pursuance of the aforesaid order, the applicant filed a detailed representation to the respondents on 07.08.2017 (Annexure C-2). Subsequently, a compliance affidavit (of the Tribunal's order dated 18.07.2017) has been filed by the respondents on 06.04.2018. They submit that the deponent has passed a reasoned and speaking order on 03.01.2018 by considering each and every point raised by the applicant in his representation dated 07.08.2017 and have thus complied with the directions of the Tribunal, as envisaged in their order dated 18.07.2017.

3. Before commenting on the same, we briefly recapitulate the facts of the case. The applicant (in OA-3460/2015) Sh. Rajeshwar Prasad joined the Department of Customs and Excise as Inspector on 25.07.1985. On inter Commissionerate Transfer, he was transferred to Allahabad Commissionerate on 30.06.1991 and promoted to the post of Superintendent on 15.10.2007. On his inter Commissionerate

Transfer, he was placed below all the officers in the zone to which he had sought his transfer. At the time of his transfer, it was made clear that the requestee (applicant) seeking inter Commissionerate transfer will be placed junior in the seniority list of Inspectors of the zone to which he is being transferred. After his request was acceded to and the applicant joined the allotted Commissionerate, he requested to retain his original seniority and approached the Tribunal (in the earlier O.A.), in the context of which, the order dated 18.07.2017 was issued.

4. After receiving the representation of the applicant, the respondents have issued a detailed order dated 03.01.2018. We have carefully perused the same. The Competent Authority i.e. Chief Commissioner, CGST & CX, Lucknow Zone, Lucknow has examined and discussed the issue extensively. Before concluding, he has cited the decision of the Apex Court in the case of **Renu Malik Vs. UOI & Anr.**, AIR 1994 SC 1152, which stipulates that:-

“10. We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/tier in the former collectorate for the purpose of seniority in the new charge. The later part of that para cannot be read differently. The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in 2 years' service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous collectorate is taken away for the purpose of counting her seniority in the new charge but that has

no relevance for judging her eligibility for promotion under Rule 4 which is a statutory rule. The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness.

9.1 It is notable in this judgment of the Hon'ble Supreme Court that the Court insisted on considering the previous service for ushering the officer in the promotion zone and not for re-fixing his seniority. Thus the Departmental instruction dated 20.05.1980 were vetted by the Hon'ble Supreme Court in its judgment. In fact, same instructions were ruling when the subject officer (Shri Rajeshwar Prasad) was transferred, on his own application, from Indore to Allahabad Commissionerate in 1991."

He has averred that the relevant benefit has been granted to the applicant by considering his length of service, (in the parent Commissionerate i.e. Indore) to put him in the zone of consideration for promotion in Allahabad Commissionerate. This contention, the respondents have painstakingly explained, date wise in para-6.1 of the order dated 03.01.2018.

5. During the course of hearing, learned counsel for the applicant Sh. Gaya Prasad submitted that the respondents have calculated the seniority of the applicant wrongly and denied him the benefit of the service rendered by him in Indore Commissionerate. This contention of the learned counsel of the applicant is belied by the details mentioned at para-6.1 of the speaking order wherein date wise corollary of events has been laboriously gone into. It is stated therein that the applicant (Sh. Rajeshwar Prasad) had joined the department on 25.07.1985 and had become eligible for promotion

to the post of Superintendent on 25.07.1993 on the basis of his (continued) service in his parent Commissionerate (Indore). This benefit of his previous service was made available to him and accordingly, he was put in the zone of consideration for promotion by two consecutive DPCs one held in July, 2002 and the second in 2007-08. This culminated in his getting the promotion as Superintendent on 15.10.2007.

6. In the Tribunal's order dated 18.07.2017, the directions were issued for the respondents to pass appropriate reasoned and speaking order by keeping in view the orders of the Hon'ble Apex Court in SLP No. 5408-5409/2014 dated 23.02.2017, which is precisely what has been done by the respondents. In view of the aforesaid, we are satisfied that the compliance of the Tribunal's order dated 18.07.2017 in OA-3460/2015 has been carried out by the respondents in true letter and spirit. As such, Contempt Petition is liable to be dismissed. Ordered accordingly. Notice issued to the respondent is discharged. No costs.

**(Praveen Mahajan)**  
**Member (A)**

**(Jasmine Ahmed)**  
**Member (J)**

/Vinita/