

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CHANDIGARH BENCH**

...

**ORIGINAL APPLICATION NO. 060/01505/2017**

**Chandigarh, this the 28<sup>th</sup> day of May, 2018**

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &  
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

1. Gurpal Singh, aged 36 years, son of Shri. Malkit Singh, resident of H.No. 4756, Block-N Darshan Vihar Society, Sector 68, SAS Nagar, Mohali, presently working as Income Tax Inspector, in the office of the Director General of Income Tax (Inv.), CR Building, Sector-17E, Chandigarh.
2. Sukhwinder Kaur, aged 14 years, wife of Sh. Jagdeep Singh Sohi, resident of House No.15, Street No.2, Balaji Nagar, Near Chand Di Dairy, Partap Singh wala, Ludhiana, working as Income Tax Inspector, Office of Income Tax Officer (Intelligence & Criminal Investigation) Opp. BVM School, 3-Floor, Kitchlu Nagar, Ludhiana.
3. Sundeep Singh, aged 33 years, son of Sh. Maan Singh, resident of House No.135, Ajit Enclave, Near Aujla Estate, Airport Road, Amritsar, presently posted as Income Tax Inspector, Office of Assistant Commissioner of Income Tax, Circle-II, First Floor, Aayakar Bhawan, Rishi Nagar, Ludhiana.
4. Aman Singla, aged 31 years, son of Sh. Suresh Kumar, resident of H.No.2223-C, Sector-63, Chandigarh, posted as Income Tax Inspector Office of Commissioner of Income Tax (ITAT)-I, Aayakar Bhawan, Sector-17E, Chandigarh.
5. Amit khattar, aged 31 years, son of Chander parkash khattar, resident of H.No.1252, Sector-17, HUDA, Panipat, posted as Income tax Inspector Office of Deputy Director of Income Tax (investigation) SCF No.44, Sector-11/12, HUDA Panipat.
6. Digvijay Singh, aged 31 years, son of Shri. Fakir Chand, resident of H.No.937/25, Chynot Colony, Rohtak, as Income tax Inspector Office of Inspector Tax Officer, Ward No.5, Ground Floor, Aaykar Bhawan, Opp. Mansarovar Park, Rohtak.
7. Balwinder Singh, aged 32 years, son of Shri. Surjit Singh, resident of VPO Bhucher Kalan, Tehsil and District Tarntaran, posted as Income tax Inspector, Office of ITO Exemption Ward, Jalandhar, New Wing, CR Building, Opp. Skylark Hotel, Jalandhar.
8. Mukesh Kumar, aged 28 years, son of Shr. Vijay Kumar, resident of H.No.1247, Sector-7D, Faridabad, posted as Income tax Inspector Office of Deputy Director, Income Tax (investigation)-I, Faridabad, First Floor, New CGO Complex NH-IV, NIT, Faridabad.
9. Abhishek Ahlawat, aged 29 years, son of Shri Kadam Singh, resident of H.No.888 Sector-1 Rohtak posted as Income tax

Inspector, ITO Ward No.4, Aaykar Bhawan, Opp Mansarovar Park, Rohtak.

10. Neha, aged 28 years, daughter of Shri Ram Kishan, resident of H.No.1429/2 Guru Ram Dass Nagar, Near Nestle Moga, posted as Income Tax Inspector, office of Income Tax Officer, Ward No.6(3), First Floor, Aaykar Bhawan, Rishi Nagar, Ludhiana.
11. Sandeep Chahal, aged 30 years,, son of Shri Shelender Singh, resident of H.No.2922, Sector 11, Urban Estate, Jind, posted as Income tax Inspector, o/o Assistant Director of Income Tax (investigation), Rohtak.
12. Vikas Kumar aged 40 years, s/o Sh. Tarsem Lal, r/o H.No.136, Gokul Avenue, Majitha Road, Amritsar posted as Income tax Inspector, o/o Income Tax Office, Ward-5(1), Amritsar.

(All Group-C Staff of Income Tax Department)

....APPLICANTS

(Argued by: Shri G.S. Bal, Sr. Advocate with Ms. L.K. Brar, Advocate )

### **VERSUS**

1. Union of India through Secretary to Govt. of India, Department of Revenue, North Block, New Delhi.
2. Secretary to Government of India, Department of Personnel and Training, Shahjahan Road, New Delhi.
3. Chairman, Central Board of Direct Taxes, North Block, New Delhi.
4. Principal Chief Commissioner of Income Tax, North West Region, Aaykar Bhawan, Sector-17E, Chandigarh.

....RESPONDENTS

(By Advocate: Shri K.K. Thakur )

### **ORDER (Oral)**

**SANJEEV KAUSHIK, MEMBER (J)**

Heard.

2. The learned counsel for the parties are in agreement that the issue involved in the instant Original Application (O.A.) has already been set at rest by this Bench in O.A. No. 060/00887/2017-

**Guneet Singh Sodhi Vs. Union of India & Ors.** decided on

4.4.2018, therefore, instant O.A. may be disposed of in the same terms.

3. We have gone through the pleadings available on record and the decision rendered in the case of Guneet Singh Sodhi (supra), and find that the issue involved in the instant O.A. is squarely covered by the decision rendered in the case aforementioned. The relevant paras 16-27 thereof are reproduced hereunder for ready reference:-

"16. The solitary issue which came up for consideration at the hands of the applicants is whether an employee whose seniority is determined region-wise can claim seniority of his/her previous region/charge on being request transfer to another region or not?

Or

Whether on ICT an employee will get bottom seniority in new region in terms of circular dated 14.5.1990 or will get benefit of previous service in his parent region?

17. Before we dwell over the issue raised as noticed in the preceding paragraph, we would like to take up preliminary objections raised by the respondents. First of all, we will take up the issue of non-joinder of necessary of parties. As noticed, the applicants have not impleaded the persons who will be affected in the eventuality of petition be accepted as party respondents, thus their valuable right to defend the plea raised against them in petition has been taken away. Therefore, we are of the view that the present petition deserve to be dismissed on this ground, but considering the facts that some of them have been impleaded as party respondents, therefore we are not inclined to dismiss petition on this ground as they have been heard.

18. Second objection taken by the respondents is of principle of estoppel. Admittedly, the applicants applied for ICT in terms of circular dated 14.5.1990. While accepting their request for ICT, the competent authority had specifically incorporated conditions in their order consonance with circular dated 14.5.1990 that they will lose seniority and be given bottom seniority in the new region. The employees concerned having accepted the benefit could not be permitted to approbate and reprobate nor can they be permitted to resile from their earlier stand. Their plea is hit by principle of estoppel. Estoppel is a legal principle that precludes a person from alleging facts that are contrary to his previous claims or actions. In other words, estoppel prevents someone from arguing something contrary to a claim made or act performed by that person previously. Thus, petition deserves to be dismissed on this ground only.

19. Coming back to the main issue, as noticed above, are not in dispute. The only issue, as noticed above, whether the

applicants are to be governed by circular dated 14.5.1990 issued by CBDT or are to be given seniority in accordance with OM dated 11.11.2010. Before we develop the issue raised in the present OA, we would like to note that it is settled proposition of law that administrative instructions/ circulars/orders/guidelines issued by the CBDT are binding upon the department. This has been so held in para 11 of the judgment passed in the case of Murlidhara Menon(supra). Para 11 of the judgment deals with the issue, which reads as under:-

"11. Respondents did not have any legal right to be transferred from one charge to another. Indisputably, the seniority of the LDCs and UDCs are maintained chargewise. Vacancies in the posts of UDCs are filled up

from two sources, namely, by direct recruitment and promotion. As the Service Rules provide for two different sources of recruitment and vacancies could be identified on the basis thereof, the CBDT, having a supervisory jurisdiction, could issue circulars from time to time. It has not been disputed that the said circular letters are binding on all the authorities of the department. The circular letter dated 14.5.1990 clearly provides for imputation of certain conditions laid down therein."

Similar view has been expressed by Full Bench of the jurisdictional High Court in 324 I.T.R. Page 115 ; **Union of India & Another** versus **Azadi Bachao Andolan & Another** ( 2009(2) Supreme Court Cases Page 1), therefore, it can safely be recorded that any instructions issued by CBDT are binding in nature on the department.

20. It is equally settled that if the rules are silent, then the Government can issue instructions for filling up the lacuna which may not be contrary to the rule formation. In the instant case, there is nor rule which govern ICT, therefore, CBDT issued instructions visualizing the problem which will arise lateron. Therefore, these instructions cannot be said contrary to the rule formation.

21. The post of Inspector is governed by the rules framed under Article 309 of the Constitution of India known as Income-tax Department (Inspector) Recruitment Rules, 1969, whereas as per Appendix, 33.13% posts are to be filled up by direct recruitment and remaining posts are to be filled up by way of promotion. Their seniority are maintained region/charge wise. It is not in dispute that the applicants are not originally allocated to NWR charge when they were offered appointment as a result of direct appointment. After joining their respective region/charge, they applied for ICT in terms of circular dated 14.5.1990 to North West region. While accepting their request for ICT, the competent authority while passing order has specifically indicated conditions which are in consonance with CBDT circular that they will lose seniority in the new region and will be given bottom seniority. Not only this, they will forfeit all claims for promotion/confirmation/regularization in the old region. Having accepted those conditions, the applicants have joined the new NWR charge. One such order dated 2.7.2011 in case of Shri Vijay Choudhary dated 2.7.2011 is annexed as Annexure A-3. For better



appreciation, condition no.1 & 2 mentioned in the order of ICT dated 22.7.2011 reads as under :-

"i. The services rendered by him in the Chennai charge will not be counted in the NWR charge for the purposed of seniority. He will be placed at the bottom of the list of all the Inspectors in the new charge. His seniority in the NWR charge will start from the date of his reporting for duty in the NWR charge.

ii. He will forfeit all claims for promotion/confirmation/regularization in the old charge. He will be eligible for promotion/confirmation/regularization in the new charge in accordance with the seniority allotted to him on transfer".

Reading of the above extracted part makes it abundantly clear that it was made viral in the order dated 22.7.2011 that on ICT, they will lose seniority and be placed at the bottom of the seniority in the new region.

22. Since the star argument of the parties revolve around CBDT circular dated 14.5.1990, thus, it will be useful to reproduce the same for better appreciation :-

" Sub.: Transfer of Non-gazetted staff from one charge to another charge under the Central Board of Direct taxes – delegation of powers to Heads of the Department.

I am directed to refer to Board's letter F.No.A-22020/37/86-Ad.VII dated 30.6.1986 regarding transfer of non-gazetted staff from one charge to another on compassionate grounds.

2. The instructions contained in the above mentioned letter have been reconsidered consequent on the recent changes in the concept of confirmation and lien. As a result of such reconsideration, it has been decided that requests for interchange transfer of non gazetted staff on really compassionate grounds may herein after be considered by the Cadre Controlling Authorities on merits and transfers, where considered necessary, may be effected subject to the observance of the following conditions:-

- (a) No request for inter-charge transfer shall be entertained in respect of posts, recruitment to which is made 100% by promotion ( e.g. Tax Assistants, Head Clerk, Supervisors, Gr.I and II, Stenographers Gr.II and I etc.).
- (b) Requests for transfer on compassionate grounds shall be entertained only in respect of posts, recruitment to which is made either by direct recruitment or partly through direct recruitment and partly through promotion.
- (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;
- (d) A person who seeks transfer, should apply to the head of the department, chief commissioner director general under whom he is working, who will, on being satisfied, take up the matter with his head of the department in the charge to which the employee seeks transfer. The latter head of the department will examine the request on merits and pass necessary orders for absorption of the person seeking transfer. Such request shall be considered and

conceded only against a clear vacancy. His decision in the matter shall be final. No request for re-transfer shall be entertained under any circumstances

- (e) The direct recruits coming on transfers will be shown against direct recruitment quota and promotees against the promotion quota.
- (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.**
- (g) On transfer, the transferee will forfeit all claims for promotion/confirmation in the old charge. He/she will be eligible for promotion/confirmation in the new charge in accordance with the seniority allotted to him on transfer.
- (h) As far as possible, efforts should be made to retain husband and wife at the same station.
- (i) The transferee will not be entitled to any joining time and transfer travelling allowance.

3. Heads of the department shall exercise the powers delegated to them in the matter of effecting inter-charge transfers on compassionate grounds in accordance with the above terms and conditions. If, in any case, relaxation of these terms and conditions become necessary, prior approval of the Board should invariably be obtained.

4. The powers delegated to the Heads of the Department in the matter of inter-charge transfer can be exercised only in respect of employees of the Income-tax department and not in respect of transfer of employees of any other office/department/Ministry.

5. A written undertaking to abide by the requisite terms and conditions may be obtained from the employee seeking transfer in the annexed proforma before the transfers are actually effected.

6. These instructions take effect from the date of issue and in supersession of earlier instructions issued vide File No.A-22020/37/86-Ad.VII dated 30.6.86".

Perusal of clause 2(f) of the circular dated 14.5.1990 makes it clear, that on ICT, an employee has to lose seniority, then it does not lie in the mouth of the applicant to raise this plea at this juncture after having accepted the ICT. Thus, the applicants are estopped from challenging the clause. Thus, their argument are hit by the principle of estoppel. The arguments raised on behalf of the learned counsel for the applicants that this circular loses its existence after issuance of OM dated 11.11.2010 (Annexure A-10) cannot be accepted because the circular dated 14.5.1990 has been issued by CBDT under which the applicants are directly working which has binding effect and still hold the field as they are following the same and have issued the clarification on 4.1.2018 clarifying condition no.2( c) of the circular dated 14.5.1990 where earlier condition was that no request for ICT shall be entertained for 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. By the latest clarification dated 4.1.2018, this condition has been relaxed and five clauses have

been included wherein requirement of three years of service has been waived off. Thus, the argument raised at the hands of the applicants that the circular dated 14.5.1990 loses its sanctity cannot be accepted. Thus, we do not find any reason to interfere with the impugned order. We also find support from the order of the Principal Bench in the case of Kanika Patwal(supra) which is also based upon the judgment passed by the Allahabad High Court in the case of Rajeev Mohan (supra) where the similar controversy was put to rest by holding that the ICT are to be governed by clause 2(f) of the circular dated 14.5.1990.

23. The arguments raised by the learned counsel for the applicants that the circular dated 14.5.1990 loses its existence after issuance of OM dated 11.11.2010 cannot be accepted because the circular dated 14.5.1990 has been issued by CBDT, under whom the applicants are directly working whereas DoPT order is general in nature appealable to all the departments under the Government of India. It is settled proposition of law that if a specific instructions/ circular has been issued by the concerned department, then the general will not over-ride the specific circular. The law of the land that special rule override general rule/policy as per the principle of "Generalibus specialia derogant" i.e. (special things derogate from general things). Reference in this regard is in the case of **S.C.Jain versus State of Haryana** (1985(4) S.C.C. Page 6545); **Chandra Prakash Tiwari & Ors. vs. Shakuntala Shukla & Ors.** (2002(6) S.C.C. Page 127); **D.R.Yadav versus R.K.Satija & Ors.** (2003(7) S.C.C. Page 110). Recently, in the case of State of Karnataka & Ors. versus Shankar Baburao Kangralkar & Another (2018(1) A.I. S.L.J. Page 111) in para 11, the Hon'ble Apex Court has held as under :-

"11. Recently, in Independent Thought v. Union of India (2017) 10 SCC 800, we have discussed the primacy given to and the application of a special law as against a general law from paragraph 95 onwards of the Report. More recently in Atma Ram Properties Pvt. Ltd. Vs. The Oriental Insurance Co. Ltd., 2017 SCC OnLine SC 1424, a reference was made to the following passage from St. Stephen's College v. University of Delhi, (1992) 1 SCC 558, wherein it was held:-

"140....The golden rule of interpretation is that words should be read in the ordinary, natural and grammatical meaning and the principle of harmonious construction merely applies the rule that where there is a general provision of law dealing with a subject, and a special provision dealing with the same subject, the special prevails over the general. If it is not constructed in that way the result would be that the special provision would be wholly defeated".

1. Clearly therefore, it is well settled that if a special provision is made on a certain matter, that matter is excluded from the general provision".

Even the circular dated 14.5.1990 has further been clarified by CBDT by issuing circular in the year 2016 and now by circular dated 4.1.2018 wherein they have waive off requirement of having three years service. Thus, it is clear that the circular dated 14.5.1990 still hold field with regard to ICT.

24. Even the last argument of the learned senior counsel appearing on behalf of the applicants that the respondednts



cannot be allowed to take a different stand on OM dated 11.11.2010 which has been taken by CBEC which is under the same Ministry. Though, he has taken us to various notings of the respondent department which suggest that a view has been taken to follow clause 3.5 of OM dated 11.11.2010, as has been taken by the CBEC. But the learned counsel for the applicants failed to show any order accepting the view proposed by the lower authority.

25. Contrary to that, the respondent department has issued a clarification on 4.1.2018 clarifying the earlier circular dated 14.5.1990. Thus, this plea raised by the counsel for the applicants that the applicant on their ICT will gain seniority in the new region cannot be accepted and the issue is decided against them.

26. This issue of losing seniority of ICT has also been considered by the Principal Bench in the case of Ms. Kanika Patwal(supra) which is based upon the judgment passed by the Allahabad Bench in the case of Rajeev Mohan(supra) where the Hon'ble High Court after examining the circular dated 14.5.1990 came to the conclusion that on ICT, an employee loses his seniority and be placed at the bottom in the new region. Relevant paras of the order passed in the case of Kanika Patwal(supra) are reproduced hereunder:-

"17. It can be seen that this clarification is nothing but paraphrasing of first three of the four sentences in para 2 (f) of the circular dated 14.05.1990. Curiously enough a copy of this communication, which is the mainstay of the ground for challenge of the impugned orders, has not been placed on record by the applicant. While interpreting the above para it is necessary to see the context in which the clarification has been issued because a clarification would address the question that has been raised and will not comprehensively reiterate all the conditions that would apply to the subject. In this case also we do not know the question that was raised to the respondents in response to which this clarification was issued. It is also a settled position in law that a clarification cannot replace the substantive provisions of a rule or order. It is intended to cover only the space that has not been addressed to by the provisions in the main communication or to remove any ambiguity. It cannot override or modify the provision contained in the impugned memorandum because for that a fresh communication has to be issued superseding the earlier order. It has not been contended by the applicant that the clarification in question is in supersession of the para 2(f) of the circular of 1990. We are, therefore, unable to agree with the interpretation of the learned counsel for the applicant that the clarification issued by the CBDT in 2013 would become the 30 OA No.2039/2014 substantive provision to regulate the seniority replacing para 2 (f) of the circular of 1990 effectively omitting the last sentence. The same argument would apply to the undertaking given by the applicants at the time of the transfer which did not specifically mention the last sentence of para 2 (f) of circular of 1990. Since the applicants had applied for transfer under the provisions of circular of 1990, they ought to be aware of its provisions and even if their 'undertaking' is at variance with the provision of that circular, it cannot have the effect of modifying the conditions of ICT contained therein.



18. We have perused the order of the Patna Bench of this Tribunal in Manoj Kumar Pandit (supra). In that order while allowing the OA the Bench had noted the undertaking given by the applicants and the fact that the same was confirmed by the CBDT's communication dated 16.04.2013. The judgment in Rajeev Mohan (supra) which has been upheld by the Apex Court, has enumerated the principles for determination of seniority between the DRs and ICTs, as reproduced earlier in this order, and have noted in sub para (4) therein the condition laid down in the fourth sentence of para 2 (f) of the circular of 1990, which is the crux of the present controversy. It follows that Rajeev Mohan acknowledges the continued validity of the Para 2(f) in totality contrary to the learned counsel for applicant's emphasis on the clarification of CBDT dated 16.04.2013. It is not the contention of 31 OA No.2039/2014 the applicant that aforesaid CBDT clarification being of a later date has made Rajeev Mohan (supra) partly infructuous. In the wake of such finding of Hon'ble High Court and upheld by the Hon'ble Supreme Court, we are bound to follow the same.

19. Considering the entire conspectus of the case and judgments cited and the provisions contained in the CBDT circular of 14.05.1990, we find that the present OA is devoid of merit and the same is dismissed. No costs."

No other point raised.

27. Having deeply considered the crux of the pleadings/projected grounds and in the light of the aforesaid prismatic reason, there is no merit and the same is hereby dismissed. MAs, if any, also stand disposed of accordingly. No costs."

4. In the light of above, the O.A. is dismissed. M.A. pending, if any, stands disposed of. No costs.

**(P. GOPINATH)**  
**MEMBER (A)**

**(SANJEEV KAUSHIK)**  
**MEMBER (J)**

**Dated: 28.05.2018**

‘SK’

