

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH

O.A.NO.060/00887/2017 Date of order:- 4-4-2018.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mrs.P.Gopinath, Member (A).

1. Guneet Singh Sodhi s/o Sh. Gurdarshan Singh Sodhi, office of the Deputy Director of Income of Income Tax (Investigation) Leela Bhawan, Patiala.
2. Parmanand s/o Sh. Mool Chand, office of Deputy Director of Income Tax (Investigation), HSIIDC, Udyog Vihar, Phase V, Gurgaon.
3. Yatender Takshak s/o Sh. Rajbir Singfh Takshak, office of Additional Commissioner of Income Tax, Rohtak Range, Rohtak.
4. Sanjeev Kumar s/o Sh. Raghunandan Lal, O/o Asstt. Director of Income Tax (Inv.)-1, Kitchlu Nagar, Ludhiana.
5. Deepak Sharma, s/o Sh. Ishwar Singh, o/o ITO Ward 2, Aayakar Bhawan, Sector 2, Panchkula.
6. Pooja Yadav d/o Sh. Kuldeep Singh, o/o Ward 2(1) HSIIDC, Udyog Vihar, Phase V, Gurgaon.
7. Vijay Choudhary s/o Sh. Shiv Charan Gupta, O/o Income Tax Officer, Katra, Jammu.
8. Virinder Kumar Vohra s/o Sh. Vinod Kumar Vohra, o/o ITO Ward 4(3), Aayakar Bhawan, Sector 17-E, Chandigarh.
9. Ajit Kumar s/o Sh. Suresh Kumar, o/o Asstt. Commissioner of Income Tax, Panchkula Circle, Sector 2, Panchkula.
10. Durga Kaul s/o Sh. Sunil Pandit, Inspector, o/o ITO(Audit), Aayakar Bhawan, Rail Head Complex, Panama Chowk, Jammu.

.....Applicants.

(By Advocate :- Mr. Sanjay Kaushal, Sr. Advocate with Mr. A.P.Setia)

Versus

1. Union of India through Chairman, Central Board of Direct Taxes, North Block New Delhi.
2. Department of Personnel & Training through its Secretary, Shahjahan Road, New Delhi-110 003.

3. Department of Revenue through its Secretary, North Block, New Delhi.
4. Principal, CCIT, North West Region, Aayakar Bhawan, Sector 17-E, Chandigarh.
5. Chandan Prasad Sharma son of Shambhu Prasad Sharmaa, resident of House NO.121-D, Lane NO.5, Hans Enclave, Rajiv Chowk, Gurugram.
6. Vinod son of Nafe Singh, resident of Flat No.301, Type IV, GH-83A, Income Tax Flat, Sector 20, Panchkula.
7. Rajpal Singh son of Satram Singh, resident of G-38, CR Colony, Lawrence Road, Amritsar.
8. Yashpal Singh PUndir son of Raghubir Singh, resident of House NO.1108, Sector 6, Karnal.
9. Bhim Singh son of Sh. Jagat Ram, resident of House NO.468, Sector 20, Kaithal.
10. Dharam Singh Narwal son of Sh. Ram Chander, resident of House No.933, Sector 3, Rohtak.
11. Sandeep Kumar son of Sh. Ranveer Singh, resident of VPO Nathusari Kalan, Distt. Sirsa.
12. Ashutosh Kumar son of Sh. Ravi Bhushan Sharma, resident of House NO.1955-A, Sector 43-B, Chandigarh.
13. Akhilesh Kumar Parmatma ji son of Sh. Tripurari Sahay, House NO.1956-A, Sector 43-A, Chandigarh.

...Respondents

(By Advocate : Shri K.K.Thakur, for respondents no.1 to 4.
Shri D.S.Patwalia, Senior Advocate with Mr. Gurjot Grewal, for respondents no.5 to 13).

ORDER

Sanjeev Kaushik, Member (J):

Applicants, ten in number, who are working as Inspector in Income-tax department, have challenged the office order dated 26.5.2017 (Annexure A-17) rejecting their claim for re-fixing of seniority and promotion by giving them the benefit of earlier service

rendered under earlier commissionerate/region and to quash the seniority list dated 21.8.2015 (Annexure A-13) of Inspectors. The exact prayer made in the O.A. reads as under:-

" i) the order dated 26.5.2017(Annexure A-17) passed by respondent no.4 rejecting the claim of the petitioner for re-fixation of seniority and promotion by not giving them the benefit of past service, on the basis of the opinion rendered by respondent no.2, which opinion is not in consonance with the existing instruction O.M.No.20011/1/2000-Estt.(D) dated 27.3.2001 (Annexure A-9) and O.M.No.20011/1/2008-Estt(D) dated 11.11.2010(Annexure A-10) issued by respondents, may please be quashed;

ii) Seniority list of Inspectors as on 31.3.2013 for NWR Chandigarh circulated on 21.8.2015(Annexure A-13) on internet by the o/o Pr. CCIT, NWR, Chandigarh, may please be revised by giving the applicants the benefits of past service for their promotion to the posts of Income tax officers;

iii) Eligibility list of Income tax Inspectors also may please be prepared by including the names of the applicants who were eligible to be considered and promoted as ITO's for recruitment year 2012-2013 onwards;

iv) Para 2(f) of CBDT circular dated 14.5.1990 may please be declared illegal and ultra vires in the light of new instructions vide O.M.No.20011/1/2000-Estt.(D) dated 27.3.2001 and O.M.No.20011/1/2008/Estt.(D) dated 11.11.2010 whereby petitioners are entitled to the benefit of past service for purpose of seniority and promotion;

v) for issuance of directions to the respondents to place the applicants at par with their batch-mates of SSC CGL batch in the same recruitment year in terms of para 3.4.3 and para 3.5 of dopt o.m.no.20011/1/2008/Estt(D) dated 11.11.201(Annexure A-10)".

2. The applicants who were directly recruited as Inspector through Combined Graduate Level Examination initially joined in different regions between 2011 to 2013. Later on, they applied for inter-charge transfer (for short ICT) to Chief Commissioner of Income-tax Chandigarh, in NWR on different dates. After acceptance of their request for ICT , they joined the office of respondent no.4.

When they were not assigned seniority by giving the benefit of their earlier service rendered by them with earlier regions, were shown junior to the persons who were selected along with them and allocated the North West Region, they submitted various representations in terms of CBDT circular dated 14.5.1990(Annexure A-5). The next promotion from the post of Inspector is to the post of Income-tax Officer, which is governed under the Rules known as Income-tax Officer, Group B Posts Recruitment (Amendment) Rules, 2005 wherein it is provided that an Inspector of Income-tax in the pay scale of Rs.6500-10500 with three years regular service in the grade and who have qualified the departmental examination for Income-tax Officer is eligible for consideration. Feeling dis-satisfied with the view taken by respondent no.4 for not assigning seniority to them by not counting their previous service, they submitted various representations for correction of their seniority and requested that they be given seniority from the date when they joined their parent commissionerate. One of such representation submitted by applicant no.7 is dated 23.7.2014 followed by representations dated 11.9.2014 and various other representations, as noticed in para 15 of the O.A.

3. The respondents held DPC for promotion to the post of Income-tax Officer for the year 2014-2015 where persons junior to the applicants have been considered and promoted. They have also issued seniority list of Inspectors as on 31.3.2013 for NWR which was circulated on 30.6.2015 along with the eligibility list of Income-tax Inspectors as on 31.3.2013 for considering their cases for promotion as ITO for the recruitment year 2016-2017, objections were called

against seniority list as well as eligibility list. The applicants stated to have filed individual objections on 3.7.2015. When the respondents did not decide their objections, the applicants approached this Tribunal by filing O.A.No.060/00563/2015 (Parmanand & Ors. versus Union of India & Ors.) which was disposed of on 17.7.2015 with a direction to the respondents to decide their pending representation against tentative seniority list/eligibility list in accordance with law and only after issuance of final seniority list, the meeting of the DPC for promotion will be conducted. On 30.7.2015, the respondents after considering their objections to the tentative seniority list, finally published the final seniority list of Income-tax Inspectors on 21.8.2015 (Annexure A-13).

4. Dis-satisfied with the final seniority list, the applicants have again submitted representation and ultimately after considering their objections, final seniority was circulated vide letter dated 21.8.2015 (Annexure A-13). Since there was direction by this Court to pass reasoned and speaking order, respondent no.4 has rejected the claim by passing speaking orders dated 30.7.2015, 21.8.2015 & 14.9.2015 (Annexure A-15(colly)). Dis-satisfied with the view taken by the respondents, the applicants again approached this Tribunal by filing O.A.No.060/00943/2015 which was disposed of vide order dated 26.8.2016 with a direction to respondent no.4 to re-examine and re-fix the seniority of the Inspectors of North West Region after seeking advice from respondent no.2 i.e. DoPT. Needful was to be done within six months from the receipt of copy of the order. When the respondents did not comply with the above order,

the applicants herein were forced to file contempt petition, during the pendency of contempt petition, respondent no.4 vide order dated 26.5.2017 rejected the claim of the applicants. Therefore, the contempt petition was disposed of having been rendered infructuous, the applicants were given liberty to take recourse of law. Hence the present OA.

5. The applicants have taken various grounds for invalidation of impugned orders. The foremost argument which the applicants have taken that the view taken by the respondents in not granting them the benefit of past service rendered in the earlier region based upon the circular dated 14.5.1990 is mis-placed and cannot be acted as the nodal Ministry DoPT had already issued OM dated 11.11.2010 under the subject of seniority and as per clause 3.5 of the said OM, they are under obligation to count their past service rendered in the earlier region before fixing their seniority. Thus, it is prayed that the impugned order rejecting representation and final seniority list be quashed and set aside.

6. The official respondents have filed comprehensive written statement wherein they objected to the prayer made in the OA. It is submitted therein that the impugned seniority list fixing their seniority and the order rejecting their representation is totally according to law. To elaborate their submission, it has been submitted therein that based upon their request for ICT, the competent authority in terms of circular dated 14.5.1990 particularly clause 2(f) had accepted their contention and allowed them ICT by passing speaking order, wherein it has been clarified that the service

rendered by him/her in the earlier region will not be counted in the NWR charge for the purpose of seniority. They will be placed at the bottom of the list of all Inspectors in the new charge. Their seniority in the NWR charge will start from the date of their reporting for duty in the NWR charge. Thus, it is submitted therein that once it has been made viral to the applicants while accepting their request for ICT that they will lose seniority in terms of circular dated 14.5.1990, then applicants cannot be allowed to agitate matter at this stage. The respondents have further taken a preliminary objection that the present petition deserves to be dismissed for non-joinder of necessary parties as the applicants have not impleaded persons who will be affected in case the present petition is allowed, thus the present OA be dismissed.

7. To buttress their plea, they have relied upon an order passed by the Principal Bench of the Tribunal in the case of **Ms. Kanika Patwal & Ors. versus Union of India & Ors.** (O.A.No.2039 of 2014) decided on 9.3.2016.

8. Nine private respondents namely Chandan Prasad Sharma and eight others have moved a Misc. Application No.060/00097/2018 under Order 1 Rule 10 CPC read with Section 151 CPC with a prayer to allow them to be impleaded as party respondents as they will be affected by the decision in the present OA, to which notice was issued and after having reply from the non-applicants in the MA, they were impleaded as party-respondents and have been allowed to participate in the proceedings.

9. Apart from this, the official respondents have also filed Misc. Application No.1757 of 2017 for vacation of interim order dated 12.10.2017 whereby the respondents were restrained to promote the persons from the list which they have prepared as a result of DPC meeting held on 31.3.2017 till the next date of hearing. The newly added respondents have not filed reply and have decided to argue the matter on the basis of the written statement filed by the official respondents.

10. We have heard the learned counsel for the respective parties.

11. Shri Kaushal, senior counsel appearing on behalf of the applicants vehemently argued that the action of the respondents in rejecting the representation against their illegal action for not counting their past service with their previous region towards seniority is illegal, arbitrary and against their own circular, thus, the impugned order be invalidated and their seniority be fixed at appropriate place by counting their previous service rendered in previous region. To substantiate his plea, he argued that once nodal Ministry i.e. DoPT has issued consolidated instructions vide OM dated 11.11.2010 for fixing seniority, then the respondents has to follow the same in its true letter and spirit.

He further submitted that it has been clarified under clause 3.5, seniority of persons who are transferred and absorbed directly without being on deputation has been laid down and are given the benefit of their past service towards fixation of seniority in

the new region, then the respondents cannot apply the old circular issued by the CBDT dated 14.5.1990. Thus, he submitted that the impugned view by rejecting the representations and final seniority list is contrary to law, instructions on the subject. He further argued that under clause 3, seniority of absorbtees, it has been clarified that the method of recruitment transfer has been renamed as absorption and transfer on deputation as deputation, thus, he submitted that once it has been clarified that transfer is to be read as absorption, then their seniority has to be fixed in terms of clause 3.5 by giving them seniority from the date of entry into service in the earlier commissionerate. He also drew our attention to OM dated 27.3.2001 issued by DoPT which has been issued in furtherance to the judgment passed by the Hon'ble Apex Court in the case of **Shri S.I.Rooplal & Ors. versus Lt. Governor through Chief Secretary, Delhi** (J.T. 1999(9) S.C. Page 597) where a person who is on deputation and subsequently absorbed has been given the benefit of service rendered in his parent department. Therefore, he argued that on the same analogy, the applicants be also given the benefit of past service in earlier region. While summing up the arguments, the learned counsel prayed that the impugned order be set aside with a direction to the respondents to apply clause 3.5 of OM dated 11.11.2010 by re-fixing their seniority and consider them for promotion to the post of Income-tax Officers.

12. Per contra, Shri D.S.Patwalia, Senior Advocate, appearing on behalf of private respondents vehemently opposed the petition. He argued that petition be dismissed on the ground of non-joinder of necessary parties as the applicants have not impleaded the persons

who are to be affected in case the present petition is allowed. Secondly, he raised the plea of estoppels. To substantiate his plea, he argued that once while accepting their ICT application, they were aware that they will lose seniority band will be placed at bottom in the cadre in new region. By putting this condition in their order of ICT, the applicants are stopped to challenge this condition at this stage after having accepted the same. He also submitted the order of ICT are on the basis of CBDT circular dated 14.5.1990, which is having binding force of law.

13. On merit, he argued that the applicants have mis-read the circular dated 11.11.2010 which is not applicable to a transferee from one region to another region. To buttress his plea, he placed reliance on a judgment passed by the Hon'ble Apex Court in the case of **Union of India** versus **Murlidhara Menon** (2009(2) S.C.C.(L&S) Page 597) to the effect that the administrative instructions/circulars/orders/guidelines have binding force. Thus, he submitted that once the department has issued a specific circular regulating a particular thing, then the general circular will not over-ride. Since the CBDT issued circular dated 14.5.1990 by laying down specific procedure for ICT, then the general circular will not have over-riding effect.

14. Mr. Thakur, appearing on behalf of official respondents argued on the same wave length. Apart from other argument, he argued that this issue has been put at rest by the Principal Bench in the case of Ms. Kanika Patwal(supra), which is based upon the judgment passed by the Allahabad High Court in the case of **Rajeev**

Mohan versus **Union of India** (Writ Petition No.56072 of 2010.)
by holding that circular dated 14.5.1990 will operate.

15. Having completed all the formalities, having heard the learned counsel for the parties, having gone through the pleadings on board and legal provisions with their valuable assistance.

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 pervious 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 there 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 no rule which governs ICT, therefore, CBDT issued instructions visualizing the problem which will arise later on. 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 purpose 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 revolves 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 thye 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".

11. 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 respondents 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.

(SANJEEV KAUSHIK)
MEMBER (J)

(P.GOPINATH)
MEMBER (A).

Dated: - April 4 , 2018.

Kks

