

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on : 25.04.2019

Reserved on : 19.03.2019

OA No. 060/00436/2017

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

Karmender Kumar S/o Sh.Daya Ram, Aged 33 years working as Tax Assistant , office of Joint Commissioner of Income Tax, Rewari, Haryana.

.....Applicant

BY ADVOCATE: **Sh. Rohit Seth**

Versus

1. Union of India through Chairman, Central Board of Direct Taxes, North Block, New Delhi.
2. Principal CCIT, North West Region, Aayakar Bhawan, Sector 17-E, Chandigarh.
3. Join Commissioner of Income Tax, Rewari, Haryana.
4. Staff Selection Commission, through its Chairman, Northern Region, Block No. 12, CGO Complex, Lodhi Road, New Delhi.
5. The Department of Personnel and Training, through its Secretary, Government of India, North Block, New Delhi.

.....Respondents

BY ADVOCATE: **Sh. K.K. Thakur**

ORDER

MRS. P. GOPINATH, MEMBER(A):-

1. Applicant is a person who appeared in the Combined Graduate Level Exam 2010 and was selected for the post of Tax Assistant. Due to a dispute about the eligibility of the applicant under OBC category on account of the objection that his caste certificate was issued by Naib Tehsildar and not by Executive Magistrate, the applicant

was issued an appointment letter on 21.10.2014. In the meantime, appointment of 2011 and 2012 batches were processed and finalized. The applicant who was selected vide 2010 Exam argues that his batch mates have cleared the eligibility exam for promotion as Senior Tax Assistant and also cleared their two year probation period.

2. Applicant appeared for the promotional examination of Senior Tax Assistant in July, 2015 and cleared the same. In the seniority list of Tax Assistants circulated on 31.08.2015, the name of the applicant was not shown along with his batch mates who are placed between Sr. Nos. 366-415. On 15.09.2015, respondents issued revised seniority list of Tax Assistants wherein applicant was placed at the correct position of seniority as per merit in selection at Sr. No. 349 and the batch mates of the applicant were placed at Sr. Nos. 329-366 in the seniority list.

3. Applicant submitted a representation on 22.09.2015 seeking seniority and other benefits at par with his batch mates. On the basis of the Tribunal's decision in OA No. 2885/2011 which was decided in favour of the applicant on 03.11.2012 to the extent that the applicant was holding a valid OBC certificate issued by an Executive Magistrate of State of Haryana, prior to the cut off date of the advertisement, the respondents were directed to allow him the consequential benefits.

4. Vide order dated 09.10.2015, the batch mates of the applicant including persons junior in the seniority list and merit of selection were promoted to the post of STA and were placed between Sr. Nos. 19-37. On 22.09.2015, the applicant submitted a representation wherein he submitted that delay in offering him posting was purely on

administrative grounds and the applicant asked for the benefits of (i) Time restriction of probation (ii) Chances to appear in departmental examination (iii) Consideration of name of applicant for eligibility list for promotion (iv) Fixation of salary with increment as per rules as applicant is getting less salary as compared to his batch mates and juniors.

5. Vide impugned order dated 09.11.2016, the claim of the applicant for promotion as STA was rejected on the ground that he had not completed three years of regular service as Tax Assistant. His claim for being granted promotion along with his batch mates including juniors was also rejected. Applicant was promoted as STA in the vacancy year 2017-18 whereas applicant argues that he should have been promoted in 2014-15.

6. The prayer of the applicant is for quashing of Annexure A-1 which denies him promotion as STA along with his batch mates. Applicant prays for promotion as STA in the vacancy year 2014-15 instead of 2017-18 as given to his batch mates and juniors.

7. The respondents in the reply statement admit that the claim of the applicant for promotion as STA in the year 2014-15 was rejected on the ground that he had not completed 3 years of regular service. It is also argued that the name of the applicant has been placed along with his batch mates of SSC 2010 and hence, he should have no grievance regarding the fixation of his seniority along with his batch mates.

8. Heard the learned counsel for the parties and perused the written submissions made.

9. It is necessary to look into the qualifications for promotion as STA which are as follows:-

- (i) Must have passed the Departmental Examination for Ministerial Staff.
- (ii) Must have put in 'three years' of minimum regular service in the cadre of Tax Assistant as on 01.04.2015.

The Recruitment Rules also provide as under:-

“If a junior person is concerned for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation.”

10. The respondents argue that as the applicant did not fulfil the condition of completion of three years regular service as TA, his name was not included in the eligibility list of STA. The applicant was offered appointment after the dispute regarding his caste certificate was resolved by an order of the Tribunal in OA No. 2885/2011 and the appointment formalities and character and antecedents and medical examination were completed thereafter.

11. Though the respondents argue that there was no delay on their part in offering the applicant an appointment once the dispute regarding his caste certificate status was resolved, this Bench notes that the respondents could have offered the appointment to the applicant had it not disputed the caste certificate along with his batch mates. The applicant has now been belatedly given seniority along with SSC 2010 batch.

12. The only grievance of the applicant is that he has not been considered for promotion as STA as he does not fulfil the qualification criteria for promotion to the said post.

13. The applicant's prayer is for considering his promotion in the year 2014-15. This is contested by the respondents on the ground that the senior-most official from the applicant's batch got promoted in the recruitment year 2015-16 i.e. the year in which the applicant is seeking his own promotion. It is also contended that none of the applicant's batch mates were in the zone of promotion during the recruitment year 2014-15. Hence, the applicant's demand for being promoted in the year 2014-15 before his own seniors in the SSC 2010-11 were promoted, appears to be not only unreasonable but would also disturb the promotion given to his seniors. The applicant is asking for a benefit to which he is not entitled as none of his seniors were promoted in the year 2014-15 to which he is seeking promotion. Despite the fact that applicant joined the service in department on 20.11.2014, four years after his seniors had joined the department, the applicant's seniority is maintained as per merit in SSC 2010 examination. Hence, the seniority in no way was disturbed. The applicant having joined service on 20.11.2014 is also seeking promotion in the year 2014-15. This, in our view, is a very tall order as immediately on joining and not having completed the requisite service in the lower post, the applicant is seeking a promotion to the higher post in the year of joining the post.

14. The applicant was promoted as STA in the DPC of recruitment year 2017-18 held on 23.02.2017. This promotion was effected, much before the date of completion of three years of service, which would have been on 01.04.2018. Hence, the applicant has already drawn the advantage of being promoted one year before the completion of three years of service as required in the Recruitment Rules. Thus, he has availed the relaxation in promotion provided in the recruitment rules cited by him.

15. Applicant places before us Punjab and Haryana High Court judgement in CWP No. 14525/2016 decided on 24.08.2017. This writ petition related to the post of Inspector (Central Excise) wherein some of the persons who got the benefit of inter-commissionerate transfer to Chandigarh Commissionerate joined Commissionerate on a later date. This case is distinguished from the applicant's case on the ground that the applicants in that CWP joined service in the parent cadre on 07.02.2007 and 30.10.2006 and completed eight years of service on 01.04.2015. The relevant para of that judgement is reproduced below:-

“4. The aforementioned stand of the applicant-private respondents was contested on the premise that the dates of joining of the alleged junior persons, i.e. Naveen Kalotra and Ashok Kumar Bodh in the parent cadre zone were 7.2.2007 and 30.10.2006 respectively and as such they completed the qualifying service of eight years as on 1.4.2015, whereas the case of the private respondents was not considered owing to the fact that they had not completed eight years of qualifying service. The CAT has commented illegality and perversity in not taking into consideration the SSC Guidelines.....”

The above case and other similar cases cited by the applicant on which he places reliance are different from the applicant's own case

as the applicants in the above OA had completed a large part of prescribed years experience required for promotion to the post and were short of ten or less days. The applicant in the present OA is seeking promotion to the post of STA in the year of joining itself and hence, the relief claimed by the applicant on the basis of order in Writ Petition No. 14525/2016 and other matters cannot be suo moto applied to the applicant. The junior of the applicant was promoted as STA on 09.10.2015. Applicant joined service on 20.11.2014 and would complete his probation on 19.11.2016. Granting a promotion to applicant before successful completion of probation would not be in order. The only relief we can give to the applicant is that his date of promotion as STA be fixed as 20.11.2016, when he has completed two year probation, and his immediate junior in his batch also stood promoted to the post of STA.

16. OA is disposed of as ordered above. No costs.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:
ND*