

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Reserved on : 06.03.2019

Jodhpur, this the 12th March, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

1. O.A. No.290/00470/16 with MA No. 290/00292/16 & MA No. 290/00294/2017.

- (1) R.K. Bothra S/o Shri Chintaman Dass Bothra, aged about 50 years, Tax Recovery Officer (Income Tax), O/o Principal Commissioner of Income Tax-1, Jodhpur-342010.
- (2) R.S. Rathore S/o Shri Guman Singh, Aged about 61 years, retired ITO, R/o 329, Mohan Nagar, Sector B, BJS Colony, Jodhpur-342010.
- (3) Shri Ram Meena S/o Shri Mali Ram, aged about 51 years, Income-tax Officer, Sirohi-307001.

.....Applicants

By Advocate : Mr T.C. Gupta.

Versus

- (1) Union of India, through the Finance Secretary, Government of India, Ministry of Finance, North Block, New Delhi-110001.
- (2) Chairman, Central Board of Direct Taxes, North Block, New Delhi-110001.
- (3) Pr. Chief Commissioner of Income Tax, N.C.R. Building, Statue Circle, Jaipur-302005.

.....Respondents

By Advocate : Mr Sunil Bhandari.

2. O.A. No.290/00471/16 with MA No. 290/00293/16 & MA No. 290/00295/2017.

- (1) Poona Ram Choudhary S/o Shri Lakha Ram Choudhary, aged about 50 years, Inspector of Income Tax, O/o JCIT, Range-3, Jodhpur-342010.

.....Applicants

By Advocate : Mr T.C. Gupta.

Versus

- (1) Union of India, through the Finance Secretary, Government of India, Ministry of Finance, North Block, New Delhi-110001.
- (2) Chairman, Central Board of Direct Taxes, North Block, New Delhi-110001.
- (3) Pr. Chief Commissioner of Income Tax, N.C.R. Building, Statue Circle, Jaipur-302005.

.....Respondents

By Advocate : Mr Sunil Bhandari.

ORDER

Per Smt. Hina P. Shah

This common order will dispose of OA No. 290/00470/16 with MA 290/00292/16 & MA No. 290/00294/2017 and O.A. No.290/00471/16 with MA 290/00293/16 & MA No. 290/00295/2017, as grounds having regards to the condonation of delay as well as merits of the case with regard to revision of seniority, as well as application seeking direction on the respondents for filing detailed reply, is common in nature.

2. The applicants herein claim that they are similarly situated to applicants in OA No. 291/00182/2014 (Rajiv Sharma & Ors Vs Union of India & Ors) decided on 12th December, 2014 by Coordinate Bench at Jaipur whereby orders to the effect that services rendered by the candidates in the Ministry/Departments of the Government of India or subordinate/attached offices of the Ministries/department prior to joining Income Tax Department will not be taken into account for consideration of seniority and promotion were quashed and set aside.

3. Brief facts of OA No. 470/2016 are that the applicants were initially appointed to the post of Income Tax Inspector in Gujarat/Mumbai Region. The applicant No. 1, applicant No. 2 and applicant No. 3 joined Rajasthan Region on inter charge transfer on 13.04.92, 23.06.92 & 20.02.95 respectively and were given seniority from the date of their joining in pursuance of CBDT letter No. A-22020/76/89-Ad. VII dated 14.05.1990. Similarly, in OA No. 471/2016, the applicant was initially appointed on the post of UDC in Income Tax Department in Guajrat Region on 10.04.1992 and joined Rajasthan Region on inter charge transfer as UDC on 25.07.1995 and was given seniority from the date of their joining in pursuance of CBDT letter No. A-22020/76/89-Ad. VII dated 14.05.1990. The case of the applicants in these OA is that they may be given seniority from the date of their joining in parent

Region instead of date of joining on inter charge transfer to another Region.

4. Miscellaneous Applications have been filed in both the OAs seeking condonation of delay as well as seeking directions on the respondents to file detailed reply. Respondents have filed preliminary reply raising objections with regard to maintainability and also filed reply to Misc. Applications for condonation of delay. By way of preliminary reply, respondents raised two basic objections that the cause of action had arose between the year 1992 to 1995, therefore, these OA s have been filed belatedly and suffer from huge delay and latches. When the applicants were transferred to their choice of Region, they never raised any grievance nor challenged the same and are acquiesced in the matter. Another basic objection raised by the respondents is that incumbents who had already been granted the seniority and promotions between the years on the post of Income Tax Inspectors, Income Tax Officers, etc. have not been impleaded as party respondent in the Original Applications.

5. When the matters were heard for condonation of delay on 06.03.2019, during course of arguments, Mr Sunil Bhandari, learned counsel for the respondents supplied copy of order dated 22.03.2018 passed by Hon'ble High Court of Rajasthan at Jaipur in D.B. Civil Writs No. 839/2016 whereby order dated 12th

December, 2014 passed by Coordinate Bench at Jaipur in OA No. 291/00182/2014 (Rajiv Sharma & Ors Vs Union of India & Ors) has been quashed and set aside. He also supplied copy of order dated 10.07.2018 passed by Hon'ble Supreme Court in Petition (s) for Special Leave to Appeal (C) No(s) 15815/2018 and submitted that the SLP filed by the respondent (Applicant in OA/respondent in D.B. Civil Writ No. 839/2016) has also been dismissed by Hon'ble Supreme Court.

6. We have gone through the judgment of Hon'ble Rajasthan High Court at Jaipur dated 22.03.2018 passed in D.B. Civil Writ Petition No. 839/2016. In the said order, the Division Bench of Hon'ble Rajasthan High Court has held that :

In our considered opinion, this circular dated 11th November, 2010 will apply after the advertisement of the transfer. The advertisement with regard to the respondents has been made much prior. Apart from that the respondents have accepted the condition and if they are aggrieved they ought to have challenged the condition prior to the appointment. Therefore, once having accepted the condition they cannot challenge the same. In our considered opinion, in view of the decision of Supreme Court referred hereinabove, the order impugned of the CAT is required to be quashed and set aside.

The Clause 3.5 will not apply in the well settled principle of service law that the condition which was prevailing on 26th October, 2010 will prevail and subsequent office memorandum will not be applicable, otherwise, it will be contrary to basic concept of service jurisprudence and the petition deserves to be allowed.

In view of the above, the petition stands allowed. The order of CAT is quashed and set aside.

Even otherwise, the respondents are claiming seniority and promotion without joining any of the persons who are likely to be

affected, therefore, even the Original Application is not maintainable in view of the non-joinder of proper party.

The aforesaid order has been upheld by the Hon'ble Supreme Court vide order dated 10.07.2018 and they have passed following order:

We are not inclined to interfere with the impugned judgment and order. Consequently, the special leave petition stands dismissed. Pending application, if any, also stand disposed of.

7. It is the claim of the applicants in these OAs that they are similarly situated to applicants of OA No. 291/00182/2014 (Rajiv Sharma & Ors Vs Union of India & Ors) wherein issue of grant of seniority, in principle, from date of initial appointment was decided in favour of the applicants therein. However, by aforequoted judgment dated 22.03.2018, Hon'ble Rajasthan High Court at Jaipur quashed and set aside order dated 12th December, 2014 passed by Jaipur Bench this Tribunal, which is the main ground of the applicants herein for filing present Original Applications. Applicants herein also have sought seniority from the date of their initial joining instead of date of joining on inter-charge transfer and also did not array the persons who are likely to be affected, as respondents.

8. Accordingly, in view of aforesaid judgment of Hon'ble Rajasthan High Court at Jaipur passed in D.B. Civil Writs No. 839/2016 which was upheld by Hon'ble Supreme Court, these Original Applications alongwith Misc. Applications are dismissed

on merits as well as being not maintainable in view of the non-joinder of proper party. No costs.

9. In view of the above, MA No. 290/00294/17 & 290/095/2017 seeking direction on the respondents to file detailed reply has become infructuous and accordingly, the same are dismissed.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-