

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH

OA No. 776 of 2013

Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)

Laxmidhar Gajendra, aged about 40 years, S/o Late Kumar Gahendra, a permanent resident of Village/Post - Gadasanaput, Via - Bajpur, PS-Kanas, Dist. - Puri, at present working as Inspector of Income Tax, in the office of the Director of Income Tax (Intelligence), Ayakar Bhawan, Annex Building, 4th Floor, Bhubaneswar, Dist. Khurda.

.....Applicant

VERSUS

1. Union of India, represented through its Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi – 110001.
 2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi – 110001.
 3. The Chief Commissioner of Income Tax, Odisha Region, Ayakara Bhawan, Bhubaneswar, Dist. – Khurda.
 4. Director of Income Tax (Intelligence), Ayakar Bhawan, Annex Building, 4th Floor, Bhubaneswar, Dist. – Khurda.
 5. Shir Prasanta Kumar Nanda, Senior Tax Assistant, Office of the CIT (Appeal-II), Ayakar Bhawan, Annex Building, Bhubaneswar, Dist. – Khurda.

.....Respondents.

For the applicant : Mr.J.M.Patnaik, counsel

For the respondents: Mr.S.Bhera, Sr.Panel Counsel

Heard & reserved on : 28.6.2019 Order on : 10.7.2019

O R D E R

Per Mr. Gokul Chandra Pati, Member (A)

This OA has been filed with the prayer for the following reliefs under section 19 of the Administrative Tribunals Act, 1985:-

"(i) To quash the order of rejection dated 27th August, 2013 at Annexure A/3 and to direct the respondents to allow the benefits of the decisions rendered by the Hon'ble Principal Bench of the Tribunal in the case of Pramod Kumr -vs- Union of India and others in OA No. 2406 of 2005 dated 24.8.2006 and in the case of Shri Nandaram Singh -vs- UOI and others, OA No. 2732 of 2009 disposed of on 29.9.2010 based on which benefits have been by the CCIT, New Delhi vide order No. 67/NGO/2012-13 dated 4.6.2012, by the Chief Commissioner of Income Tax, NWR, Chandigarh vide order No. 51 of 2012 dated 11.5.2012 in F.No.CC/CHD/CB-III/Sr.TAs.Pro/2012-13/182 and by the CCIT, Kanpur Region vide order No. 01/2012 dated 25.2.2013 (file No.11-40/CIT-KNP/2012-13);

- (ii) To direct the respondents to reconsider the case of the applicant for his refixation of seniority in the grade of TA in place of respondent No.5 and consequential promotion to the post of Senior Tax Assistant by counting his past service rendered in his parent region with all consequential service and financial benefits with arrear.
- (iii) And accordingly direct the respondents to revise his position in the seniority list of Senior Tax Assistant;
- (iv) And/or to pass any other order/orders as deemed fit and proper."

2. The facts in brief are that the applicant, as Tax Assistant had been transferred to Odisha region from Mumbai on 3.6.2002 against direct recruitment vacancy for the year 2002-03 on his own request. The respondents had placed him at the bottom of the seniority list for Tax Assistants for Odisha region as on 31.3.2003 at serial number 65 as per the existing guidelines dated 14.5.1990 of the Board. The respondent no. 5 was at serial number 24 of the list. Accordingly he was placed below the respondent no. 5 who was promoted to the grade of Tax Assistant in the year 2001-02 prior to joining of the applicant in Odisha region. The DPC held for promotion to the grade of Senior Tax Assistant (in short STA) was held on 2.9.2002 in which the applicant was not considered as the cut off date was 1.1.2002 and the applicant joined in Odisha region on transfer after that date.

3. The applicant is aggrieved by the fact that his experience of more than 3 years was not taken into account for deciding eligibility for promotion to STA during 2002. The applicant was promoted to the post of STA on 30.6.2006. It is stated by the applicant in the OA that he had reiterated his grievance for antedating his promotion to the vacancy year 2002-2003 in which the respondent no. 5 was promoted. It is further stated in the OA that the undertaking he had given at the time of inter-region transfer should not stand as a bar for consideration of his case (para 4.9 of the OA). The applicant has cited the following judgments in which the employees under similar circumstances had been allowed the benefit of past seniority:-

- (a) Judgment of Hon'ble Apex Court in the case of Scientific Advisor to Raksha Mantri & Anr. -vs- V.M.Josheph
- (b) Union of India & Anr. -vs- V.N.Bhat [(2003) 8 SCC 714]
- (c) Order of Jodhpur Bench of the Tribunal in OA No. 522 of 2011
- (d) Order of Lucknow Bench of the Tribunal in OA No. 315 of 2012 (Narendra Kumar & Others -vs- UOI & Others.)
- (e) Orders of Principal Bench of the Tribunal in OA No. 2406 of 2005 (Pramod Kumar -vs- UOI & Others) and OA 2732 of 2009 (Nandaram Sing -vs- UOI & Others)

4. The respondents opposed the OA by filing the Counter citing the letter dated 14.5.1990 of the CBDT (Annexure-R/1). A copy of the undertaking furnished by the applicant to abide by the terms and conditions of the letter dated 14.5.1990 has been enclosed at Annexure-R/2 of the Counter. The applicant in the said undertaking had also agreed that his seniority at

Bhubaneswar will start from the date of his reporting for duty and he will not claim any TA for his transfer to Bhubaneswar. Regarding the cases cited in the OA, it is stated in the Counter that the facts of the cited cases are different. With regard to the averments in para 4.9 of the OA regarding undertaking, it is stated in the Counter that the applicant had given the undertaking in cool mind as per the letter dated 14.5.1990 and thereafter he was transferred to Odisha region.

5. No Rejoinder has been filed by the applicant. At the time of hearing, learned counsel for the applicant submitted that this case is covered by the judgment dated 19.4.2019 of Hon'ble Supreme Court in the Civil Appeal No. 3792 of 2019 in the case of Pratibha Rani vs. Union of India & Ors. copy of which was filed by the applicant's counsel after giving a copy to the respondents' counsel. Learned counsel for the respondents submitted that the judgment cited is not applicable to the case and as stated in the Counter, the applicant had agreed to abide by the terms of the letter dated 14.5.1990 at the time of inter-region transfer to Odisha.

6. We have perused the pleadings of the parties and also considered the submissions by the learned counsels for the parties. The applicant's counsel cited the judgment of Hon'ble Apex Court in the case of Pratibha Rani (supra) in which the issue considered was whether in case of compassionate transfer, the service rendered in the previous posting is liable to be counted in the new posting for the purpose of eligibility for consideration of promotion. it is held in that judgment as under:-

"Thus, it is quite clear that insofar as issue of eligibility of promotion is concerned, the service rendered in the previous region, prior to transfer on compassionate ground, will be counted towards service for eligibility for consideration of such promotion. That it is a non-transferable job, makes no difference on this aspect as service is rendered in the same cadre."

It is seen from above that Hon'ble Apex Court has held that the service at the previous posting is to be counted for deciding eligibility of promotion. The question raised by the applicant in this OA is to have his seniority re-fixed taking into account his service in the previous station and to allow the benefit of promotion at par with the respondent no. 5 who is claimed to be the applicant's junior. In the case of Pratibha Rani (supra), the question of seniority was not decided as the issue of eligibility for promotion was decided.

7. The applicant in the OA has referred to the judgment of Hon'ble Apex Court in the case of Scientific Advisor to Raksha Mantri & Anr. vs. V.M. Joseph reported in (1998) 5 SCC 305. In that case the employee (Mr. V.M. Joseph) was denied the benefit of his service prior to compassionate transfer on bottom seniority principle, for the purpose of his eligibility for being considered for promotion. Hon'ble Apex Court in that case held as under:-

"From the facts set out above, it will be seen that promotion was denied to the respondent on the post of Senior Store keeper on the ground that he had completed 3 years of regular service as Store keeper on 7th June, 1980 and, therefore, he could not be promoted earlier than 1980. In coming to this conclusion, the appellants excluded the period of service rendered by the respondent in the Central Ordnance Depot, Pune, as a Store Keeper for the period from 27th April, 1971 to 6th June, 1977. The appellants contended that, since the respondent had been transferred on compassionate ground, on his own request to the post of Store Keeper at Cochin and was placed at the bottom of the Seniority list, the period of 3 years of regular service can be treated to commence only from the date on which he was transferred to Cochin. This is obviously fallacious inasmuch as the respondent had already acquired the status of a permanent employee at Pune where he had rendered more than 3 years of service as a Store Keeper. Even if an employee is transferred at his own request, from one place to another, on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors. This Court in Union of India & Ors. vs. C.N. Ponnappan, AIR 1996 SC 764=1996(1) SCC 524, has held that, where an employee is transferred from one unit to another on compassionate ground and is placed at the bottom of the seniority list, the service rendered by him at the earlier place from where he has been transferred, being regular service has to be counted towards experience and eligibility for promotion."

8. The applicant has referred to the orders of the Tribunal (Jodhpur Bench) in OA No. 522/2011, of Lucknow Bench in OA No. 315/2012 and of Principal Bench in OA No. 2406 of 2005. But copy of the orders of the Tribunal in above OAs has not been furnished by the applicant., who stated in the OA that these orders have been implemented by the respondents vide orders at Annexure A/4, A/5, A/6 and A/7. In reply, the respondents in the Counter have stated that in some cases the Department has challenged the order of the Tribunal in higher forum and that full facts are not readily available with the respondents. The order at Annexure-A/4 is the list of officials promoted and nothing has been stated if the service rendered in the station prior to inter-region transfer on own request has been counted or not. In the order at Annexure-A/5, it is mentioned that for serial no. 131, 132 and 133 have been promoted for year 2011-12 as an interim measure after counting service rendered in old region in terms of orders in OA No. 2406/2005 and another OA. It is further mentioned that the matter has been referred to CBDT and they will be liable for reversion if they will not be entitled for promotion and hence, it cannot be said that these promotions are final. Similarly, the order at Annexure-A/6 and order at Annexure-A/7 reveal that these cannot be treated to be final order of promotion for those who were allowed promotion as per the order of the Tribunal in OA No. 2406/2005. The applicant's counsel has submitted a copy of the judgment of Chandigarh Bench of the Tribunal in OA No. 338/2012 in the case of Balwinder Singh Matharoo & others vs. Union of India & Anr. in which it was held in case if the Inspectors of the Central Excise Department on inter-commissionerate transfer that the concerned Inspectors were entitled to the

service rendered in parent Commissionerate and the respondents were directed to grant them relevant benefits. It is not clear whether the position in the seniority of the concerned Inspectors was changed after taking into account the past service prior to transfer.

9. From above, it is clear that the judgments cited by the applicant will be helpful for the applicant for determining his eligibility for promotion after counting his service prior to his compassionate transfer on his own request. But the applicant, in his prayer in para 8 of the OA has not specified for which DPC he is claiming eligibility in pursuance to the judgments referred by him. The respondents have stated that for the DPC held for 2002-03, the applicant was not posted in Odisha region as on the relevant date i.e. 1.1.2002 and such averment has not been contradicted by the applicant. Hence, the claim for his consideration in the DPC for 2002-03 is not tenable. There is no claim for his eligibility in any other DPC apart from the DPC for the year 2002-03. It is noted that there is no claim in the OA for seniority after counting the service prior to inter-region transfer on own request. The judgments cited by the applicant will also not be helpful for re-fixing his seniority after taking into account his past service prior to his inter-region transfer.

10. In accordance with the law laid by Hon'ble Apex Court in the case of Scientific Advisor to Raksha Mantri (supra) and Pratibha Rani (supra), the applicant was entitled for counting of his service in Mumbai region for the purpose of his eligibility for being considered by the DPC for which the cut off date was after his joining in Odisha region. Hence, he would have been eligible for consideration promotion prior to 2006. But the respondents did not consider the applicant to be eligible for consideration of the DPC for promotion to the post of STA till 2006. Such a decision was not challenged by the applicant in time as per law. When the applicant was promoted as STA on 30.6.2006, it is stated in the OA that the applicant reiterated his grievance for promotion against vacancy year 2002-03 in which the applicant was not considered in the DPC as he was not posted in Odisha region as on the 1.1.2002, which was the relevant date for the DPC for the year 2002-03 as stated in the Counter. This averment has not been contradicted by the applicant. There is nothing on record to show that the applicant had claimed the benefit of his service in Mumbai Region for any of the DPC after 2002-03 for which the cut off date was after his joining in Odisha region and challenged the decision of the respondents within the time stipulated under law. The copy of the representation dated 31.7.2013 (Annexure-A/2) submitted by him furnished for re-fixing of his seniority vis-a-vis the respondent no.5, was after about 10 year of later's promotion as STA on the basis of the DPC held for the year 2002-03.

11. It stated in para 9 of the Counter that the Gradation list for the Tax Assistants for Odisha region was prepared on 31.3.2003, in which the applicant's position was 65 and the position of the respondent no. 5 was 24 and that the respondent no. 5 was absorbed as Tax Assistant after passing computer skill test w.e.f. 11.7.2002. It is further stated in para 9 of the Counter that the applicant has neither challenged the seniority list dated 31.3.2003 in which his position was at 65 vis-avis the position of the respondent no. 5 at 24, nor the persons listed above the applicant in the Gradation list dated 31.3.2003 have been included as party in the OA. These averments have not been contradicted by the applicant, who also has not furnished any document to show that he had challenged the Gradation list dated 31.3.2003, in which the respondent no. 5 has been shown to be senior to the applicant. He raised this issue first time in his representation dated 31.7.2013 (Annexure-A/2) in which, he has claimed that he was senior to the respondent no. 5. In this representation, nothing has been mentioned about the reason why he did not challenge the Gradation list dated 31.3.2013 earlier. He mentioned in the representation at A/2 that his earlier representation was rejected vide order dated 1.7.2008. There is nothing on record to show if the applicant has challenged the rejection order dated 1.7.2008 as per the provisions of law.

12. Above sequence of facts would reveal that the applicant, by challenging the seniority position of the respondent no. 5 in this OA, the applicant is trying to disturb the seniority position of a number of employees after a long delay. Further, his seniority vis-a-vis the respondent no. 5 and his non-consideration in the DPC for the year 2002-03 were the facts known to him, particularly after the Gradation list dated 31.3.2003 was issued by the respondents.

13. The question of the limitation while challenging the seniority positions was examined by Hon'ble Apex Court in the case of *Shiba Shankar Mohapatra & Ors. vs. State of Orissa & Ors.* in the Civil Appeal No. 7537-7541 of 2009 and it was held as under:-

"16. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in *Ramchandra Shanker Deodhar & Ors. v. State of Maharashtra & Ors.* AIR 1974 SC 259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in *Tilokchand Motichand v. H.B. Munshi*, AIR 1970 SC 898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be

allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under:-

"A party claiming fundamental rights must move the Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court."

17. This Court also placed reliance upon its earlier judgment of the Constitution Bench in [R.N. Bose v. Union of India & Ors.](#) AIR 1970 SC 470, wherein it has been observed as under:-

"It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years."

18. In [R.S. Makashi v. I.M. Menon & Ors.](#) AIR 1982 SC 101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in [State of Madhya Pradesh & Anr. v. Bhailal Bhai etc. etc.](#), AIR 1964 SC 1006, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under:-

"We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years..... The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government Resolution of 1968. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed." (Emphasis added)

19. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in [K.R. Mudgal & Ors. v. R.P. Singh & Ors.](#) AIR 1986 SC 2086. The Court held as under:-

"A government servant who is appointed to any post ordinarily should at least after a period of 3-4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity..... Satisfactory service conditions postulate that there shall be no sense of uncertainty amongst the Government servants created by writ petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible otherwise in addition to creation of sense of insecurity in the mind of Government servants, there shall also be administrative complication and difficulties.... In these circumstances we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches." (Emphasis added)

20. While deciding the case, this Court placed reliance upon its earlier judgment in [Malcom Lawrence Cecil D'Souza v. Union of India & Ors.](#) AIR 1975 SC 1269, wherein it had been observed as under:-

"Although security of service cannot be used as a shield against the administrative action for lapse of a public servant, by and large one of the essential requirement of contentment and efficiency in public service is a feeling of security. It is difficult no doubt to guarantee such security

in all its varied aspects, it should at least be possible to ensure that matters like one's position in a seniority list after having been settled for once should not be liable to be re-opened after lapse of many years in the instance of a party who has itself intervening party chosen to keep quiet. Raking up old matters like seniority after a long time is likely to resort in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time." (Emphasis added)

21. [In B.S. Bajwa v. State of Punjab & Ors.](#) AIR 1999 SC 1510, this Court while deciding the similar issue re-iterated the same view, observing as under:-

"It is well settled that in service matters, the question of seniority should not be re-opened in such situations after the lapse of reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This along was sufficient to decline interference under [Article 226](#) and to reject the writ petition". (Emphasis added)

22. [In Dayaram Asanand v. State of Maharashtra & Ors.](#) AIR 1984 SC 850, while re-iterating the similar view this Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under [Article 226](#) of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.

23. [In P.S. Sadasivaswamy v. State of Tamil Nadu](#) AIR 1975 SC 2271, this Court considered the case where the petition was filed after lapse of 14 years challenging the promotion. However, this Court held that aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under :-

"A person aggrieved by an order promoting a junior over his head should approach the Court at least within 6 months or at the most a year of such promotion."

24. The Court further observed that it was not that there was any period of limitation for the Courts to exercise their powers under [Article 226](#) nor was it that there could never be a case where the Courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extra ordinary powers under [Article 226](#) in the case of persons who do not approach it expeditiously for relief and who standby and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters."

14. In the case of Union of India and Ors. vs. Tarsem Singh (2008) 8 SCC 648, it has been held by Hon'ble Apex Court as under:-

"7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to

recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

15. As discussed earlier, the applicant should have challenged his position in the seniority as Tax Assistant in the Gradation list dated 31.3.2003 in which the respondent no. 5 was shown to be senior to the applicant. He should have also challenged his non-consideration for the post of Senior Tax Assistant in the DPC held after his joining in Odisha region. Further, as stated in his representation at Annexure-A/2, his claim was earlier rejected by the respondents in the year 2008, which was not challenged by the applicant within time stipulated under the Administrative Tribunals Act, 1985. After remaining silent for all these years, the applicant has filed this OA, which is clearly barred by limitation in view of the judgments in the case of Shiba Shankar Mohapatra (*supra*) and Tarsem Singh (*supra*).

16. In the facts and circumstances, the claims of the applicant are stale and the OA is barred by limitation under section 21 of the Administrative Tribunals Act, 1985. Hence, the OA, being barred by limitation, is dismissed. There will be no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

I.Nath