

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**O.A. No.290/00462/2014**

**With**

**Miscellaneous Application No. 290/00451/2014**

Jodhpur, this the 8<sup>th</sup> July, 2019

**CORAM**

**Hon'ble Smt Hina P. Shah, Judicial Member**

**Hon'ble Ms Archana Nigam, Administrative Member**

Baldev Singh Sharan S/o Shri Ranjeet Singh Sharan, aged 29 years, R/o D-106, Kaka Colony, Sardar Sahar, District-Churu. Official Address Office of Income Tax Officer (TDS) Bikaner.

.....Applicant

By Advocate : Mr Kamal Dave.

Versus

- (1) The Union of India through the Secretary Ministry of Finance, Department of Revenue, Government of India, New Delhi – 110001.
- (2) The Chief Commissioner of Income Tax (CCA), Central Revenue Building, Bhagwandas Road, Jaipur.

.....Respondents

By Advocate : Mr Sunil Bhandari.

**ORDER (Oral)**

**Per Smt. Hina P. Shah**

Heard.

The applicant preferred the present OA seeking following relief(s) :

- (a) That the order impugned dated 27.03.2012 (Annexure A/1) may kindly be quashed and set aside.
- (b) That the respondents may kindly be directed to consider the applicant for promotion to the post of Senior Tax Assistant

w.e.f. from the date persons accorded promotion in furtherance of recommendation of Departmental Promotion Committee held on 20.03.2012 by convening review DPC with all consequential benefits.

- (c) That the respondents may kindly be directed to treat the applicant as eligible by considering the period from the date of initial appointment 25.10.2007 till the date of consideration for the purpose of eligibility for promotion for Senior Tax Assistant as per Rules of 2003.
- (d) That exemplary cost and compensation be inflicted for violation of rules.
- (e) Any other appropriate order or direction, which may be considered just and proper in the light of above, may kindly be issued in favour of the applicant.
- (f) Costs of the application may kindly be awarded in favour of the applicant.

2. When the matter was taken up for hearing today, Mr Kamal Dave, learned counsel for the applicant submitted that one of the legal issue involved in the present OA '*whether in case of a compassionate transfer which is inter- region, the service rendered in the previous posting is liable to be counted in the new posting areas for purposes of eligibility for consideration of such promotion*' has been settled in view of judgment of Hon'ble Supreme Court in Civil Appeal No. 3792 of 2019 (Arising out of SLP (C) No. 31728/2018) in the case of **Pratibha Rani & Ors Vs UOI & Ors** and order of this Tribunal in OA No. 522/2011 with MA 64/2012

(Ramesh Kumar Panwar Vs UOI & Ors) as well as in other similar matters.

3. In the present case, the applicant has challenged the order dated 27.03.2012 (Annex. A/1) passed by the respondent No. 2 whereby his representation dated 21.03.2012 was rejected. The relevant portion of the said order is as under :

In this connection, I am directed to inform you that you have joined this Region on interchange transfer on 06.01.2012. As per para 2(g) of the guidelines/instructions in respect of interchange transfer, the transferee will be eligible for promotion/confirmation in the new Charge only in accordance with seniority allotted to him/her on transfer. For promotion to the cadre of Senior Tax Assistant, you should have completed a regular service of three years in the cadre of Tax Assistant. As per rules, you will be eligible for promotion in this Region only in the Recruitment Year 2016-17.

4. Applicant has also filed Miscellaneous Application seeking condonation of delay stating therein that though respondent-department rejected applicant's candidature for promotion vide communication dated 27.03.2012, which is impugned but larger question for consideration is on account of regular service rendered and not about seniority. He thus prayed that delay may be condoned, if any, though OA relates to the continuous cause for consideration and as now for the first time process of consideration is initiated. Therefore, OA is within limitation in view of judgment of Hon'ble Supreme Court in the case of Kuldeep Singh. Even if any delay is considered, the same is bonafide in view of the consideration of the applicant that the

respondents would abide by the law as declared by the Hon'ble Supreme Court.

5. Respondents did not prefer reply to Miscellaneous Application filed by the applicant for condonation of delay. Even otherwise also, we are broadly in agreement with the legal grounds raised by the respondents for condonation of delay, if any, in his application. However, it is worthwhile to record that delay in agitating his grievance at appropriate forum by the applicant shall certainly have the bearing on what relief can be granted by this Tribunal while considering the case on facts on record. With the aforesaid observation, we condone the delay in filing the OA.

6. While going through the impugned order dated 27.04.2012 (Annex. A/1) passed by the respondents, we find that representation of the applicant has been rejected mainly on two grounds, i.e. seniority and minimum qualifying service. Here, it is pertinent to record the relevant facts of the case in nutshell. The applicant appointed on the post of Tax Assistant in Gujarat Region on 25.10.2007 and promoted to the post of Senior Tax Assistant on 16.06.2011 in Gujarat Region of the respondent-department. In order to entertain his application for inter-charge transfer from Gujarat Region to Rajasthan Region by the respondent authorities, applicant got himself reverted to the lower post, i.e. Senior Tax Assistant to Tax Assistant on which he initially recruited in the

Gujarat Region. After opting for reversion to the Cadre of Tax Assistant by the applicant vide application dated 16.09.2011 (Annex. A/6), the applicant was transferred from Gujarat Region to Rajasthan Region on the post of Tax Assistant vide order dated 14.12.2011 (Annex. A/8) on the main conditions of bottom seniority and non-counting of services rendered by him in Gujarat Region. He will be eligible for promotion/confirmation/regularization only in the new charge in accordance with seniority allotted to him on transfer. In pursuance of Annex. A/8 order dated 14.12.2011, the name of the applicant has not been considered for promotion by DPC for the recruitment year 2012-13 held on 20.03.2012. Therefore, applicant filed representation dated 21.03.2012 which has been rejected by the respondents vide impugned order dated 27.03.2012.

7. We find that there are two issues involved in these matter one relating to determination of the seniority of employees seeking unilateral or voluntary transfer or inter-charge transfer and other one is with regard to counting of past services in regard to meet the condition of minimum services rendered on post for meeting eligibility criteria for promotion to a particular post. we wish to note decision of the Apex Court regarding determination of the seniority of employees seeking unilateral or

voluntary transfer in the case of K.P. Sudhakaran and another v. State of Kerala and others, (2006) SCC (L&S;) 1105, where the Apex Court held that:

In service jurisprudence, the general rule is that if a Government servant holding a particular post is transferred to the same post in the same cadre, the transfer will not wipe out his length of service in the post till the date of transfer and the period of service in the post before his transfer has to be taken into consideration in computing the seniority in the transferred post. But where a Government servant is so transferred on his own request, the transferred employee will have to forego his seniority till the date of transfer, and will be placed at the bottom below the junior-most employee in the category in the new cadre or department. This is because a government servant getting transferred to another unit or department for his personal considerations, cannot be permitted to disturb the seniority of the employees in the department to which he is transferred, by claiming that his service in the department from which he has been transferred, should be taken into account. This is also because a person appointed to a particular post in a cadre, should know the strength of the cadre and prospects of promotion on the basis of the seniority list prepared for the cadre and any addition from outside would disturb such prospects

Hence, it is settled position of law that Government servant transferred on his own request will have to forego his seniority. The applicant got reverted from Senior Tax Assistant to Tax Assistant in the Gujarat Region itself for inter-charge transfer to Rajasthan Region. Hence, we find no infirmity so far as assigning bottom seniority to the applicant in Rajasthan Region in the post of Tax Assistant.

8. Now, so far as question of past service rendered by the applicant in Gujarat Region for the purpose of eligibility for

promotion in this regard is concerned, the same has been settled by the Supreme Court dated 10.04.2019 in Pratibha Rani's case (supra), which reads as under :

1. The only question which is required to be examined in these cases is **whether in case of a compassionate transfer which is inter- region, the service rendered in the previous posting is liable to be counted in the new posting areas for purposes of eligibility for consideration of such promotion.**

2. The appellants are working as Tax Signature Not Verified Digitally signed by CHARANJEET KAUR Assistants and on account of plea of compassionate grounds, they were transferred inter-region. The stand taken by the respondent-Department is that as per the administrative instructions, the period spent in case of inter-region transfer in the previous region, could not be counted while posting such a person in a new region for eligibility for promotion.

3. The aforesaid issue is no more res integra in view of the judgment of this Court in the case of Union of India & Ors. vs. C.N. Ponnappan (1996) 1 SCC 524 where this very issue was examined in the factual context of the same department as under :

"The service rendered by an employee at the place from where he was transferred on compassionate grounds is regular service. It is no different from the service rendered at the place where he is transferred. Both the periods are taken into account for the purpose of leave and retiral benefits. The fact that as a result of transfer he is placed at the bottom of the seniority list at the place of transfer does not wipe out his service at the place from where he was transferred. The said service, being regular service in the grade, has to be taken into account as part of his experience for the purpose of eligibility for promotion and it cannot be ignored only on the ground that it was not rendered at the place where he has been transferred. in our opinion, the Tribunal has rightly held that the service held at the place from where the employees has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.

4. We may also note that in the context of a different service, on the same principle and noticing C.N. Ponnappan's case (supra),

in M.M. Thomas & Ors. vs. Union of India & Ors. (2017) 13 SCC 722, it was observed as under :

"Having heard the learned counsel appearing for the parties and upon perusal of the record, we are of the view that the words of the aforesaid Rule require five years' regular service "in the respective regions". Thus, these words must be understood to mean that the candidates should have served in the respective regions, that is, the regions where they were posted earlier and the region where they seek promotion all together for five years. Thus if a candidate has served in one region and then transferred to another, and seeks promotion in that region, the rule does not require that the candidate must have acquired experience of five years in the region where he seeks promotion, for being considered eligible. What is necessary is a total experience of five years. this must necessarily be so because the service to which the rival parties belong, is an All-India Service, in which the country is demarcated into several regions. In all-India Service, the officers are posted from one region to the other in a routine manner. The purpose of the rule is that such officers are not deprived of their experience in the feeder cadre merely because they have been transferred from one place to another."

5. **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.**

9. In view of judgment of Hon'ble Supreme Court in Pratibha Rani's case (supra), the condition of non-counting of service rendered in the previous region towards minimum service for promotion, as accepted by the applicant for his inter-charge transfer, is held to be a non-est factum. Accordingly, impugned order dated 27.03.2012 (Annex. A/1) is held to be illegal on the ground of non-counting of services rendered by the applicant in Gujarat Region for the purpose of counting minimum regular service for promotion in Rajasthan Region.



10. Accordingly, impugned order dated 27.03.2012 (Annex. A/1) is quashed. Respondents are directed to convene Review DPC within three months from the date of receipt of a copy of this order counting past services rendered by the applicant in Gujarat Region towards minimum service required as per Recruitment Rules. If applicant otherwise found fit, DPC shall consider him for promotion with all consequential benefits with effect from the date when his immediate junior's promotion order issued in Rajasthan Region. It is made clear that the applicant shall be entitled for notional financial benefits, if any, in case of his promotion from back date and actual financial benefits of promotion, if any, from the date of judgment of Hon'ble Supreme Court in Pratibha Rani's case, i.e. 20<sup>th</sup> April, 2019.

11. Original Application is allowed in above terms with no order as to costs.

**[Archana Nigam]**  
**Administrative Member**

**[Hina P. Shah]**  
**Judicial Member**

Ss/-