

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No.290/00005/2014

Jodhpur, this the 8th July, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

Vikas Barasa S/o Hansraj Barasa, aged about 34 years, resident of Adarsh Basti, Mandore, Jodhpur. Presently working on the post of Stenographer Gr. II O/o Chief Commissioner of Income Tax, Jodhpur.

.....Applicant

By Advocate : Mr Kamal Dave.

Versus

- (1) The Union of India through Chairman, Central Board of Direct Taxes, North Block, New Delhi.
- (2) The Chief Commissioner of Income Tax (Cadre Controlling Authority), CR Building, Bhagwan Das Road, Jaipur.
- (3) The Director General of Income Tax (HRD), 2nd Floor, ICADR Building, Plot No. 6, Vasant Kunj, Institutional Area, Phase II, New Delhi.

.....Respondents

By Advocate : Mr Sunil Bhandari.

ORDER (Oral)

Per Smt. Hina P. Shah

Heard.

The applicant preferred the present OA seeking the main relief that *“respondents may be directed to consider applicant for promotion as Stenographer Gr. I from the date applicant completed 5 years of service as Stenographer Gr. II i.e. 01.01.2012 in the applicable pay scale i.e. 9300-34,800 with Grade Pay Rs 4200 with all consequential benefits from the date of entitlement.”*

2. Facts of the case in nutshell are that the applicant was appointed on the post of Stenographer Grade III on 12.12.2006 in the pre-revised pay scale of Rs 4000-6000 in Delhi office. Thereafter, applicant joined the office of CIT (DR), I.T.A.T., Jodhpur on Inter-Charge Transfer on 28.05.2007 at his own request vide order dated 17.05.2007 (Annex. A/2) on the same post. After implementation of 6th Central Pay Commission post of Stenographer Grade III carrying pre-revised pay scale of Rs 4000-6000 redesignated as Stenographer Grade II in Pay Band-I Rs 5200-20200 + Grade Pay Rs 2400. However, the promotional posts of Stenographer Grade II carrying pay scale of Rs 5000-8000 and Stenographer Grade I carrying pre-revised pay scale of Rs 5500-9000 stood merged in Pay Band-2 9300-34800 + Grade Pay Rs 4200/- and redesignated as Stenographer Grade I. However, the recruitment rules for the post of Stenographer Grade I and Stenographer Grade II were not revised/amended by the CBDT, New Delhi and the old recruitment rules were in force. The grievance of the applicant is that though he completed 05 years' regular service required for promotion to the post of Stenographer Grade II on 01.01.2012 and despite vacancy being available, the respondents have not convened DPC for the Recruitment Year 2012-13.

3. Respondents denied the claim of the applicant stating that as per order dated 17.05.2007 (Annex. A/2), the applicant is not

entitled to count services rendered by him in the office of Delhi Charge towards counting minimum service for promotion as well as for seniority. Therefore, respondents plea is that the applicant did not complete minimum 5 years service as on 01.01.2012 as services rendered by him under Delhi charge cannot be counted as per terms and conditions of order dated 17.05.2007 (Annex. A/2) transferring him in the Rajasthan Charge at his own request. Hence, DPC for the Recruitment Year 2012-13 was not convened as no eligible candidate was available for further promotion. However, DPC for the Recruitment Year 2013-14 was convened on 15.01.2014 and name of three eligible candidates including applicant have been released for promotion. The applicant being eligible and found fit for promotion to the cadre of Stenographer Gr. I by the DPC for the Recruitment Year 2013-14 held on 15.01.2014.

4. Mr Kamal Dave, learned counsel for the applicant submits that question 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 already been settled by this Tribunal as well as by the Hon'ble Supreme Court. He referred to the judgment of this Tribunal passed on 09.08.2012 in OA No. 522/2011 with MA 64/2012 (Ramesh Kumar Panwar Vs UOI & Ors) and 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.** Referring to these judgments, he contended that in so far as issue of eligibility of promotion is concerned, the service rendered in the previous region prior to transfer on compassionate ground should be counted towards service for eligibility for consideration of such promotion. He thus prayed that respondents may be directed to consider application for promotion when he completed 5 years of service as Stenographer Grade III redesignated as Grade II.

5. Mr Sunil Bhandari, learned counsel for the respondents vehemently opposed the arguments advanced by learned counsel for the applicant. He submits that the applicant with open eyes accepted the terms and conditions of the Inter Charge transfer while joining in Rajasthan Region from Delhi Charge. His name has already been found eligible and he was found fit by the DPC for the Recruitment Year 2013-14 held on 15.01.2014 (Annex. R/2). Hence, he is not entitled for any relief from this Tribunal.

6. We have gone through the material available on record and considered the arguments advanced by both the parties.

7. It is an admitted fact, as mentioned in para 6 of reply, that DPC in the Recruitment Year 2012-13 for the post of Stenographer Grade II redesignated as Stenographer Grade I, could not take place as no eligible candidate was available for further promotion. As per respondents, applicant was not eligible as he

did not complete 5 years service on the post of Stenographer Grade III (pre revised scale Rs 4000-6000, revised to Rs 5200-20200 + Grade Pay Rs 2400) in the Rajasthan Charge as services rendered by him in Delhi charge was not counted towards minimum service required for promotion, which is 5 years. The plea of the respondents is that in Inter-Charge transfer on compassionate ground at the request of an incumbent, he/she is assigned bottom seniority as well as services earlier rendered in other Region are not counted as has been mentioned in para 2 and para 3 inter charge transfer order of the applicant dated 17.05.2007 (Annex. A/2).

8. 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 notice 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. However, the question of service rendered by an individual in for the purpose of eligibility for promotion has been examined by the various courts and the legal position is now settled by the Hon'ble Apex Court. In the case of Pratibha Rani & Ors Vs UOI & Ors (Supra) of the same Ministry/Department, the Hon'ble Apex Court has set the legal issue at rest which is also involved in the present matter. The judgment of Hon'ble Apex Court 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 have 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 the judgments of Hon'ble Supreme Court referred in preceding paragraph, it is clear that the applicant was eligible for promotion in the Recruitment Year 2012-13 and plea of the respondents cannot be accepted that applicant had not completed 5 years minimum service required for promotion. Hence, the condition number three in order dated 17.05.2007 (Annex. A/2) to the effect that services rendered by the applicant in Delhi Charge will not count towards the minimum service, if any prescribed for promotion or appointment to any higher post or grade is a non-est factum and the same is held non-est.

10. Now, the issue is what relief can be granted to the applicant looking to the fact that in the subsequent recruitment year, i.e. 2013-14 his name was considered for promotion and Departmental Promotion Committee in its minutes dated

15.01.2014 (Annex R/1) recorded the fact that 30 posts were lying vacant on the said date out of 31 posts of Stenographer Grade I. Had the respondents counted the services rendered by the applicant in Delhi Region, the applicant would have been promoted to the post of Stenographer Grade I since promotions were being given in other Regions as per Annex. A/4 document dated 15.09.2013 placed on record by the applicant and not denied by the respondents.

11. The applicant has completed his 05 years service on 01.01.2012. However, the applicant was not considered for promotion and DPC could not be convened as respondents found him ineligible for want of minimum required 05 years service on wrong notion. Hence, we direct the respondents to convene the DPC for the post of Stenographer Grade II redesignated as Stenographer Grade I for the Recruitment Year 2012-13 as per existing Recruitment Rules at relevant time with all consequential benefits keeping in view law laid down by Hon'ble Supreme Court in K.P. Sudhakaran's case (supra) and Pratibha Rani's case (supra). The respondents shall complete the said exercise within 03 months from the date of receipt of a copy of this order and promote the applicant from the 1st day of model calendar for DPC for the Recruitment Year 2012-13, if otherwise found fit. It is made clear that financial benefit to the applicant, if promoted, will be

notional till 10.04.2019 (Date of judgment of Hon'ble Supreme Court) and thereafter, he will be entitled for actual financial benefits.

12. OA is allowed in above terms with no order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-