

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Jodhpur, this the 8th July, 2019

CORAM

Hon'ble Smt Hina P. Shah, Judicial Member

Hon'ble Ms Archana Nigam, Administrative Member

1. O.A. No.290/00226/2014

Shri Arun Parsoya S/o Babu Lal Parsoya aged about 31 years, resident Near Bhadwasiya School, Street No. 2, Post Krashi Mandi, Jodhpur. Official Address Stenographer Grade II, Office of Chief Commissioner of Income-Tax, Jodhpur.

.....Applicant

By Advocate : Mr Kamal Dave.

Versus

- (1) The Union of India through the Secretary, Ministry of Finance, Department of Revenue of Government of India, New Delhi.
- (2) Principle Chief Commissioner of Income Tax, Statute Circle, Jaipur.
- (3) Central Board of Direct Taxes (CBDT), Directorate of Income Tax, ICADR Building, Plot No. 6 Vasant Kunj, Institutional Area Phase II, New Delhi-110070.

.....Respondents

By Advocate : Mr Sunil Bhandari.

2. O.A. No.290/00227/2014

Shri Arun Parsoya S/o Babu Lal Parsoya aged about 31 years, resident Near Bhadwasiya School, Street No. 2, Post Krashi Mandi, Jodhpur. Official Address Stenographer Grade II, Office of Chief Commissioner of Income-Tax, Jodhpur.

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- (1) The Union of India through the Secretary, Ministry of Finance, Government of India, New Delhi -110001.

(2) Principle Chief Commissioner of Income Tax, Central Revenue Building, Statute Circle, Bhagwandas Road, Jaipur.

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ORDER (Oral)

Per Smt. Hina P. Shah

Heard.

Since relief prayed for in both these Original Applications is based on adjudication of common legal issue and also, these Original Applications have been filed by the same applicant. Accordingly, we are deciding both these Original Applications, for the sake of convenience, by a common order.

2. The main relief prayed for by the applicant in OA No. 290/00226/14 and OA No. 290/00227/14 respectively are as under:

OA No. 290/00226/14

- (a) That the order impugned Annexure-A/1 issued in Feb. 2014 and Annex. A/2 dated 27.05.2014 issued by CBDT may be declared contrary to the statutory rules and the same may kindly be quashed and set aside.
- (b) That the respondents may kindly be directed to consider applicant's service period subsequent to entering the respondent department through merit selection irrespective of his own request transfer to Rajasthan Region as 3 years regular service in fulfilment of requirement of 'rules of 1986' and it may further be declared that loss of seniority after own request transfer have no effect as regard the required condition of 'regular service'.

OA No. 290/227/2014

- (a) That the respondents may kindly be directed to consider the applicant for promotion to the post of Stenographer Grade I (PB Rs 9300-34800 with Grade Pay Rs 4200) w.e.f. from the date of his eligibility i.e. RY 2012-13 with all consequential benefits.

- (b) That the respondents may kindly be directed to treat the applicant as eligible by considering the period of the date of initial appointment 07.12.2006 till the date of consideration for the purpose of eligibility for promotion of as per Rules of 2003.

2. Facts of these Original Applications, in nutshell, are that the applicant was selected for the post of Stenographer Grade III through Staff Selection Commission in the Delhi Region of respondent department where he joined on 07.12.2006. Thereafter, the applicant applied for inter-charge transfer for Rajasthan Region which was accepted by the competent authority with certain conditions and applicant was transferred to Rajasthan Region vide order dated 18.11.2011. The applicant is aggrieved mainly of loss of seniority in new Region as seniority is maintained Region wise as well as non-counting of past services rendered by him in the old Region, i.e. Delhi Region towards required minimum service for consideration of promotion.

3. In O.A. No. 290/00226/2014, the applicant has challenged order dated February, 2014 (Annex. A/1) whereby his representation dated 21.01.2014 was rejected on the ground that services rendered by him in old Region will not be counted in the new region for the purpose of seniority; and he also challenged the order dated 27.05.2014 (Annex. A/2) containing instructions for conducting DPCs for vacancy year 2013-14.

4. In OA No. 290/00227/2014, the applicant's candidature for promotion to the post of Stenographer Grade I was not considered

mainly on the ground of non-counting of services rendered by him in the Delhi Region for the purpose of eligibly.

5. Today, when the matter was taken up for hearing, Mr Kamal Dave, learned counsel for the respondents submitted 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 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**, 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.

However, Mr Sunil Bhandari, learned counsel for the respondents vehemently opposed the arguments advanced by learned counsel for the applicant and submitted that the applicant with open eyes accepted the terms and conditions of the Inter Charge transfer while joining in Rajasthan Region from Delhi Region.

6. We have considered the arguments advanced by learned counsels for the parties and perused the record.

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 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, the decision of the respondents as per guidelines/instructions to assign the applicant bottom seniority in the transferred region is perfectly legal and Annex. A/1 dated February, 2014 passed by the respondents in OA No. 290/00226/2014 cannot be faulted with. However, para 5 of Annex. A/2 dated 27.05.2014 cannot be sustained in view of judgment of Hon'ble Supreme Court in Pratibha Rani's case (supra) as well as in K.P. Sudhakaran's case (supra) and the same is declared as non-est factum, which reads as under :

5. It is further clarified that as per the existing DoPT and CBDT instructions on inter-Region transfer for the purpose of reckoning prescribed years' regular service in the grade, the service rendered by an inter-region transferee in the old region shall not be counted in the new region which he has joined on such transfer, if the transfer is on the request of the officer concerned.

8. Accordingly, in view of Hon'ble Supreme Court judgments referred in preceding paragraphs, respondents are directed to consider the case of the applicant for promotion from the date of his eligibility for the Recruitment Year 2012-13 as well as seniority with all consequential benefits, if otherwise found fit, by convening DPC within 03 months from the date of receipt of a copy of this order. It is made clear that if applicant is found fit and promoted, he will be entitled for notional financial benefits till 10.04.2019 (Date of judgment of Hon'ble Supreme Court) and thereafter, he will be entitled for actual financial benefits.
9. Original Applications are allowed in above terms with no order as to costs.

[Archana Nigam]
Administrative Member

[Hina P. Shah]
Judicial Member

Ss/-