

CENTRAL ADMINISTRATIVE TRIBUNAL CUTTACK BENCH

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

Reserved on : 13.11.2019

Order on : 02.12.2019

1. OA 547/2013

Manoranjan Behera, aged about 33 years, S/o Duryodhan Behera, At-Saiguda, PO-Manoharpur, Dist-Cuttack at present working as Tax Assistant in the office of the JCIT, Range-II, Aayakar Bhawan, Rajaswa Vihar, Odisha Region, Bhubaneswar, Dist-Khurda, Odisha.

.....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, Aayakar Bhawan, , Rajaswa Vihar, Bhubaneswar, Dist-Khurda.
4. Joint Commissioner of Income Tax, Range-II, Aayakar Bhawan, , Rajaswa Vihar, Bhubaneswar, Dist-Khurda.
5. Deputy Commissioner of Income Tax (Hqrs)(Admn), Aayakar Bhawan, , Rajaswa Vihar, Bhubaneswar-751007, Dist-Khurda.

.....Respondents.

For the applicant : Mr.P.C.Sethi, Counsel

For the respondents: Mr.M.R.Mohanty, Counsel

2. OA 507/2014

Rabindra Kumar Behera, aged about 34 years, S/o Bhaskar Behera, at present working as Tax Assistant in the office of the JCIT, Berhampur Range, Aayakar Bhawan, Berhampur, Dist:Ganjam, Odisha, Pin-76—10 permanent resident: Back side of Shanti Nagar, Gunupur, Dist:Rayagada, Odisha, Pin-765022.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, Central Revenue Building, Queens Road, Bangalore, Karnataka.

5. Joint Commissioner of Income Tax, Berhampur Range, Aayakar Bhawan, Ambapua, Berhampur, Dist-Ganjam, Odisha.

.....Respondents.

For the applicant : Mr.P.C.Sethi, Counsel

For the respondents: Mr.J.K.Nayak, Counsel

3. **OA 519/2014:**

Himansu Kumar Das, aged about 32 years, S/o Anandi Charan Das, at present working as Tax Assistant in the office of the CIT(A), Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha, Pin-751007, Permanent resident of Chaulia, RS Dhenkanal, P.S. Thana Sadar, Dist:Dhenkanal, Odisha, Pin-759013

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, A.C. Guards, I.T. Towers, Masabtank, Hyderabad-500004.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant : M/s.P.C.Sethi, S.Pattnaik, Counsel

For the respondents: Mr.L.Jena, Counsel

4. **O.A.No. 520/2014**

Susant Kumar Sahoo aged about 32 years, S/o Agani Sahoo, Office of the Deputy Director of Income-tax(Inv.), F-6 Old Siemens Buildings, Sector-2, Rourkela, Dist-Sundargarh, Odisha, Pin-751007, Permanent resident of Nua Bhuban, Post_Bhuban, Dist:Dhenkanal, Odisha, Pin-759017

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, Central Revenue Building, Queens Road, Bangalore, Karnataka-560001.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant : Mr.P.C.Sethi, Counsel

For the respondents: Mr.L.Jena, Counsel

5. **O.A.No. 521/2014:**

Ram Narayan Behera, aged about 34 years, S/o Deenabandhu Behera, Office of the JCIT, I.B. Road, Station Square, Balasore, Odisha, Permanent resident of EB/792, Badagada Brit Colony, Bhubaneswar-751018, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, A.C. Guards, I.T. Towers, Masabtank, Hyderabad-500004.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant :Mr.P.C.Sethi, Counsel

For the respondents: Mr.J.K.Nayak, Counsel

6. **O.A.No. 542/2014:**

Santosh Kumar Rout, aged about 33 years, S/o Bandhu Rout, Office of the JCIT, Range-2, Aayakar Bhawan, Shelter Chhaka, Kaffla, Cuttack, Odisha, Permanent resident of Kusunpur, P.O: Podamarai, P.S.: Mahanga, Dist:Cuttack-754206, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, A.C. Guards, I.T. Towers, Masabtank, Hyderabad-500004.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant :M/s. P.C.Sethi & S.Pattnaik, Counsel

For the respondents: Mr. J.K.Nayak, Counsel

7. **O.A.No.546 of 2014:**

Deepak Kumar Nayak, aged about 30 years, S/o Pramod Kumar Nayak, at present working as Tax Assistant in the office of the JCIT, Berhampur Range, Aayakar Bhawan, Berhampur, Dist:Ganjam, Odisha, permanent resident: of Chhotinatara, PO-Bhimdasapur, P.S. Salipur, Dist-Cuttack, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, Central Revenue Building, Queens Road, Bangalore, Karnataka.
5. The Director of Income –tax (HRD), ICADR Building, Plot No No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant :M/s.P.C.Sethi & S.Pattnaik, Counsel

For the respondents: Mr.J.K.Nayak, Counsel

8. **O.A.No. 553/2014:**

Bikram Das, aged about 30 years, S/o Jogendra Das, Office of the JCIT, Range-2, Aayakar Bhawan, Shelter Chhaka, Kafla, Cuttack, Odisha, Permanent resident of Kharida Patna, P.O:Laxminarayanpur, Dist:-Puri-752100, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, A.C. Guards, I.T. Towers, Masabtank, Hyderabad-500004.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant :M/s. P.C.Sethi & S.Pattnaik, Counsel

For the respondents: Mr.J.K.Nayak, Counsel

9. **O.A.No. 554/2014**

Trilochan Malik, aged about 33 years, S/o Batakrushna Malik, Office of the JCIT, Range-2, Aayakar Bhawan, Shelter Chhaka, Kafla, Cuttack, Odisha, Permanent resident of Bahabalpur, P.O:Odisso Andeigoda, Dist:Jajpur-755008, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, A.C. Guards, I.T. Towers, Masabtank, Hyderabad-500004.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant : M/s.P.C.Sethi & S.Pattnaik, Counsel
For the respondents: Mr.S.K.Singh, Counsel

10. **O.A.No. 562/2014:**

Atulya Kumar Patra, aged about 34 years, S/o Himanchal Kumar Patra, Office of the JCIT, Range-1, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha, Pin-751007, Permanent resident of At:Kuthurla, P.O.:Bhutiari Bahal, Dist:Bolangir, Pin-Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, Aayakar Bhawan, Telngkhadi Road, Civil lines, Nagpur, Maharastra.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant : M/s.P.C.Sethi & S.Pattnaik, Counsel
For the respondents: Mr.L.Jena, Counsel

11. **OA 563/2014:**

Dibakara Prusty, aged about 34 years, S/o Lachhamana Prusty, Office of the CIT, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha, Pin-751007, Permanent resident of Nagapur Kharidasahi, P.S. Gop, Dist-Puri-752110, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.

3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, A.C. Guards, I.T. Towers, Masabtank, Hyderabad-500004.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant : M/s.P.C.Sethi & S.Pattnaik, Counsel

For the respondents: Mr.L.Jena, Counsel

12. O.A.No. 564/2014:

Ratna Karan, aged about 36 years, S/o Kartika Karan, Office of the ITO, FCI Square, New Industrial Estate Phulbani, Dist:Kandhamal, Odisha, Pin-751007, Permanent resident of Bondra, Bolangir.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, Aayakar Bhawan, Telngkhadi Road, Civil lines, Nagpur, Maharastra.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant : M/s.P.C.Sethi & S.Pattnaik, Counsel

For the respondents: Mr.J.K.Nayak, Counsel

13. O.A.No. 604/2014:

Hrusikesh Sahoo, aged about 37 years, S/o Laxman Sahoo, Office of the JCIT, Range-1, Aayakar Bhawan, Shelter Chhaka, Kafla, Cuttack, Odisha, Permanent resident of Gandhinagar, PO/PS:Odagaon, Dist-Nayagarh, Odisha, Pin-752081, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, Central Revenue Building, Queen's Road, Bangalore-560001.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant : M/s.P.C.Sethi & S.Pattnaik, Counsel
 For the respondents: Mr.L.Jena, Counsel

14. O.A.No. 623/2014:

Anubrata Sahu, aged about 31 years, S/o Basanta Kumar Sahu, Office of the ITO, Bandutikra, Bargarh, Odisha, Permanent resident of Dholbandh, PO-Bishipili, P.S-Padampur, Dist-Bargarh, Pin-768049, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax, Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. Principal Chief Commissioner of Income Tax, Central Revenue Building, Queen's Road, Bangalore-560001.
5. The Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant : M/s.P.C.Sethi & S.Pattnaik, Counsel
 For the respondents: Mr.L.Jena, Counsel

15. O.A.No. 736/2015:

Trilochan Barik, aged about 33 years, S/o Gajendra Barik, At/PO-Barimund, Via-Phulnakhara, Dist-Khurda, At present working as Tax Assistant, Office of the JCIT, Central Range, Bhubaneswar, Dist-Khurda, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax (CCA), Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007.

.....Respondents.

For the applicant :M/s. Biswa Behari Mohanty,
 M.Harichandan, B.Tripathy,
 B.Samantray, Counsel
 For the respondents: Mr.G.R.Verma, Counsel.

16. O.A.No.871 of 2015:

Prafulla Kumar Nayak, aged about 32 years, Son of Kshetra Mohan Nayak, Tax Assistant, O/O Income Tax Officer, Kendrapara Ward, Paradeep, Permanent resident of Village-Darada, Post-Borikina, PS: Balikuda, Dist. Jagatsinghpur, Odisha.

.....Applicant

-Versus-

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax (CCA), Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. The Deputy Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant :M/s. N.R.Routray, S.Sarkar, U.Bhatt,
Smt. J.Pradhan, Mr. T.K.Choudhury,
S.K.Mohanty, Counsel

For the respondents: Mr.G.R.Verma, Counsel

17. O.A.No.872 of 2015:

Samir Chandra Behera, aged about 33 years, Son of Sagar Chandra Behera, Tax Assistant, O/O. CIT (TDS) 2nd Floor, Ayakar Bhawan Annexe, Rajaswa Vihar, Bhubaneswar, permanent resident Village Jayarasasan, Post. Jagannathpur, Ps. Baliana, Dist. Khurda, Odisha.

....Applicant

-Versus-

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax (CCA), Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. The Deputy Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

18. O.A.No. 963/2015:

Akshay Kumar Sahoo, aged about 37 years, S/o Bhima Charan Sahoo, Tax Assistant, Office of the JCIT, Range-1, Aayakar Bhawan, Shelter Chhaka, Tulasipur, Cuttack, Odisha, Permanent resident of Plot No.3C/271, Sector-9, CDA., Cuttack-753014, Odisha.

.....Applicant

VERSUS

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, North Block, New Delhi – 110001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110001.
3. The Principal Chief Commissioner of Income Tax (CCA), Odisha Region, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar, Dist-Khurda, Odisha.
4. The Deputy Director of Income Tax (HRD), ICADR Building, Plot No.6, Vasant Kunj, Institution Area, Phase-II, New Delhi-110070.

.....Respondents.

For the applicant : M/s. N.R.Routray, T.K.Choudhury, S.Sakar,
U.K.Bhatt, S.K.Mohanty, Smt. J.Pradhan,
Counsel
For the respondents: Mr.J.K.Nayak, Counsel.

O R D E R

SWARUP KUMAR MISHRA, MEMBER(JUDL.):

1. OA No. 547/2013

The reliefs sought for by the applicant in this OA are under:-

- “(i) To quash the letter dated 10.12.2012 (Annexure A/5) & the order of rejection dated 18.6.2013 (Annexure A/6) being opposed to the law laid down by the Hon’ble Apex Court and various Benches of the Hon’ble Tribunal referred to above besides being discrimination;
- (ii) Consequently to direct the respondents to convene the review DPC and consider the case of the applicant for promotion against one of the vacancies of 2013-14 taking into consideration his total length of service and if found suitable promote him to the post of Senior Tax Assistant with all consequential service and financial benefits retrospectively.
- (iii) To pass any other order/orders as deemed fit and proper.
- (iv) To quash the letter of rejection dated 16.9.2013 (Annexure A/7)”.

2. OA No. 507 of 2014

The reliefs sought for by the applicant are as under:

- (i) To quash the letter dated 10.12.2012 under Annexure-A/4 and Annexure-A/6 dated 27.05.2014 being contrary to the law laid down by the Hon’ble Apex Court and various Benches of the Hon’ble Tribunal.
 - (ii) To declare the conditions imposed by the Respondent No.3 in the order under Annexure-A/1 of not considering the past service for promotion is illegal;
 - (iii) To direct the Respondents to consider the case of the applicant for promotion against the vacancies of 2013-2014 taking into consideration of the total length of service for the purpose of eligibility for the post of Senior Tax Assistant and if found suitable then promote the applicant to the post of Senior Tax Assistant along with consequential service and financial benefits retrospectively from the date other employees are getting;
- And/or
- (iv) To pass any other order/orders as deemed fit and proper and order if any prayed for.”

3. **O.A.Nos. 519 & 604 of 2014**

The reliefs sought for by the applicants are as under:

- (i) To declare the conditions imposed by the Respondent No.3 in the order under Annexure-A/1 for not considering the past service for promotion is illegal;
- (ii) To quash the letter dated 10.12.2012 under Annexure-A/6 dated 10.12.2012 and Annexure-A/7 dated 27.05.2014 being contrary to the instruction issued by the Respondent No.2 dated 14.05.1990 under Annexure-A/2 series and hence is illegal;
- (iii) To declare the directions issued by the Respondent No.5 under Annexure-A/6 and A/7 in violation to the order of Respondent No.2 under Annexure-A/2 series is without jurisdiction and hence are liable to be set aside;
- (iv) To declare that the Respondent No.5 is not competent to issue direction to the Respondent No.3 as had been done under Annexure-A/6 and A/7 and for which same are liable to be set aside.
- (v) To quash the representation disposed by the Respondents under Annexure-A/5 rejecting the prayer of the applicant under Annexure-A/4 being contrary to the law laid down by the Hon'ble Apex Court and various benches of the Hon'ble Tribunal;
- (vi) To direct the Respondents to consider the case of the applicant for promotion against the vacancies of 2013-2014 taking into consideration of the total length of serve for the purpose of eligibility for the post of Senior Tax Assistant and if found suitable then promote the applicant to the post of Senior Tax Assistant along with consequential service and financial benefits retrospectively from the date other employees are getting;

And/or

- (vii) To pass any other order/orders as deemed fit and proper and order if any prayed for;

4. **O.A.Nos. 520, 521, 542, 546, 553, 554, 562, 563, 564 & 623/2014:**

The reliefs sought for by the applicants, in the above OAs being same are as under:

- (i) To declare the conditions imposed by the Respondent No.3 in the order under Annexure-A/1 for not considering the past service for promotion is illegal;

- (ii) To quash the letter of Respondent No.5 under Annexure-A/4 dated 10.12.2012 and Annexure-A/6 dated 27.04.2014 being contrary to the instruction issued by the Respondent No.2 dated 14.05.1990 under Annexure-A/2 series and hence is illegal;
 - (iii) To declare the letter issued by the Respondent No.5 under Annexure-A/4 and A/6 in violation to the order of Respondent No.2 under Annexure-A/2 series is without jurisdiction and hence are liable to be set aside;
 - (iv) To declare that the Respondent No.5 is not competent to issue direction to the Respondent No.3 as had been done under Annexure-A/4 and A/6 and for which same are liable to be set aside.
 - (v) To direct the Respondents to consider the case of the applicant for promotion against the vacancies of 2013-2014 taking into consideration of the total length of serve for the purpose of eligibility for the post of Senior Tax Assistant and if found suitable then promote the applicant to the post of Senior Tax Assistant along with consequential service and financial benefits retrospectively from the date other employees are getting;
- And/or
- (vi) To pass any other order/orders as deemed fit and proper and order if any prayed for;

5. **O.A.No. 736/2015:**

The reliefs sought for by the applicant are as under:

- (i) The Original Application be allowed;
- (ii) This Hon'ble Tribunal be pleased to quash the order of rejection dated 16.09.2015, stipulation contained in the CBDT instruction dated 17.06.2015 at para-5 and the condition available at Clause 2(iii) of the letter dated 10.07.2014;
- (iii) Necessary direction may be issued to the Respondents to consider the applicant as eligible by taking his services rendered under Tamilnadu Region prior to his coming on inter change transfer to Odisha Region for the purpose of determination of eligibility of qualifying services for promotion to the next higher post i.e. Sr. Tax Assistant as well as Inspector of Income Tax and hold a DPC or a Review DPC for the vacancy year 2014-2015 and for the vacancy year 2015-2016 as against the substantive vacancies available and if required by holding review DPCs and promote the applicant with all consequential service and financial benefits forthwith or within a time to be stipulated by this Hon'ble Tribunal;

- (iv) And pass any other order/orders or direction/directions be issued so as to give complete relief to the Applicant.

6. **O.A.No.871 of 2015:**

The reliefs sought for by the applicant are as under:

- (i) To declare Para-5 of the instruction dated 02.12.2014 under Annexure-A/6 as non est;
- (ii) And to direct the Respondents to reckon the regular service rendered in the old region before inter range transfer as qualifying service for promotion to the post of Senior Tax Assistant/Inspector;
- (iii) And to direct the Respondents to conduct review DPC and promote the applicant to the post of Senior Tax Assistant/Inspector at par with beneficiaries of orders dated 01.01.2015 with all consequential service benefits.

7. **O.A.No. 872 of 2015:**

The reliefs sought for by the applicant are as under:

- (i) To declare Para-5 of the instruction dated 02.12.2014 under Annexure-A/4 as non est;
- (ii) And to direct the Respondents to reckon the regular service rendered in the old region before inter range transfer as qualifying service for promotion to the post of Senior Tax Assistant/Inspector;
- (iii) And to direct the Respondents to conduct review DPC and promote the applicant to the post of Senior Tax Assistant/Inspector at par with beneficiaries of orders dated 01.01.2015 with all consequential service benefits.

8. **OA No.963 of 2015:**

The reliefs sought for by the applicant are as under:

- (a) To declare Para-5 of the instruction dated 17.06.2015 under Annexure-A/6 as non est in the eye of law;
- (b) And to quash the order of rejection dated 09.12.2015 under Annexure-A/14;
- (c) And to direct the Respondents to reckon the regular service rendered in the old region before inter range transfer as qualifying service for promotion to the post of Senior Tax Assistant;
- (d) And to direct the Respondents to conduct review DPC and promote the applicant to the post of Senior Tax Assistant/Inspector at par with beneficiaries of orders dated 05.08.2015 with all consequential service benefits.

9. In all these OAs, the nature of dispute is whether the service rendered in earlier administrative unit prior to his transfer will be counted for eligibility for promotion even though the employee was transferred on own request to another administrative unit on the basis of the bottom seniority at the new station. The applicants had joined under the Income Tax Department (in short ITD) as Tax Assistant under different charges in different States. After completion of probation period, they had requested for transfer to another Charge of their choice, which was accepted by the authorities with the condition that the service rendered in the old charge will not be counted in the new charge for the purpose of seniority and he/she will be placed at the bottom of the list of employees at the new station. The applicants had also submitted undertaking to the effect that their seniority will be determined from the date of their joining in the new Charge and the service rendered in earlier Charge will not count towards the minimum service prescribed for promotion to any higher grade. After joining in the new Charges/Regions of their choice after furnishing the undertakings as above, they objected to the undertaking regarding the minimum service requirement for the purpose of promotion to the next higher grade of Senior Tax Assistant (in short STA) on the ground that such undertaking is not as per the circular of the CBDT and the judgment of Hon'ble Apex Court and Tribunal in earlier similar cases. They filed these OAs after the respondents did not accept their claim on the ground that they had furnished the undertakings prior to their joining in the new Charges.

10. The dispute being common in all the OAs in this batch, these OAs were heard together, for which, no objection was received from any of the

parties. All these OAs in this batch are being disposed of by this common order, taking the OA No. 547/2013 as the lead OA.

O.A.No.547 of 2015:

11. The applicant in OA No. 547/2013 joined as Tax Assistant in Andhra Pradesh Charge under ITD on 16.1.2008 under direct recruitment quota and had passed departmental examination and completed two years of service on 15.1.2010. On his request for transfer to Odisha Charge, he was transferred to Odisha Charge where he joined on 20.4.2012. His seniority as Tax Assistant was fixed at the bottom of the list of other employees in Odisha Charge as per the CBDT circular dated 14.5.1990 (Annexure-A/1) and the seniority list dated 1.4.2013 (Annexure-A/2) reflected his place at serial no. 52.

12. Thereafter, the Applicant submitted a representation dated 7.6.2013 (Annexure-A/4) when he was not considered in the DPC held on 1.4.2013 for promotion to the post of STA for which the eligibility of three years of service has been prescribed under the Recruitment Rules (Annexure-A/3). The applicant stated in his representation dated 7.6.2013 stating that the circular dated 14.5.1990 of the CBDT only specified about seniority of employees who are transferred from other Charge, without specifying anything about the eligibility of minimum service for promotion. He also cited the judgment of Honble Apex Court in the case of Renu Mullick vs. UOI, reported in 1994 SCC (1) 373, in which it was held that the employee in such cases will be entitled for counting his/her service in previous Charge for the purpose of minimum service requirement prescribed for promotion. The applicant had also cited the judgment of Hon'ble Apex Court in the cases of UOI & other vs. C.N. Ponnapan, AIR 1996 SC 764 and Scientific Advisor to Raksha Mantri & Anr. vs. V.M. Joseph reported in

AIR 1998 SC 2318 and UOI & Anr. vs. V.N. Bhat reported in AIR 2004 SC 3200. He has also cited the judgments of the Tribunal dated 24.8.2006 of the Principal Bench in OA No. 2406/2005, dated 9.8.2012 of Jodhpur Bench in OA No. 522/2011 and dated 14.2.2013 of Lucknow Bench in OA No. 315/12, which has been upheld by Hon'ble Allahabad High Court (Lucknow) vide judgment dated 27.5.2013 in Service Bench No. 826 of 2013. The applicant in his representation had also cited the instances of other Charges where similar reliefs have been allowed to the staffs who had joined new Charge on transfer from another Charge. However, the representation dated 7.6.2013 was rejected by the authorities vide order dated 18.6.2013 (Annexure-A/6) without considering the points mentioned in the representation dated 7.6.2013.

13. Being aggrieved by above decision, the applicant filed this OA. By order dated 14.8.2013, this Tribunal allowed liberty to the respondents to reconsider the case of the applicant. In compliance, the respondents passed the order dated 16.9.2013 (Annexure-A/7) again rejecting the case. The orders at Annexure- A/6 and A/7 have been impugned in this OA mainly on the same grounds as stated in his representation dated 7.6.2013 (Annexure-A/4).

14. Counter has been filed by the respondents opposing the OA without disputing the fact. It is pointed out in the counter that the applicant has given an undertaking as per the CBDT's letter dated 14.5.1990 as under :

"The service rendered by me in Andhra Pradesh Region will not count towards the minimum service if any, prescribed for promotion/appointment to any higher grade or post in Orissa Region."

The copy of such undertaking has been enclosed at Annexure R/1 of the counter. It is, therefore, averred in the counter that the applicant was not

entitled to claim any credit of past service for the purpose of promotion to the Grade of STA. It is also pointed out that his representation filed earlier has been rejected vide order dated 18.6.2013 (Annexure A/6) and that subsequently in compliance to the direction of this Tribunal a detailed order dated 16.9.2013 (Annexure A/7) was passed by the respondents which has been challenged in this OA. It is further contended by the respondents that as per the Board's letter dated 14.5.1990 (Annexure A/1), his past service cannot be taken into account for the purpose of promotion to the Grade of STA. It is also mentioned in the order dated 5.1.2012 of the respondents while posting the applicant under Orissa charge that service rendered by him in Andhra Pradesh Region will not be counted as minimum service for the purpose of promotion to the higher grade. Copy of the order dated 5.1.2012 has been enclosed by the respondents at Annexure R/2 of the Counter. This has been reiterated in the letter dated 10.2.2012 of the CBDT (Annexure A/5).

15. Rejoinder has been filed by the applicant broadly reiterating the averments in the OA. It is stated that in the CBDT's letter dated 14.5.1990 (Annexure A/5) there is no condition prescribed that the past service in the old Charge will not be counted in the new station for the purpose of considering minimum service requirement prescribed for promotion. Hence, it was averred that the undertaking given by the applicant at Annexure R/1 is contrary to the guidelines of CBDT dated 14.5.1990 (Annexure A/1). It is also averred that the undertaking at Annexure R/1 is also contrary to the judgment of the Hon'ble Apex Court and judgment of the co-ordinate Benches of the Tribunal as indicated in the OA. It is stated that the applicant was forced to give such undertaking copy at Annexure R/1 and the said undertaking is illegal as it is in violation of the Annexure

A/1. It is further mentioned that the qualifying service is totally different from the seniority and as per seniority list is concerned his name is mentioned in the bottom of the seniority list of Tax Assistant as prescribed in the circular dated 14.5.1990. But it does not take away the past services. It is stated that the sole ground for denying the benefit of past services is on the basis of giving an undertaking by the applicant which is contrary to the letter of the CBDT at Annexure A/1.

16. In the case of Renu Mullick (*supra*), which has been relied upon by the applicant's counsel, the petitioner joined the service as LDC and then was transferred on her own request to Allahabad in 1987 by giving an undertaking that her seniority will be fixed below the last temporary UDC in Allahabad Collectorate and she will be treated as fresh entrant in the cadre of UDC in new charge. Subsequently, at the time of her consideration in the next higher grade of Inspector, for which the total requirement of 5 years' service as UDC or 13 years of service as UDC and LDC together was the qualifying requirement, she was duly considered and promoted as Inspector. The relevant rules provide that when juniors completing eligibility period are considered for promotion, their seniors should also be considered irrespective of the length of service. The petitioner was promoted on November 11, 1989. Subsequently on 28.2.1992 the promotion order was cancelled reverting the applicant from the post of Inspector and no reason was assigned for such reversion and no opportunity was given to the petitioner before passing the reversion order. The petitioner approached the Allahabad Bench of the Tribunal, which dismissed the case. The appeal was filed before Hon'ble Apex Court challenging the Tribunal's order, in which it was held by Hon'ble Apex Court as under :

“10. We are of the view that the Tribunal fell into patent error in dismissing the application of the appellant. A bare reading of para 2(ii) of the executive instructions dated May 20, 1980 shows that the transferee is not entitled to count the service rendered by him/tier in the former Collectorate for the purpose of seniority in the new charge. The later part of that para cannot be read differently. The transferee is to be treated as a new entrant in the collectorate to which he is transferred for the purpose of seniority. It means that the appellant would come up for consideration for promotion as per her turn in the seniority list in the transferee unit and only if she has put in 2 years' service in the category of UDC. But when she is so considered, her past service in the previous collectorate cannot be ignored for the purposes of determining her eligibility as per Rule 4 aforesaid. Her seniority in the previous collectorate is taken away for the purpose of counting her seniority in the new charge but that has no relevance for judging her eligibility for promotion under Rule 4 which is a statutory rule. The eligibility for promotion has to be determined with reference to Rule 4 alone, which prescribes the criteria for eligibility. There is no other way of reading the instructions aforementioned. If the instructions are read the way the Tribunal has done, it may be open to challenge on the ground of arbitrariness.

.....

12. The appellant has stated in para II of the petition that 8 persons junior to the appellant were promoted as Inspectors. According to her, even if it is assumed that she was ineligible, she was entitled to be promoted in terms of Note 3 to the Schedule to the Rules (reproduced above) read with Office Memorandum dated July 19, 1989 (quoted above). This argument has not been dealt with by the Tribunal. Prima facie there is force in the argument but it is not necessary for us to go into the same.”

17. From the factual circumstances in the case of Renu Mullick (supra), it is clear that the circular governing transfer specified about seniority in the new charge. There was also provision in the rules that when a junior was promoted, senior has to be promoted irrespective of the length of service and the petitioner had claimed that some of her juniors were promoted as Inspector. No such claim is made in the present case, for which, the cited case is distinguishable. Moreover in the present case there is a specific undertaking given by the applicant at the time of his transfer to new Charge stating that the service in the previous charge will not be counted towards the minimum service requirement for promotion to the higher grade (Annexure-R/1). The applicant has challenged the said undertaking to be violating the circular dated 14.5.1990 (Annexure-A/1) of the CBDT.

18. The applicant's counsel has also cited the case of U.N.Bhatt (supra), in which the respondent-employee had joined as LDC in the Ministry of Defence in 1962. He sought transfer from the Ministry of Defence to the CPMG under Department of Posts which was allowed and the employee in that case joined the Postal Department in 1982 as LDC at the bottom seniority in the gradation list. The dispute arose on account of the eligibility for the time bound promotion and BCR scheme which were allowed to the employees after rendering 16 years and 26 years of service as Postal Assistant respectively. The concerned employee was given the benefit of the said scheme by converting his post to that of Postal Assistant. But subsequently, on receipt of clarification that the scheme will be available for employees who have rendered 16/26 years in Postal Department, the benefit allowed to the employee was withdrawn. This was challenged before the Tribunal, which allowed his case. The order of the Tribunal was challenged in appeal, in which it was held by Hon'ble Supreme Court as under :

“4. The submission of the learned counsel for the appellants in short is that having regard to the admitted fact that the respondent herein has not completed 16/26 years in the postal service, the One Time Bound Promotion Scheme or B.C.R. Scheme is not applicable in his case. The fact that the respondent herein had completed 18 years of service in the Ministry of Defence is not disputed. The question which, therefore, arises for consideration is as to whether the period of service rendered by the respondent in the Ministry of Defence should be wiped off for all purposes? The well settled principle of law that even. In the case where the transfer has been allowed on request, the concerned employee merely loses his seniority, but the same by itself would not lead to a conclusion that he should be deprived of the other benefits including his experience and eligibility for promotion. In terms of the Schemes aforementioned, promotion is to be granted for avoiding stagnation only within the said parties. The said Schemes have been framed because they are beneficial ones and thus required to be implemented. The Scheme merely perused that any person having rendered 16/26 years of service without obtaining any promotion could be entitled to the benefit therefor. It is, therefore, not a case where promotion to the higher post is to be made only on the basis of seniority. Even in a case where the promotion is to be made on the selection basis, the concerned employee, even if he be placed at the bottom of the seniority list in terms of the order of transfer based in his favour, he cannot be deprived of being considered for promotion to the next higher post if he is eligible therefor. This aspect of the matter is clearly covered by the three decisions of this Court, namely, [A.P. SEB v. R. Parthasarathi](#), [1998] 9 SCC 425; [Scientific Advisor to Raksha Mantri v. V.M. Joseph](#), [1998] 5 SCC 305 and [Renu Mullick v. Union of India](#), [1994] 1 SCC 373.”

19. It is clear from above that the decision in the case of U. N. Bhat (supra) was allowed as it was a promotion based only on years of service and not seniority. The transfer employee affected only the seniority, but not his years of service, which was accepted by the authorities to be at par with Postal Assistant. He was allowed the benefit initially which was withdrawn. Clearly, this cited case is factually different from the present OA.

20. In the case of C.M.Ponappan (supra), the respondent-employee was transferred to another unit on compassionate ground and he was placed at bottom of the sonority list. In that case, Hon'ble Apex Court held as under :

“3. We have considered the appeals in the light of provisions contained in the relevant rules. For promotion of a Lower Division Clerk to the post of Upper Division Clerk, which is in issue in Civil Appeals Nos. 1221 of 1987 and 2320 of 1995, the relevant rules required "eight years regular service in the grade." Similarly, for promotion from the post of Stenographer Grade III to Stenographer Grade II, which is in issue in Civil Appeal No. 529 of 1989, "five years of regular service in the post of Stenographer Grade III" was required.

4. 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 retrial 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 employee has been transferred has to be counted as experience for the purpose of eligibility for promotion at the place where he has been transferred.

5. It has been pointed out that subsequent to the judgment of the Tribunal in Poonappan's case (supra), the relevant rules governing promotion from Lower Division Clerk to Upper Division Clerk have been amended by notification dated June 30, 1986 and now the requirement is "with eight years regular service in the grade in the unit/office/establishment/laboratory/centre/ unit, etc. in which they are considered for promotion."

21. Similarly, in the case of V.M.Joseph (supra), which is also cited by the applicant's counsel, it is held by Hon'ble Apex Court as under :

"6. 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.

7. 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. In view of this decision, with which we respectfully agree, the direction of the Tribunal that the respondent may be promoted to the post of Senior Store Keeper from an earlier date and the further direction concerning respondent's promotion to the post of Senior Store Keeper, Grade-I, do not suffer from any infirmity. That being so, the appeal has no merits and is accordingly dismissed without, however, any order as to costs."

22. The principle laid down by Hon'ble Apex Court in the above cases is that although an employee is transferred to another administrative unit on compassionate transfer, he/she is placed at the bottom of the seniority, but his/her past services are not wiped out for the purpose of the eligibility for promotion, leave or retirement benefits unless the rules provide for the same.

23. In this OA, the only ground on which the respondents have rejected the request of the applicant to be considered for promotion to the post of

STA in the DPC held in the year 2013, is that the applicant had furnished an undertaking to the effect that his/her past services will not be counted for the purpose of the minimum years of service for promotion. The applicant has not mentioned anything about such undertaking in the OA, but has taken a stand in the Rejoinder that such undertaking was furnished under compulsion and it violates the circular dated 14.5.1990 (Annexure-A/1) of the CBDT.

24. The circular dated 14.5.1990 of the CBDT stated the following as one of the conditions for allowing his/her transfer on own request to a different Charge as under:-

“(f) The service rendered in the old charge will not be counted in the new charge for the purpose of seniority. He/She will be placed at the bottom of the list of the employees of the concerned cadre in the new charge. Seniority in the cadre in the charge to which person is transferred will start from the day that person reports for duty in that charge. However, he will not rank senior to any official who belongs to a batch selected on merit whose inter se seniority is not regulated by date of joining.”

It is clear from the above stipulations in the said circular that the inter-charge transfer on compassionate ground affected only the seniority of the employee and there is nothing in the said circular to specify that the past service rendered in the old charge prior to transfer will not be counted for the eligibility for promotion also. No circular or rules have been cited or furnished by the respondents to demonstrate that the past services of an employee prior to compassionate transfer will not be counted for the purpose of the eligibility for promotion to higher grade. The only requirement is that the past service will not be counted for the purpose of seniority.

25. The Schedule appended to the Recruitment Rules notified on 2.9.2003, the copy of which has been enclosed at Annexure-A/3 of the OA, prescribes the following criteria for promotion to the post of STA:-

"12. Grade from which recruitment by promotion/deputation/absorption/short term contract employment is to be made:

100% by promotion from among Tax Assistants who have rendered a minimum regular service of three year in the grade and have qualified the prescribed Departmental Examination for Ministerial staff.

Note.1:

Promotee Tax Assistant will not be eligible for promotion as Senior Tax Assistant till they qualify the departmental examination for data entry skills of 5000 key depressions per hour.

It is provided that :-

If a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion, notwithstanding that they may not have rendered the prescribed qualifying period of service in that grade but have completed successfully the prescribed period of probation."

The rules provide for minimum three years of regular service as Tax Assistant and passing of the departmental examination as the eligibility for consideration for promotion to the post of Senior Tax Assistant. It also states if any junior person is considered for promotion, then his seniors will also be considered for promotion even if they do not have minimum years of service if they have completed the probation period. The rules do not specify that the minimum service as regular Tax Assistant is required for the Charge in which he/she is considered for promotion to the post of STA. Since the rules do not specify that a Tax Assistant has to complete

three years of regular service at the Charge where he/she is being considered for promotion, insistence of the respondents for completion of three years of regular service at the new Charge after transfer, will be a violation of the Recruitment Rules and hence, it is not tenable.

26. Regarding the undertaking and the stipulation of the condition in his posting order dated 5.1.2012 (Annexure-R/2) that the past service in the station prior to his compassionate transfer to Odisha will not be counted for the purpose of minimum service requirement for promotion to the post of STA in Odisha Charge, will be a violation of the Recruitment Rules. The circular of the CBDT does not specify any such condition for compassionate transfer. Hence, such a stipulation made in the order and undertaking will not have any force on the face of the provisions in the Recruitment Rules and the circular of the CBDT and it will be of no help for the respondents' case.

27. In the impugned order dated 16.9.2017 (Annexure-A/7), it is stated that the respondents have challenged the order of Jodhpur Bench of the Tribunal in the case of Ramesh Kumar Panwar, which was cited by the applicant in his representation and filed a writ petition before Hon'ble Rajasthan High Court. It is seen that the said writ petition has been dismissed by Hon'ble Rajasthan High Court vide the judgment dated 26.5.2015 with observation that the circular dated 14.5.1990 did not specify that on transfer, the employee would also lose the length of service for promotion. Hence, the Tribunal order has been upheld by Hon'ble Rajasthan High Court. The SLP filed by Union of India SLP(C) No. 3479/2016 challenging the order dated 26.5.2015 of Hon'ble Rajasthan High Court has been dismissed by Hon'ble Apex Court vide order dated

10.4.2019. Hence, the legal issue in this OA has already been decided by this Tribunal which has been upheld in higher forum.

28. On a similar issue in the case of *Pratibha Rani vs. Union of India* in Civil Appeal No. 3792/2019, SLP (C) No. 31728/2018, it has been held by Hon'ble Apex Court vide the judgment dated 10.4.2019 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 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 employee 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.

6. We may note that on the same issue, the petitions filed by the Union of India are dismissed today.

7. The appeals are, accordingly, allowed. The parties to bear their own costs."

29. In view of the discussions above, we are unable to accept the contentions of the respondents that in view of the undertaking at Annexure-R/1 furnished by the applicant, his regular service as Tax Assistant in the Charge prior to his transfer (Andhra Pradesh) to new Charge (Odisha) on his own request on bottom seniority principle, will not be counted for the purpose of the minimum service required for eligibility for promotion to the post of STA in the DPC. Hence, the impugned orders dated 10.12.2012 (Annexure-A/5), dated 18.6.2013 (Annexure-A/6) and dated 16.9.2017 (Annexure-A/7) by which, the case of the Applicant was rejected, are set aside and the matter is remitted to the respondent no. 3 for reconsideration of the Applicant's case for promotion to the post of Senior Tax Assistant by holding the review DPC for the year 2013-14 and for subsequent years after taking into account the regular service rendered

by the applicant prior to transfer to Odisha Charge for the purpose of deciding eligibility for promotion. It is noted that by such consideration of the applicant, all his seniors in Odisha Charge will also be considered for promotion as per the Recruitment Rules at Annexure-A/3 of the OA, even though some of them might not have completed the minimum years of service in accordance with the Rules applicable for such promotion. If the applicant is found eligible for promotion to the post of Senior Tax Assistant after such consideration, then he will be allowed such benefit on notional basis till the date when he discharged duty against the post of Senior Tax Assistant after his posting.

30. The facts and circumstances of other OAs in the batch, being similar to OA No. 547 of 2013, the impugned orders rejecting the representations of the applicants in other OAs of this batch are set aside and these OAs are also allowed in terms of paragraph 29 above. Under the circumstances, there will be no order as to costs.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

