

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
MUMBAI.**

**M.A.859/2016
in
O.A.210/00788/2016**

Dated this Friday the 11th day of October, 2019

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
Ravinder Kaur, Member (Judicial).**

Aditya Kumar,
Inspector of Income Tax,
Aayakar Bhavan, M.K. Road,
Marine Lines, Mumbai-400020
and residing at :
Income Tax Residential Complex,
Quarter No.13A/1302, Powai,
Mumbai.

.. Applicant.

(By Advocate Shri Rajeev Kumar).

Versus

1. Union of India, through
the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110001.
2. The Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.
3. The Principal Chief Commissioner
of Income Tax,
3rd Floor, Aayakar Bhavan,
M.K. Road, Marine Lines,
Mumbai - 400 020.
4. The Addl. Commissioner of
Income Tax (HQ) Personnel,
3rd Floor, Aayakar Bhavan,
M.K. Road, Marine Lines,
Mumbai - 400 020.

.. Respondents.

(By Advocate Shri R.R. Shetty).

Order reserved on : 26.08.2019

Order delivered on : 11.10.2019

O R D E R

Per : Dr.Bhagwan Sahai, Member (A)

This O.A. has been filed by Shri Aditya Kumar, working as Inspector of Income Tax, Aayakar Bhavan, M.K. Road, Marine Lines, Mumbai. He has sought declaration that-

- (i) clubbing of erstwhile Tax Assistants and erstwhile Upper Division Clerks (UDCs) for preparing combined seniority list of Sr. Tax Assistants for recruitment year 2000-01 is arbitrary, impermissible in law and violative of equality clause enshrined in Articles 14 and 16 of the Constitution;
- (ii) he has further sought quashing and setting aside of combined seniority list of erstwhile Tax Assistants and UDCs prepared for the year 2000-01 for induction on the newly created posts of Sr. Tax Assistants after restructuring of the cadre during 2001 and also the revised seniority list of Sr. Tax Assistants circulated vide letter dated 22.01.2016 to implement Supreme Court decision in case of N.R. Parmar and others; and
- (iii) direction to the respondents to prepare fresh seniority list for that recruitment year by placing erstwhile Tax Assistants enbloc above the

erstwhile UDCS for induction on the newly created posts of Sr. Tax Assistants, and to pay him cost of this application.

2. The applicant has filed two MAs i.e. M.A.859/2016 for condonation of delay on 14.10.2016 and M.A.249/2018 for amendment to the O.A. on 18.04.2018. The respondents have filed M.A.386/2016 for taking their sur-rejoinder on record. After hearing the parties, this M.A.386/2016 was allowed on 26.08.2019.

3. Before dealing with the MA filed by the applicant for amendment to the O.A. and hearing the parties on the O.A., in consultation with the counsels for both the parties, it was decided to first hear M.A.859/2016 filed by the applicant for condonation of delay. On this M.A. counsel of both the parties have been heard on 26.08.2019 and it was reserved for orders.

4. With the O.A. as Annex-A-1, the applicant has attached a copy of the letter dated 21.01.2016, from Dy. Commissioner of Income Tax, Headquarters, Personnel Branch, Office of Principal Chief Commissioner of Income Tax, Aayakar Bhavan, Mumbai in response to his letter dated 27.10.2015.

5. In M.A.859/2016 filed by the applicant on 14.10.2016 for condonation of delay in filing the

O.A., it has been stated that the applicant had joined as UDC on 26.10.1995 but after passing the Income Tax Law Papers 1 and 2 with more than 40% marks, and after completion of 3 years as UDC, he was promoted as Tax Assistant from 31.03.1999. It has been further stated that as a result of cadre restructuring in 2001 when the post of Sr. Tax Assistant was created, both erstwhile UDCs and Tax Assistants (similar to the applicant) were redesignated as Sr. Tax Assistants and a combined promotion order was published on 20.08.2001.

6. The applicant claims that while doing so, those working as UDC prior to the restructuring were placed senior to the applicant, although because of their non-promotion as Tax Assistants, and continuing to work as UDCs only, they were junior to him. Therefore, the seniority list was incorrect and it was not rectified in spite of his representation. Subsequently from 04.09.2009 the applicant was promoted as Inspector of Income Tax.

7. Based on the Apex Court decision in case of N.R. Parmar Vs. Union of India and others revised seniority list of Sr. Tax Assistants was also published on 22.01.2016. The applicant claims that wrong fixation of his seniority in the post of Sr. Tax Assistant is a continuous cause of action

and, therefore, the delay in filing of the O.A. should be condoned. Apart from mentioning this one sentence, the applicant has not submitted any satisfactory reason/justification which might have prevented him from challenging the seniority of Sr. Tax Assistants in the promotion order of 20.08.2001 issued by the respondents.

8. It is further claimed by the applicant that in view of the seniority list of Sr. Tax Assistants circulated on 22.01.2016, based on the Apex Court decision in case of N.R. Parmar Vs. Union of India and others, there is no delay in filing of the O.A.

He has also attempted to benefit from these caselaws:

(i). **Basic Shiksha Parishad and another Vs. Smt. Sugna Devi and others, Civil Appeal No.3957/1998 decided by the Apex Court on 12.12.2003 (2004) AIR SCW 119.** However, the facts in that case were different and in view of transfer of service of the respondent therein to the appellant, her service was considered as continuing and salary accruing every month was accepted as a continuous cause of action.

(ii). **Mohinder Kumar Mehra Vs. Roop Rani Mehra, Civil Appeal No.19977/2017 decided by the Apex**

Court on 11.12.2017 (2018) 182 AIC 178, in which pleading of additional issues were allowed without expressing any opinion on merits of the case including the question of applicability of Section 110 of the Limitation Act; and

(iii). **State of Bihar and others Vs. Kameshwar Prasad Singh and another in Civil Appeal No.3005/2000 decided on 27.04.2000 {(2000) AIR (SCW) 2389)}**, in which it was held that power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matters on merits and, therefore, in deciding 'sufficient cause' liberal approach should be adopted.

9. In their reply, the respondents have contended that the O.A. is seeking to upstage the seniority of Shri Ganesh Shetty and Ms.Rekha Bhatia (the applicant has attempted to add these two persons as private respondents through M.A.No.249/2018 filed on 18.04.2018 for amendment to the O.A.), which is grossly barred by limitation and deserves to be dismissed on this ground alone. It is a clear attempt to unsettle the settled seniority of a large number of Sr. Tax Assistants (total 1070 erstwhile Tax Assistants and UDCs who

were included in the promotion order dated 20.08.2001).

10. The respondents have explained that in the promotion order/list of Sr. Tax Assistants notified as above on 20.08.2001, after restructuring the earlier cadres of UDCs and Tax Assistants, the applicant was placed at Sr.No.998 whereas Shri Ganesh Shetty was placed at Sr.No.665 and Ms.Rekha Bhatia at Sr.No.781. Therefore, even the allegation of the applicant about incorrect fixation of seniority is totally wrong because the other two persons were much more senior to him as UDC and change of seniority of the applicant if at all it may happen, would affect the seniority of all those at seniority ranks from 665 to 997 in that order. Therefore, at belated stage in 2016 after implementation of the Apex Court decision in N.R. Parmar Vs. Union of India and others, the applicant has no cause of action for agitating against his seniority fixed in the promotion order of 20.08.2001.

11. In the M.A. filed for condonation of delay, the applicant has not mentioned the quantum of delay which has taken place in filing the present O.A. and he has simply prayed for condoning it. During arguments on 26.08.2019, the counsel

for the applicant pleaded that there was no delay in filing of the O.A. because wrong fixation of his seniority was a continuous cause, for which limitation is not relevant and the application for condonation of delay has been filed merely as a precaution. From these details it is clear that the applicant in fact has challenged the fixation of his seniority in the promotion order of 20.08.2001 but neither he is clear about the quantum of delay nor he has brought out any justified reasons for the delay.

12. The respondents have also relied on the Apex Court decision in case of **B.V. Sivaiah and others Vs. K. Addanki Babu and others, (1998) 6 SCC 720 decided on 17.07.1998**, which held that it cannot be said that seniority has no role where the employees are eligible and have the same length of service, where the length of service is to be determined on the basis of inter se position in the select list prepared at the time of appointment to feeder post. It was further held that belated challenge to promotions cannot be entertained.

13. From the case record, we find that after restructuring of the cadre by the Department, for the year 2000-01 a combined seniority list of UDCs and Tax Assistants was prepared by the respondents

based on which the promotion order dated 20.08.2001 was issued. As mentioned in the communication of the respondents to the applicant dated 21.01.2016 (Annex-A-1), the earlier eligibility lists were available in public domain and were finalised after due consideration of the representations received at that point in time and for the year 2000-01, combined seniority list of existing Tax Assistants and UDCs were prepared but the applicant had not represented against that promotion order based on the combined seniority.

Till 2016, he seems to have been happy with his seniority in the promotion order of 20.08.2001. Hence he cannot agitate against it now. Therefore, in absence of any challenge by the applicant to the seniority in the promotion order of 20.08.2001 of Sr. Tax Assistants before 2016 i.e. before filing of this O.A., to challenge it now is totally time-barred and it suffers from limitaion as per the Apex Court view taken in the following caselaws.

14. In Naresh Kumar Vs. Department of Atomic Energy and others (2010) 7 SCC 525, it was held that if an employee keeps on making repeated representations which are consistently rejected, he cannot seek any relief on that ground.

As decided in **Udai Shankar Awasthi Vs. State of U.P. and another, (2013) 2 SCC 435**, repeated representations cannot enable the aggrieved person to explain the delay as per the provisions of Limitation Act.

Similar view was also taken in **Jai Dev Gupta Vs. State of Himachal Pradesh and another (1987) 11 SCC 13**, that submission of number of representations to the departmental authorities is not a valid ground for approaching the Tribunal late.

On this issue, as per the Supreme Court view in **B. Madhuri Goud Vs. B. Damodar Reddy, 24(2012) 12 SCC 693**, the concept of liberal approach while handling the application for condonation of delay has to encapsulate the conception of reasonableness and it cannot be allowed as a totally unfettered free play. Where there is inordinate delay, the doctrine of prejudice is attracted and it warrants strict approach whereas the delay of short duration or few days calls for a liberal delineation. The applicant has to justify the delay of every day which prevented him from filing of the O.A. in time. But in the present case, there is no justification provided for the delay. The context

of publication of the revised seniority list of Senior Tax Assistants by the respondents in pursuance to the Apex Court decision in N.R. Parmar case is not relevant to the present case.

15. In view of the above facts and analysis, the M.A.859/2016 filed by the applicant for condonation of delay is dismissed. Consequently the O.A. also stands dismissed for delay having been not condoned. No costs.

(Ravinder Kaur)
Member (J)

(Dr. Bhagwan Sahai)
Member (A).

H.

JD
27/10/17

