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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **W.P.(C) 4715/2011**

UOI AND ANR ..... Petitioner

Through: Mr. R.V. Sinha with Mr. R.N.Singh, Advs.

versus

AMIT KUMAR MAITRA AND ORS ..... Respondent

Through: Mr. Sudhir Nandrajog, Sr. Adv with Mr.Sujit Kumar Singh and Mr. Dhiraj Philip, Advs.

\+ **W.P.(C) 7105/2011**

UNION OF INDIA AND ANR. ..... Petitioner

Through: Mr. R.V. Sinha with Mr. R.N.Singh, Advs.

versus

SURYA CHATTOPADHYAY AND ORS. ..... Respondent

Through: Mr. Sudhir Nandrajog, Sr. Adv with Mr.Sujit Kumar Singh and Mr. Dhiraj Philip, Advs.

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CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

ORDER

% **22.01.2013**

The Union of India claims to be aggrieved by a common order of the Central Administrative Tribunal (CAT) whereby the respondents' claims were allowed.

The brief facts of the case are that the respondents, who are now working as Deputy Commissioners of Income Tax, approached the CAT for a declaration that the dates of their promotion to the post be shifted to 01.01.2005/01.01.2006, when persons junior to them or similarly situated were promoted, regardless of the fact that they had not completed the required period of eligibility in the grade. The applicants had argued that they were entitled to be promoted to the post of Assistant Commissioners in the feeder category w.e.f. 2001 since vacancies had arisen during that year. As a matter of fact, the applicants had been promoted to that post in 2002, in respect of the said vacancy year (2001). The applicants had relied upon an earlier decision in OA No.2107/2008 with OA No. 2358/2008 decided by the CAT on 30.06.2009 and affirmed by this Court by its order dated 27.07.2010 in W.P(C) 13096/2009 & 13104/2009. The judgment of ***Subash Saini & Ors. v. UOI & Anr.*** had in turn taken note of the decision of the Jaipur Bench in ***S.K.Shukla vs. Union of India & Anr.***, which was decided on 29.03.2005.

By the impugned order, the CAT accepted the contentions of the applicants. During the course of the order, it was recorded that the

respondents conceded that the judgments mentioned in ***S.K.Shukla*** (supra) applied to the facts and circumstances of the case. However, the submission made on behalf of UOI before the Tribunal was that the applicants had not completed the prescribed period of eligibility in lower grade on the relevant dates i.e. 01.01.2005/01.01.2006. The relevant rules i.e. Rule 7(2) and(3) of IRS Recruitment Rules, 1988, inter alia, prescribe that to be eligible for the post of Deputy Commissioner of Income Tax, the official concerned should possess four years "regular service" in the grade (of ACIT). This contention was turned down by the Tribunal which relied upon the previous order of the Tribunal and had been confirmed by the Rajasthan High Court.

Learned counsel argued that the applicants' claim could not have been entertained and adjudicated. His submissions were two fold i.e. the applicants, unlike in the two other decided cases, did not make a claim that their juniors had been promoted from 2002, whereas the vacancies to which they were entitled to be promoted had arisen in 2001. It was submitted that this distinction was lost sight of by the Tribunal.

It was next argued by the counsel that "regular service" meant actual service in the feeder grade, and therefore, in the present case, the applicants did not possess the four year's experience. The third submission made was that the Tribunal ought not to have entertained the proceedings initiated by the applicants since it was time barred in terms of Section 21 of the Administrative Tribunal's Act, 1985. It was lastly argued that the concerned individuals, who were likely to be affected, were not impleaded as parties.

We have considered the submissions, as well as the impugned order and also gone through the order of the Jaipur Bench and the judgment of the Rajasthan High Court confirming the said order. The Jaipur Bench in

S.K.Shukla (supra) discussed the question of eligibility while examining an identical contention. As regards the question of eligibility i.e. whether the incumbent in the feeder cadre had to possess regular service or actual physical working experience in the grade, this is what the Tribunal had to say:- 15

> "Learned counsel for the applicant then also referred to a judgment of the Hon'ble Supreme Court in the case of Union of India & Others Vs. K.B.Rajoria, reported as AIR 2000 SC Page 1819. This judgment deals with the word "regular service". It has been held by Hon'ble Supreme Court that "Regular Service" cannot be construed as actual physical service- More so, when notional promotion was given to candidate for compensating wrong done to him earlier by supersession by his junior and office memorandum provided that in case of supersession actual service for prescribed period was not required". In reply, learned counsel for the respondents has simply stated that since no junior to the applicant has been promoted so the applicant was rightly not considered as eligible.
>
> To our query as to whether any seniority list has been issued after the appointment of Ms. Meera Srivastava etc. who have been appointed directly, both sides could not place any seniority list showing that these direct recruits had been shown junior to the applicant. However, there is not denial on the part of the respondents that the practice of considering the eligibility period from the date of quota year has been followed as illustrated by the applicant in the case of V.D. Dubey. There is no denial that the applicant has been granted promotion as AC(JS) against the

> quota of vacancies of year 2000 itself so in a way the applicant had completed four years of requisite service and the candidates were considered for promotion.
>
> In view of the above discussion, we find that the O.A. deserves to be allowed. Accordingly, we allow the O.A and direct the respondents to consider the case of the applicant for promotion as AC(SS)/DC and in case he is found fit, he may be given promotion from due date with all the consequential benefits, within a period of three months from the date of receipt of copy of this order. No costs."

The Rajasthan High Court dismissed the petition challenging the order of the CAT in ***S.K.Shukla's*** case, inter alia, observing as follows:-

> "The direction has been challenged on the premise that the respondent does not come within the zone of consideration as he has not completed four years of service on the feeder post i.e. Assistant Commissioner (Junior Scale) and is therefore not eligible. The tribunal has recorded categorical finding to the effect that there was no denial of the fact that the respondent had been granted promotion as Assistant Commissioner (Junior Scale) against the quota vacancies of the year 2000, and if that is so, it is plain that the respondent completed four years of requisite service on the feeder post in 2004 against vacancies of which the respondent is to be considered. We thus, do not find any substance in the stand of the petitioner that respondent is not eligible for being considered for promotion as Assistant Commissioner (Senior Scale).
>
> We find no error in the decision of the Tribunal to warrant interference by this Court. The writ petition is dismissed."

In view of the above, this Court has no reason to differ with the conclusions of the Rajasthan High Court. However, the Court is mindful of the decision of the Supreme Court in ***UOI Vs. K.B.Rajoria***, 2000 (3) SCC 562 where the precise question was whether "regular service" meant actual working service. The Court had liberally construed the contention, identical to the one put forward by the Union of India in the present case, and rejected it. The Court also took into consideration its own previous ruling in ***UOI & Ors. Vs. M. Bhaskar & Ors.***, 1996 (4) SCC 416, where the eligibility criteria expressed was "two years experience" in Grade II.

This Court also observes that had the intention of the rule making authority been actual or working experience in the feeder grade it would have been expressed more clearly by using such terms as 'experience' etc. Having regard to this, the Court is of the opinion that there is no error in the order of the CAT.

So far as the question of the applicants entitlement to be considered and the distinction sought to be made out by the petitioner/UOI between the facts of this case and the facts in ***S.K. Shukla*** is concerned, this Court is of the opinion that the concessions made by the UOI- as expressly recorded in the impugned order, which of course was later corrected to the extent that the Tribunal modified the order only vis-a-vis the description of the CAT's order in Shukla's case, binds the petitioner. Even otherwise the argument that the applicants were not entitled to be considered for appointment on the date the vacancies arose, has no force. It is not asserted in any manner whatsoever by the Union of India that the said vacancies did not arise in 2001 or that the applicants were in any manner ineligible or suffering from any disability from being appointed, when the vacancies arose. Nor was

any rule to the contrary shown to the Court. Therefore, this contention too has no merit.

As far as the other contentions are concerned, we notice that the Tribunal had relied upon its previous order in ***Surya Chattopadhyay and others Vs. Union of India & Anr.,*** being O.A.No.608/2010, where apparently the applicant had made an identical complaint before it and the objection with regard to the maintainability on the ground of limitation had been rejected. The Union of India has also not shown as to who are the officers likely to be affected by the impugned ruling.

In view of the above conclusions, this court is of the opinion that the petitions lack merit. They are accordingly dismissed without any order as to costs.

S. RAVINDRA BHAT, J

SUDERSHAN KUMAR MISRA, J

JANUARY 22, 2013

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