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

\+ **W.P.(C) 6368/2015**

% *Date of Judgment : 29.10.2015*

UNION OF INDIA AND ORS. ..... Petitioners
Through : Ms. Arti Bansal, Advocate.

versus

CHET RAM MEENA AND ORS. ..... Respondents
Through : Mr. Sanjeev Kumar, Advocate.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G. S. SISTANI, J. (ORAL)

1. Rule DB.
2. With the consent of the parties, the writ petition is set down for final hearing and disposal.
3. Challenge in this writ petition is to the order passed by the Central Administrative Tribunal dated 15.10.2014.
4. The respondents had joined the Income Tax Department at Chennai and Kerela in the year 2008. One of the respondents had joined the Department in the year 2010. The respondents were thereafter at their request transferred to the Delhi Zone. Since the Department failed to count their past service rendered in the earlier zone of allocation for the purpose of promotion to the post of Income Tax Officer (ITO) Group 'B', the respondents approached the Central Administrative Tribunal (hereinafter referred to as Tribunal). The respondents before the Tribunal (petitioner herein) relied on a notification dated

24.03.2005, more particularly, Clause 2 Note-I Sub Clause (2) to justify their action. The relevant portion of the notification reads as under :

> "(2) For the purpose of reckoning three 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."

As per the notification for the purpose of reckoning three years regular service in the grade the service rendered by an inter region transferee was not to be counted in the new region, if such a transfer was made at the request of the officer.

5. The respondents herein had argued before the Tribunal that their case was fully covered by various decisions of the Hon'ble Supreme Court of India.

6. Today, the learned counsel for the parties are in agreement that identical orders passed by two Tribunals being Jodhpur Bench and Guwahati Bench have attained finality, OAs stand allowed and writ petitions filed stand dismissed.

7. Ms. Bansal has however clarified that the Department is contemplating filing special leave petitions.

8. We have heard the learned counsel for the parties.

9. The controversy at hand in our view stands fully settled by the decisions rendered by the Hon'ble Supreme Court of India and also by various Courts as detailed below :

In the case of ***Raksha Mantri and Anr. Vs. V. M. Joseph, (1998) 5 SCC 305***, it was held as under :

> *“.............The appellants contended that, since the respondent had been transferred on compassionate ground, on his own request to the post of Storekeeper 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 Storekeeper. 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.”*

In the case of ***Renu Mullick Vs. Union of India and Anr., (1994) 1 SCC 373,*** the Hon’ble Supreme Court held in para 10 that :

> *“...........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 purpose 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.

Similar view was expressed in ***Union of India and Anr. Vs. V. N. Bhat, 2003 (9) SCALE 517***, wherein it has been held by the Hon'ble Supreme Court in para 4 that :

"..........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."

Again, the Hon'ble Supreme Court in ***Union of India and Ors. Vs. C. N. Ponnappan, (1996) 1 SCC 524*** in para 4 held that :

> *"..........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."*

Hon'ble High Court of Rajasthan at Jodhpur Bench in D. B. Civil W.P. No. 5148/2013 passed on 26.05.2015 in ***Union of India Vs. Ramesh Kumar Panwar & Anr.*** held in para 8 that :

> *".........A reading and perusal of Annex.9 dated 14.05.1990 shows that a person on his transfer would not be entitled to maintain his seniority from the old charge and that he would be placed at the bottom of the list. A further reading of the said circular shows that on a transfer, the transferee will forfeit all claims for promotion/confirmation in the old charge. However, the said circular does not stipulate that on a transfer, the transferee would lose his length of service as well. As in the present case, the respondent herein lost his seniority,*

he would not lose the length of service and the length of service would be counted from the date of initial appointment. The argument raised by the petitioner that the applicant had not rendered service three years continuous service on the post of Tax Assistant in Rajasthan Region, is wholly fallacious and is hereby rejected. It has to be kept in mind that there is no discontinuation of service of the respondent as a Tax Assistant. There is only a change in the Division. The recruitment rules do not bar the applicant-respondent from promotion and the regular service of the applicant is to be counted from the date of initial appointment.........."

10. Having regard to the settled position of law, we find that there is no infirmity in the judgment rendered by the Tribunal. The service rendered by the respondents in their earlier zone is to be treated as service rendered for the purpose of promotion. Accordingly the writ petition is dismissed. No costs.

C. M. APPL. 11586/2015 (Stay)

11. In view of the order passed in the writ petition, the application is also dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

OCTOBER 29, 2015

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