IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.120 of 2016

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Dipak Kumar, son of late S.S. Prasad, Tax Assistant, at present posted in O/o Principal Chief Commissioner of Income Tax, Patna

.... Petitioner/s

Versus

1. Union of India through the Secretary Finance, Ministry of Finance, North Block, New Delhi-1
2. The Chairman, Central Board of Direct Taxes, New Delhi
3. The Secretary, DOPT, New Delhi
4. The Directorate of Income Tax
5. The Dy. Director of Income Tax (DRD)
6. The Principal Chief Commissioner of Income Tax
7. The Joint Commissioner of Income Tax
8. The Additional Commissioner of Income Tax
9. Dhiraj Kumar, son of Shri Gopal Prasad, at present working as Tax Assistant, O/o ITO Ward 1(1) LNJP, Bhawan, Patna
10. Vikash Kumar Sinha, sonof Shri Jagdish Prasad, at present working as Tax Assistant, O/o JCIT, Range-5, LNJP, Bhawan, Patna
11. Pradeep Kumar, son of Shri Vijay Choudhary, at present working as Tax Assistant, O/o Principal CCIT (CCA), Patna
12. Anjani Kumar, son of Shri Yogendra Kumar Singh, at present working as Tax Assistant, O/o Priincipal, CCIT (CCA), Patna
13. Dayanand Kumar, son of Shri Ram Swaroop Das, at present working as Tax Assistant, O/o JCIT, Range-1, LNJP Bhawan, Patna
14. Manish Kumar, son of Shri Awadesh Prasad, at present working as Tax Assistant, O/o JCIT, Range 5, LNJP, Bhawan, Patna

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Naresh Chandra Verma, Advocate
Mr. Natraj Verma, Advocate

For Union of India : Mr. S.D. Sanjay, Addl. Solicitor General of India
Mr. Tuhin Shankar, CGC

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 01-08-2016

Heard learned counsel for the review petitioner and learned Additional Solicitor General of India for the Union of India.

The review petitioner was one of the respondents in C.W.J.C. No. 10247 of 2015 (Union of India and others Vs. Dhiraj Kumar and others). From the records it appears that the aforesaid writ petition was disposed of by us in terms of a separate judgment delivered in C.W.J.C. No. 12515 of 2015 (Union of India and others Vs. Ranjeet Kumar and others) on 11.01.2016. The issue in the case of Ranjeet Kumar was with regard to Stenographer Grade-III and the question was for consideration of promotion to Stenographer Grade-II. That was a separate cadre from that of Tax Assistant. Tax Assistant is a separate cadre having its own cadre rules.

In the judgment in the case of Stenographers this Court had held that upon voluntary inter-cadre transfer the person would lose his seniority and he would be placed at the bottom of the seniority-list in the new cadre, but having completed the minimum period of service, which shall include service in the previous cadre, if he is to be considered for promotion, he cannot get the benefit of promotion over his seniors in his new cadre which would otherwise be effectively restoring his loss of seniority. In other words, what we have held was that unless the seniors' case matures for consideration of promotion the juniors cannot be considered for promotion, even though they may have fulfilled the criteria. This principle be applied to the case of Tax Assistants as well. Learned counsel did not bring to our notice the cadre rules in respect of Tax Assistants which reads as follows :

> *"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."*

Having heard the parties, in our view, the submission is correct in view of the statutory provision noted above. It is clear that though upon inter-cadre voluntary transfer a person may lose his seniority and thus be placed at the bottom of the seniority-list in the new cadre, if the Tax Assistant has completed minimum regular service of three years in that grade, service being for the whole period irrespective of the cadre, he would be liable to be considered for promotion. In case, there was any senior in the seniority-list of the new cadre and had not completed the period, even though, would be considered accordingly. Thus, it would make a difference. No one's promotion including the seniors and the juniors would be withheld once the juniors completed three years regular service in the grade and had qualified the departmental examination.

We accordingly, modify our judgment and order dated 11.01.2016, passed in C.W.J.C. No. 10247 of 2015(Union of India and others Vs. Dhiraj Kumar and others). This review application is, accordingly, disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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