IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12515 of 2015

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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 Dehli.
3. The Secretary, DOPT, New Dehli.
4. The Directorate of Income Tax, Govt. of India, Ministry of finance, CBDT (Human Resource Development) ICAR Building plot no. 6, Vasant Kunj Institutional Area Phase-II, New Delhi 110070.
5. The Dy. Director of Income Tax Finance, DBDT (Human Resource Development, ICADR, Building, Plot no.6,Vasant Kunj Institutional Area Phase-II, New Delhi-70.
6. The Principal Chief Commissioner of Income Tax, (CCA-Bihar & Jharkhand Region) Patna.
7. The Joint Commissioner of Income Tax HQ (Admn.) O/o the Chief (CCA) Patna.
8. The Addl. Commissioner of Income Tax Hq. (Admn.) O/o the Chief (CCA) Commissioner of Income Tax, (CCA) Patna. .... Petitioners.

Versus

1. Ranjeet Kumar, S/o Late Bindeshwar Das, at present as Stenographer Grade-II, o/o the ACIT, Circle -5, Patna.
2. Avinash Kumar, S/o Shri Ramchandra Paswan, at present working as Stenographer Grade-II, o/o DGIT (INV) Patna.
3. Rajesh Kumar Choudhary, S/o Shri Arjun Choudhary, at present working as Stenographer Grade-II, o/o ITO, ward -1, Hospital More Biharsharif.

.... Respondents.

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Appearance :

For the Petitioners : Mr. S.D. Sanjay, A.S.G.
Mr. Tuhin Shankar, C.G.C.

For the Respondents : Mr. Hemant Kumar Karn, Adv.

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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: 11-01-2016

Union of India has filed this writ petition challenging the order dated 23.01.2015 passed in O.A. No.414 of 2014 by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter in short as 'Tribunal'). The contesting respondents have appeared and with their consent, this writ petition has been heard at length for final disposal at this stage itself.

Placing reliance on the decision of the Apex Court in the case of **Union of India Vs. Deo Narain and others** since reported in **(2008) 10 Supreme Court Cases 84**, the learned Additional Solicitor General submits that merely by reason of the total length of service, which includes service rendered from the other regional cadre to which the respondents belonged, they cannot be granted promotion over their seniors.

The facts are not in dispute. The applicants before the Tribunal, who are contesting private-respondents herein, had sought an inter-regional transfer. It is not in dispute that if an employee seeks an inter-regional transfer then upon transfer to the new region, which is in fact a different cadre, they would loose their original seniority and would be put at the bottom of the seniority in the new regional cadre from the date they join. This being the rule, when the next promotion are due which is contingent upon a minimum service period, the question is, can their earlier service be taken into account to qualify them for consideration for promotion over and above their seniors, who are yet to complete the minimum period required for the purpose of consideration of their services for promotion. The Tribunal appears to have held that all persons who are ineligible have to be considered for promotion. In other words, the services rendered in the earlier regional cadre, for the purposes of eligibility to be considered for promotion, would have to be taken into account for consideration for promotion. Accordingly, learned Additional Solicitor General submits that this would lead to anomalous results. Those persons, who had sought an inter-regional cadre transfer and were to loose their seniority, would get an advantage and jump over their seniors and in that way get their seniority restored. This would be contrary to and destructive of the rule which clearly specifies loss of seniority upon requested inter-regional cadre transfer.

Having considered the matter and perused the records, in our view, the Additional Solicitor General is correct. The Tribunal has relied on earlier orders of the Tribunal including the judgments of the Apex Court. The Tribunal has relied on, inter alia, on the case of **Scientific Advisor to Raksha Mantri Vs. V.M. Joseph** since reported in **(1998) 5 Supreme Court Cases 305** and **Renu Mullick Vs. Union of India** since reported in **(1994) 1 Supreme Court Cases 373**. Both these cases have been extensively considered by the Apex Court in the later judgment in the case of **Deo Narain (supra)** and have been explained relying on the decision of **Union of India Vs. C.N. Ponnappan** since reported in **(1996) 1 Supreme Court Cases 524** and **Renu Mullick (supra)**. The Apex Court was dealing with a different nature of dispute. What was being contended by learned Additional Solicitor General was that as the rules provided for loss of seniority and ignoring the past services, it would be deemed virtually that upon a request transfer, the person would be virtually treated as a fresh appointee in the new regional cadre. This was negatived by the Apex Court in those cases holding that it is only seniority that was taken away and not the services or the continuity thereof. Here, in the present case, the situation is identical to the case of **Deo Narain (supra)**. To us, it seems what had happened was the applicants before the Tribunal, who are the respondents in this writ petition, had sought on their own request a transfer from Bangalore region of Income Tax Department to Bihar region as Stenographers. Having come to Patna, when promotional matters were being considered at Patna, which required a minimum of five years of service for promotion from Stenographer Grade-III to Stenographer Grade-II, the applicants contended that their past services in the earlier regional cadre at Bangalore be taken into account and, if that is done, then they were eligible, having completed five years. According to learned counsel for the Union of India, their seniors at Patna had not completed five years except few of them. Giving benefit of past services of Bangalore to the applicants would mean that seniors would remain where they were, but the applicants, who had lost their seniority and gone below, would then get a jump and virtually get their seniority restored. This is exactly what had happened in the case of **Deo Narain (supra)** and the Apex Court in clear terms held, relying on the case of **C.N. Ponnappan (supra)**, held that such juniors would have to wait for their turn *to get their promotion*, taking any other view of the matter would be virtually restoring the lost seniority, which is not intended.

Learned counsel for the respondents, who were applicants before the Tribunal, points out that, in fact, the so called seniors were also considered for promotion but they were otherwise found unfit. We would not comment upon this inasmuch as all the matters, as apparent from the order of the Tribunal, were kept in sealed cover. It will be upon opening the sealed cover one would see the status but, so far as the law is concerned, in our view, the Tribunal erred and the two positions, as stated by the Apex Court in the case of **Deo Narain (supra)** wherein the applicants, who are respondents herein, would have to await their turn for promotion. If any of the seniors have not completed five years they cannot be superseded by these applicants who would have to await their turn as and when it comes. We may clarify that if a senior is found otherwise unfit for promotion, then, that would be a different case altogether. If he was in the zone of consideration and otherwise found unfit for promotion then obviously those next in the queue would be considered, subject to eligibility, because that would not be a case of jumping over a senior but that would be a case where the senior is found not fit for promotion.

In that view of the matter, we have no option but to allow this writ petition and set aside the order of the Tribunal. The authorities would now proceed on basis of what we have said in this judgment.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Trivedi/AFR

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