IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7730 of 2017

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Manish Verma Son of Shri S.C. Verma, Income Tax Officer (TDS), Patna (Bihar) presently residing at22/146, S.K. Nagar, Police Station- Budha Colony, District- Patna.

.... Petitioner

Versus

1. The Union of India through the Secretary (Revenue), Government of India, Ministry of Finance, Department of Revenue.
2. The Under Secretary to the Government of India, Ministry of Finance, Department of Revneue, Central Board of Direct Taxes, New Delhi. null null
3. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Government of India, New Delhi.
4. The Principal Chief Commissioner of Income Tax (B & J, Patna), Central Revenue Building,Patna- 800001 (Bihar).

.... Respondents

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Appearance :

For the Petitioner	:	Mr. Ajay Kumar Rastogi, Advocate
		Mr. Parijat Saurav, Advocate
For the Respondent	:	Mr. S.D Sanjay, A.S.G.
		Mr. Rajesh Kumar Verma, CGC

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
And
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)
Date: 07-08-2017

Heard learned counsel for the petitioner and learned Additional Solicitor General assisted by Sri Rajesh Kumar Verma, learned counsel for the Union of India.

2. Dismissal of the Original Application (in short the "O.A.") No. 190/2014 by the Central Administrative Tribunal (hereinafter referred to as the "Tribunal"), Patna Bench, Patna on 20th July, 2016 is the reason for filing the present writ application.

3. The O.A. was filed challenging the so-called order of rejection dated 20th December, 2013, which is Annexure-A/1 to the O.A. The claim of the petitioner for restoration of seniority was considered by the office of Chief Commissioner of Income Tax and rejected primarily on the ground that the advantage which the petitioner wanted to draw from two orders of the Central Administrative Tribunal Bench Allahabad and principal Bench, New Delhi has no applicability, and that since no departmental examination was conducted in the year 2004 and 2005, therefore, there was no result, which was pending, which could come in the way of holding of a DPC for grant of promotion from the post of Inspector, Income Tax to the post of ITO for the eligible candidates.

4. Admittedly, the present petitioner participated in the departmental examination for such promotion in the year 2006, result was declared in April 2007, and he came to earn his promotion in the year 2007. Since, the petitioner had not participated in any earlier examination with success; therefore, any reference to such candidates, who had sat for the examination and succeeded, has no relevance for the present petitioner.

5. The non-conduct of the departmental examination in the year 2004 and 2005 placed every candidate who were an aspirant or hopeful in the same class or bracket, the petitioner cannot make a grievance against non-conduct of examination, because it was to the disadvantage of every eligible candidate and not limited to the present petitioner. Besides there was bona fide reason due to Cadre restructuring.

6. Coming to the order passed by the Tribunal, Patna Bench, Patna, there are two significant observations for the conclusion reached by Central Administrative Tribunal, which are reflected in paragraph nos. 11 and 12 of the said order. The court would like to reproduce the same before going on the correctness or otherwise of such rationality. Paragraph nos. 11 & 12 of the impugned order reads as under: -

> *"11. Thus, as per the clear law laid down by the several pronouncements of the Hon'ble Apex Court this matter cannot be entertained at this stage. It is also self-evident that after a lapse of seven years several persons' right*

would have got accrued and upgrading the seniority of the applicant by one year would affect a large number of persons who have not been made party by the applicant. In a government administration a long-settled matter cannot be unsettled by some employee approaching for his grievance after a lapse of seven years.

12. We might have considered a ground of overwhelming merit had the applicant showed that any person lower to him in the written examination of 2006 has been given an earlier seniority. The applicant has not made out any such case. Therefore, we believe that that is not a issue in this case."

7. The petitioner having become successful in the examination held in the year 2006, the DPC met and granted him promotion after declaration of the result in the year 2007. The order of promotion obviously accrued to the advantage of the petitioner, and therefore, it cannot be his case that he was not aware as to when he earned his promotion by virtue of passing of the departmental examination. This stand of the petitioner before the Tribunal trying to explain the delay of seven years in moving the Central Administrative Tribunal did not impress the Tribunal nor does it impress us. The annexures which are said to be the representations with the O.A. do not instill confidence in any manner as it lacks authenticity. It cannot be accepted as an explanation that the petitioner had filed a representation as early as 21.06.2006, and since, it was not acted upon, he filed yet another representation after six years on 02.07.2012, which came to be rejected on 20th December, 2013, therefore, the cause of action for him would begin from 20th December, 2013 and not when he was granted promotion in the year 2007.

8. In the opinion of this Bench, the cause of action did not arise from the order of rejection passed in the year 2013. The cause of action for him arose the day he became aggrieved when he was granted promotion in the year 2007 and not prior to that date which the petitioner was looking for.

9. The petitioner cannot claim benefit of promotion from any earlier date prior to passing of the departmental examination and compete with any junior who have sat and qualified in previous departmental examination, since the petitioner was never eligible due to non-participation or passing of the departmental examination prior to the year 2006. If he was ineligible he cannot equate himself with eligible candidates even though they may have been his juniors.

10. Another aspect of the significance is that no colleague of the petitioner who is or was junior in rank in the departmental examination conducted has been given advantage of promotion from a prior date. In other words, the block of successful candidates in the examination held in the year 2006 have been treated equally on the basis of their performance in the examination and eligibility, and the Tribunal has taken note in paragraph 12 that, no person lower to him in the written examination of 2006 has been given seniority from an earlier date. In other words, there is neither violation of Article 14 or 16 of the Constitution of India.

11. The discrimination alleged or demand made by the petitioner before the Tribunal or his grievance against rejection of his O.A. before this Bench are all imaginary, not based on any foundational fact or law which can shift his date of promotion in isolation as a stand-alone case.

12. The Tribunal, therefore, did no wrong by dismissing the O.A. Application and we also have not found any infirmity in the said rationale and reasoning. Before parting, we must also take note of yet another technicality that very cleverly the petitioner chose not to implead anybody as a party respondent in the O.A. against whom discrimination could be pleaded or urged. This was a deliberate move because the petitioner was trying to create the ghost of discrimination, which never existed.

13. The writ application is dismissed for the reasons as stated above.

(Ajay Kumar Tripathi, J.)

Rajeev/-

(Rajeev Ranjan Prasad, J.)

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.08.2017
Transmission Date	N.A.