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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5873/2016

Date of decision: 2nd March, 2017

UNION OF INDIA & ORS

..... Petitioner

Through Mr. Rakesh Kumar, Central
Government Standing Counsel.

versus

N.D. AZAD & ORS

..... Respondent

Through Mr. Rajiv Ranjan Mishra and Mr.
Saurabh, Advocates for R-1 to 3.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

The Union of India and its functionaries have impugned order dated 21st August, 2015, passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) in OA No. 3326/2013.

2. The Tribunal in the impugned order has held as under:-

“3. In their reply, the respondents have opposed the averments made by the applicants even though factual position regarding dates of joining and transfer of applicants from Indore Commissionerate to Patna Commissionerate as mentioned in the O.A. have not been disputed. According to the respondents, as per ICT Circular F.No.A-22015/34/80-Ad.III B dated 20.05.1980 the service rendered prior to ICTC was not to be counted for the purpose of seniority in the new change. The

applicants want their past services to be counted contrary to the instructions. They are relying on the judgment of this Tribunal in I.C. Joshi's case (supra). However, CBEC has already decided not to extend benefits of the judgment to similarly placed officers.

4. We have heard both sides and have perused the material on record. It is now settled legal position that on Inter Commissionerate transfer while a transferee loses his seniority and is placed at the bottom of the seniority list in the new Commissionerate, yet he does not forgo the length of service rendered by him prior to his transfer. Thus, while he loses seniority, he does not lose the service already rendered by him. Therefore, if in the new Commissionerate, despite being at the bottom of the seniority list, if he is senior enough to fall within the zone of consideration for next promotion, his eligibility for such promotion shall be determined after counting his service rendered prior to ICT. This has been laid down by this Tribunal in the case of I.C. Joshi's case (supra). However, the respondents have refused to extend the same benefits to similarly placed officers. Their stand is indeed baffling. The respondents have not denied that the applicants were similarly placed and their cases were squarely covered by the judgment in I.C. Joshi's case (supra). Yet, without assigning any reason they have refused to extend the same benefits to the applicants. They have also misinterpreted the law laid down by Hon'ble Supreme Court in the case of UOI Vs. Deo Narain in Civil Appeal No. 8017/2013 and Naroatham Rath in CA No. 5357/2008. In our view this stand taken by the respondents is totally unacceptable. It will only lead to further litigation and waste of precious judicial time. Once the ratio has been laid down by this Tribunal, the respondents should themselves have examined the case of the applicants and extended the same benefits to them as have been allowed to applicants in I.C. Joshi's case.

5. We, therefore, allow this O.A. and direct the respondents to consider ante dating promotion of the applicants by counting their services rendered in Indore Commissionerate prior to their transfer to Patna Commissionerate in terms of the judgment in I.C. Joshi's case (supra). After ante dating of the promotion, the applicants shall also be entitled for the benefit of seniority commensurate with the revised dates of promotion in the grade of Superintendent. The respondents shall complete this exercise within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.

3. The aforesaid observations are in consonance with the decision of the Tribunal in O.A. No. 651/1997, *I.C. Joshi Vs. Union of India & Ors.* decided on 26th August, 1997. This decision was made subject matter of challenge before the High Court and then before the Supreme Court. The decision of the Tribunal was affirmed. Therefore, on inter-Commissionerate transfer, officer would be placed at the bottom of the seniority list, but for the purpose of eligibility, the service rendered in the earlier Commissionerate would be counted. Learned counsel for the parties are *ad idem* and state that, this means that the seniors, who are eligible, would be considered first for promotion. Only if there are vacant posts and the seniors are not eligible for promotion, then the juniors would be considered. The consideration would be in accordance with the Rules. While considering eligibility of the case of the respondent Nos.1 to

3, the service rendered in the earlier Commissionerate before transfer would be counted.

4. Learned counsel for the petitioner submits that they had filed this writ petition in view of the observations made in paragraph 5 of the impugned order quoted above, as it was ambiguous.

5. We do not agree with the said contention, for we find that the Tribunal had in the earlier paragraph rightly noted the legal position and had asked the petitioners to only consider the case of the respondent Nos.1 to 3 in accordance with the said legal position. In case, the respondent Nos.1 to 3 were held to be entitled to ante dated promotion, other consequential benefits would flow.

6. At this stage, learned counsel for the petitioner submits that there was delay and the respondent Nos.1 to 3 had approached the Tribunal by OA No.3326/2013, whereas they were actually promoted as Superintendents on 23rd September, 2002 and were seeking ante dated promotions from 1997. However, learned counsel for the petitioner accepts that the plea of delay and laches or limitation was not raised before the Tribunal. This aspect has not been examined. Learned counsel for the respondents submits that in several other matters, similar orders

have been passed and the plea of limitation, delay or laches has not been accepted. Our attention, in this regard, is drawn to the order dated 3rd August, 2012 passed by the Chandigarh Bench of the Central Administrative Tribunal in OA No.338/PB/2012. The applicants therein were identically situated as the respondent Nos.1 to 3. It is pointed out that the authorities had challenged this order in a writ petition, which was dismissed, and had subsequently filed SLP (Civil) No. 5408-5409/2014, which was also dismissed recording that no ground for interference was made out.

7. In these circumstances, we would not like to interfere with the impugned order to maintain uniformity.

8. With the aforesaid observations, the writ petition is disposed of.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MARCH 02, 2017
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