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

\+ W.P.(C) 8063/2017 & CM No.33179/2017

UNION OF INDIA & ORS ..... Petitioners

Through: Mr.Ruchir Mishra, CGSC with Mr.Ramneek Mishra, Advocates.

versus

MANGLALZOM GANGTE AND ORS ..... Respondents

Through: Mr.M.K. Bhardwaj, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

<u>O R D E R</u>

% **21.09.2017**

The petitioner-Union of India has assailed the order dated 15.01.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.4547/2015. The said Original Application had been preferred by the respondents. The respondents who are 18 in number, had joined the Income Tax Department as Tax Assistants in different regions during the year 2008-2012. They were transferred to Delhi region on their request during the years 2012-2015 and their next promotional avenue was that of Senior Tax Assistant and Income Tax Inspector for which the residency period prescribed under the Rules is 3 years regular service. When the respondents came on voluntary transfer to Delhi region, they agreed to lose their seniority thus, they were placed at the bottom of the seniority list of Tax Assistant in Delhi region upon their voluntary transfer. The issue arose with regard to the counting of their service rendered in their original region from where they came on transfer. According to the respondents, their past service could not be washed away and had to be counted towards eligibility for consideration for promotion to the post of Senior Tax Assistant and Income tax Inspector. The Tribunal held in favour of the respondents by placing reliance on the decision of this Court in ***Union of India and Ors. Vs. Chet Ram Meena & Ors.,*** W.P.(C) No.6368/2016 decided on 29.10.2015. The direction issued by the Tribunal in Paras 3 and 4 reads as follows:-

> *"3. The aforesaid Order of this Tribunal after taking note of various precedents has in similar circumstances held that one is entitled to be considered for promotion after taking into account his past service rendered in the previous region despite his bottom seniority in the region of his request. On inter-region transfers on their requests, while the employees accept bottom seniority, they do not forgo the earlier service rendered by them before such transfer. Such service should, therefore, be counted towards eligibility while considering their cases for promotion provided they are falling within the zone of consideration. While seniority is lost, the length of service is not. Annexure A-5 is the Hon'ble Delhi High Court's judgment dated 29.10.2015 in U.O.I & Ors. Vs. Chet Ram Meena & Ors. taking the same view.*

> *4. In the light of the above, the instant OA deserves to succeed. Therefore, the respondents are directed to take into account the applicants' past service as Tax Assistants rendered in their respective regions of joining for the purposes of their eligibility for promotion to the posts of Senior Tax Assistant and Income-tax Inspector. Consideration of their cases for promotion shall be effected within three months from the date of receipt of a copy of this Order."*

At this stage, itself, we may observe that the petitioner has taken its own sweet time to file this petition. The impugned order is of 15.01.2016. It is stated by learned counsel for the petitioner that in the mean time, on account of the respondents preferring the contempt petition, the impugned order has already been implemented. The manner of implementation resorted to by the petitioner was that even though the respondents were placed at the bottom of the seniority list, they were considered eligible for promotion and some of them have actually been promoted while their seniors were not considered, since they did not have the requisite residency service. The Tribunal, nowhere directed that the seniors of the respondents should not be considered for promotion on account of their not having the requisite residency service. Since the seniors of the respondents were not eligible, while the respondents were found eligible, the petitioner was not prevented from considering the seniors of the respondents for promotion, along with the respondents in terms of the decision of the

Supreme Court in ***R. Prabha Devi & Ors. vs. Government of India & Ors.,*** (1998) 2 SCC 233 and OM dated 25.03.1996, In fact, learned counsel for the petitioner has sought to place reliance on decision of the Supreme Court in ***Union of India & Ors. vs. Deo Narain & Ors.***, (2008) 10 SCC 84 and in particular, Para 41 thereof which reads as follows:-

> *"43. The High Court then proceeded to observe that there was no bar in considering the cases of the applicants for promotion. The Court observed that though there were LDCs who were senior to the applicants but they were not eligible to be appointed as UDCs and hence, the applicants were entitled to be considered for promotional post of UDCs. In our considered opinion, there the High Court was not right. The statutory rules referred to above empower the Central Government to relax the provisions of the Rules. In exercise of the said power under Rule 7 of the Rules, the Central Government relaxed the eligibility condition. Such action, therefore, cannot be held illegal or unlawful and could not have been interfered with by CAT or by the High Court. Moreover, the applicants opted for voluntary and unilateral transfer foregoing their seniority and joined Meerut Collectorate with open eyes and were placed below all LDCs who were serving in the said Collectorate. It was, therefore, not open to them to make grievance if LDCs shown above them in the seniority list were considered for promotion to the cadre of LDC (sic UDC). Thus, neither law nor equity supports the so-called claim of the applicants."*

From the above extract itself, it appears that the Central

Government had the power to relax the provisions of the rules, with regard to the requisite residency period, thus, the petitioners could have obviated the difficulty which presented on account of the seniors of the respondents, not being eligible for consideration for promotion while the respondents who were so eligible on account of their past service. The petitioners have failed to correctly implement the decision of the CAT. It is a problem entirely of their own creation. That cannot be a reason to interfere with the impugned order.

Learned counsel for the petitioner has also submitted that in ***Chet Ram Meena*** (*supra*), this Court has placed reliance on the decision of the Rajasthan High Court in ***Union of India vs. Ramesh Kumar Panwar and Ors.,*** Civil W.P. No.5148/2013 decided on 26.05.2015. Mr.Mishra submits that that decision is under scrutiny by the Supreme Court in CC No.1691/2016 and the operation of that decision has been stayed on 01.02.2016. However, we are not impressed by this argument as we find that the Division Bench while deciding ***Chet Ram Meena*** *(supra)* has taken into account several other decisions including the decision of the Supreme Court itself in ***Union of India & Ors. vs. C.N. Ponnapan,*** *(1996)1 SCC 524* wherein Supreme Court held as follows:-

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

Other decisions to the same effect, taken note of by the Division Bench, were rendered in the case of ***Union of India & Anr. Vs. N. Bhat,*** 2003 (9) Scale 517, ***Renu Mullick vs. Union of India & Anr.,*** (1994) 1 SCC 373 and ***Raksha Mantri and Anr. Vs. V.M. Joseph,*** (1998) 5 SCC 305.

For the aforesaid reasons, we find no reason to interfere with the impugned order and the same is dismissed.

The pending application also stands disposed of.

VIPIN SANGHI, J

REKHA PALLI, J

SEPTEMBER 21, 2017
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