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

+ **W.P.(C) 9063/2017**

UNION OF INDIA AND ORS.

..... Petitioner

Through: Mr. Arun Bhardwaj, CGSC with Mr.
Nikhil Bhardwaj, Adv.

versus

RAM ADHAR AND ANR.

..... Respondent

Through: Mr. Sudarshan Rajan, Mr. Ramesh
Rawat, Mr. Arjun Gadhoke, Ms.
Swapneswari Sahoo and Mr. Rajeev
Khurana, Adv.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

16.10.2017

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Cav No.892/2017

Since the caveator has put in appearance, the caveat stand discharged.

C.M. Nos.37030-31/2017

Exemption allowed, subject to all just exceptions. The applications stand disposed of.

W.P.(C) 9063/2017 & C.M. No. 37029/2017

1. The petitioner/ Union of India has assailed the order dated 15.11.2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi

(the Tribunal) in O.A. No.3249/2012 preferred by the respondents/applicants. The tribunal has allowed the said OA and held that the respondents would be entitled to consideration for grant of 2nd ACP benefit by treating that they had joined the service on the earliest date when their other batch mates had joined the service in the Delhi Commissionerate.

2. The controversy in question arose in the background that the respondents were recruited as Inspector in the Central Excise Department through examination conducted by the SSC in 1979. Initially, their dossiers were sent to Patna Commissionerate. However, due to shortage of vacancies, they could not join the Patna Commissionerate. Therefore, they were given options to join at Delhi or Kolkata, and both the respondents opted for Delhi. They were allowed to join their posts at Delhi. In this entire process, their actual dates of joining were delayed by about two years. Whereas the respondent Ram Adhar joined on 09.08.1982, the respondent Rattan Kumar could join only on 14.11.1982. Pertinently, the petitioner acted fairly and gave the respondents their seniority at appropriate places depending upon their merit in the recruitment examination in the batch of 1979. They were also promoted as Superintendant as per the recruitment rules along with their other batch mates on 30.09.1997 and 17.09.1997 respectively.

3. At the time of consideration for grant of the 2nd ACP benefit, the respondents represented that their entitlement should be considered on completion of 24 years of service by counting their initial date of appointment as 01.07.1980. The petitioner, however, granted the 2nd ACP benefit to the respondents only from 09.08.2006 and 04.11.2006 by counting

the period of 24 years of service from their actual date of joining in the year 1992. Consequently, the respondents preferred O.A. No.3962/2010 before the tribunal, which was disposed of with a direction to the petitioner to dispose of their representations by a speaking order. Consequently, the petitioner passed the speaking order dated 16.11.2011, which was assailed before the tribunal.

4. The respondents claimed parity with the CSS and CSSS Officers in respect of whom the regular service is counted from 1st July. The tribunal has, however, rejected the said submissions of the respondents, since DoPT had clarified that the said stipulation was only applicable to CSS and CSSS Officers, and could not be applied to other services. However, the tribunal found the claim of the respondents justified on the premise that their delayed joining in the year 1982 was not on account of any mistake on their part, but due to there being no vacancies in the Patna Commissionerate, where the dossiers were initially sent, and on account of the fact that the petitioner itself had thereafter given options to them for joining either at Delhi or Kolkata, and they had opted for Delhi. The tribunal also took note of the fact that the respondents had been granted seniority by placing them at the appropriate place along with their other batch mates of 1979 on the basis of their merit.

5. The tribunal, therefore, held that a fair inference could be drawn that, had the administrative delay not taken place, and the respondents would have joined with their other batch mates in the year 1980. Since the exact date of joining of the respondents could not be determined in the year 1980, as their other batch mates had joined on different dates, the tribunal held that

the ends of justice would be met if the date of joining of the respondents is taken as the earliest date on which any of their batch mates had joined in the Delhi Commissionerate. Thus, it was directed that regular service for purpose of grant of ACP benefit of the respondent should be counted from that date.

6. The petitioner is aggrieved by the impugned direction. The submission of Mr. Bhardwaj, learned counsel for the petitioner is that the OA had been filed belatedly inasmuch, as, the respondents had joined the service in the year 1982 at Delhi, and they had preferred the OA only in the year 2012 to claim that their date of joining be considered as in 1980.

7. We do not find any merit in this submission. The relevance of the date of joining came into issue only when the date – from which they would be entitled to grant of 2nd ACP benefit, came into question. Prior to that, there was no issue which arose in that regard. Pertinently, the respondents got their seniority along with their batch mates of 1980, as well as their first promotion with their batch mates and, therefore, they had no reason to believe that they would be at an disadvantageous position on account of the delayed joining, which was attributable to the petitioner and not to them.

8. The further submission of learned counsel for the petitioner is that under the Office Memorandum dated 09.08.1999 on the subject of ACP scheme for the Central Government, in clause 3.2 “regular service” is interpreted for the purpose of ACP scheme to mean the eligibility service counted for regular promotion in terms of relevant recruitment/ service rules. Mr. Bhardwaj submits that regular service is equivalent to actual service/ experience.

9. We do not find any merit in this submission either. Clause 3.2 defines regular service for purpose of the ACP scheme to mean the eligibility service counted for regular promotion. The respondent got their regular promotion along with their batch mates in the 1997, which would not have been the case had their regular service been counted from 1982, and not 1980. In fact, clause 3.2 puts the matter beyond any doubt that the respondent had the regular service for grant of the 2nd ACP benefit when counted from 1980.

10. For the aforesaid reasons, we find no merit in this petition. The same is, accordingly, dismissed.

11. The petitioner is granted four weeks time to comply with the order.

12. Dasti.

VIPIN SANGHI, J

REKHA PALLI, J

OCTOBER 16, 2017

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