IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO. 4521/2018

Union of India & ors.
..VS..
Shri Anil Kumar S/o Shri Sarwan Kumar Mehami

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

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CORAM : B.P. DHARMADHIKARI AND Z.A.HAQ, JJ.
DATED : 13/08/2018

1] Heard Advocate Mugda Chandurkar for petitioners and Advocate A.S. Agrawal for respondent.

2] Challenge is to the order passed by CAT in Review Application No. 06/2017.

3] Original Application No. 2118/2014 was disposed of by CAT vide judgment dated 28/07/2015. That judgment was questioned before this Court in W.P. No. 1336/2017.

4] W.P. No. 1336/2017 was considered by Division Bench of this Court on 13/04/2017 and the relevant observations are as under:-

> *"In the circumstances narrated herein above, we are not inclined to set aside the order of the Tribunal and hold, in exercise of the writ jurisdiction, that the Tribunal was not justified in passing the impugned order. The Tribunal is at no fault in passing*

the impugned order. It was necessary for the petitioners to have pleaded and pointed out to the Tribunal at the time of hearing of the original application that the respondent was not liable to be considered for promotion along with the other Income Tax Officers in the year 2012 as no Income Tax Officer that was promoted in the year 200102 was considered for promotion to the post of Assistant Commissioner of Income Tax in the year 2012. It was necessary for the petitioners to have pointed out this aspect of the matter to the Tribunal and had the Tribunal then decided the matter against the petitioners, the petitioners could have filed the writ petition. If the petitioners have not pointed out an important and relevant aspect of the matter to the Tribunal at the time of hearing of the original application, the appropriate remedy is to file a review application or any other appropriate application before the Tribunal for seeking the modification of the order. However, instead of approaching the Tribunal and pointing out the said important aspect of the matter to it, the petitioners have directly approached this Court by raising the points that were not raised before the Tribunal at the time of arguments. It would be unjust to hold in the aforesaid set of facts that the Tribunal has committed an error in passing the order in favour of the respondent. If the relevant facts are not brought to the notice of the Tribunal, the Tribunal cannot be blamed for passing an order without considering the relevant facts. We are not inclined to entertain the writ petition solely on the ground, that is, sought to be raised by the petitioners in the instant

> *petition. The petitioners are free to avail the appropriate remedy, if so advised.*
>
> *For the reasons aforesaid, we dispose of the writ petition with no order as to costs. The points raised in the petition are kept open."*

5] Thus, this Court then was satisfied that writ petition was filed raising contentions not presented to CAT. Petition was therefore rejected. Court observed that petitioners (employer) were free to avail appropriate remedy, if so advised.

6] It appears that in view this observation, a review petition was then filed.

7] Review petition has been looked into and by detailed order, review has been again rejected. Consideration in para nos. 6, 7 and 8 shows that CAT has in the process found no substance in the stand of department that the respondent (employee) though promoted on 18/06/2001 was not included in Recruitment Year 2000-2001.

8] We have looked into the records, we find that on 18/06/2001, several Income Tax Inspectors have been promoted as Income Tax Officers. The juniors or colleagues of respondent are also given benefit by said order.

9] Respondent sought a correction in his placement in seniority list of ITOs promoted from 01/01/1982. He pointed out that for next promotional post, his entry as ITI was also relevant and that date was mentioned as 29/03/1995 instead of 10/07/1989. If this later date is corrected as 10/07/1989 then in seniority list, he shifts from Serial No. 2212 to Serial No. 1110. CAT earlier had accepted it and even in review, it has maintained it.

10] Perusal of list mentioned supra reveals that persons who have entered as ITI after 10/07/1989 are included above name of respondent in said list.

11] When 10/07/1989 is admittedly the deemed date given to respondent as ITI after his transfer to Vidarbha Zone, we do not see any jurisdictional error or perversity.

12] Petition is therefore rejected. No costs.

JUDGE **JUDGE**

Ansari