



सत्यमेव जयते

न्यायालय मुख्य आयुक्त विकलांगजन
COURT OF CHIEF COMMISSIONER FOR PERSONS WITH DISABILITIES
विकलांगजन सशक्तिकरण विभाग / Department of Empowerment of Persons with Disabilities
सामाजिक न्याय और अधिकारिता मंत्रालय / Ministry of Social Justice and Empowerment
भारत सरकार / Government of India

Case No.: 2760/1021/2014

Dated: 19.04.2017
Dispatch No.....

In the matter of :

Shri Sandip Das,
Senior Tax Assistant,
Office of the Additional Commissioner of Income Tax,
HQ. Admn. Kolm
General Section,
Receiving Wing,
Aayakar Bhavan,
Kolkata – 700 069

.....Complainant

Versus

Office of the Chief Commissioner of Income Tax (CCA), Kolkata
(Through the Chief Commissioner of Income Tax)
Aayakar Bhavan,
P-7, Chowringhee Square,
Kolkata – 700 069

.....Respondent

Date of Hearing : 27.03.2017

Present :

1. Complainant Absent.
2. Shri Sanjib Banerjee, Assistant Commissioner, Shri Kesar Ray, O.S. and Shri Samrat Guha, STA – On behalf of Respondent

ORDER

Shri Sandip Das, a person with 60% locomotor disability filed a complaint dated 11.09.2014 in the Court of the Chief Commissioner for Persons with Disabilities under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, hereinafter referred to as Act regarding non determination of his correct seniority and non grant of promotion for the post of Inspector Income Tax.

2. The complainant submitted that he joined the Income Tax Department, Mumbai on 03.03.2008 as Tax Assistant. He was promoted to Sr. Tax Assistant on 15.07.2011. He was transferred from Mumbai region to Kolkata region in inter-change transfer and posted at Kolkata. He further claimed that while he was in Mumbai, he was declared pass in the Departmental Examination for Income Tax Inspector, 2010. He was working as Senior Tax Assistant which is considered a feeder cadre for the post of Income Tax Inspector. He has also completed 3 years in the respective grade and has qualified the examination for Income Tax Inspector. He further submitted that he should have been promoted to the grade of Income Tax Inspector as a person with disability candidate for the recruitment year 2013-14.

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3. The matter was taken up under Section 59 of Persons with Disabilities Act, 1995, with the Chief Commissioner of Income Tax, Office of the Chief Commissioner of Income Tax (CCA), Kolkata vide this Court's letter dated 06.04.2015.

4. The Liaison Officer (SC,ST & PH), Kolkata vide letter no. JCIT, Hqrs, (Tech)/Kol./2014-15/592 dated 12.05.2015 submitted that Reservation Roster is properly maintained by SC/ST Cell under the control of Pr. Chief Commissioner of Income Tax, West Bengal and Sikkim as per the instruction of DoP&T. The Pr. Chief Commissioner of Income Tax, West Bengal and Sikkim vide letter no. 5E/22/2013-14/DPC/2015-16/1703 dated 12.05.2015 submitted details of vacancies filled since 01.01.1996, but has not submitted the comments in the matter.

5. A copy of the respondent's letter dated 12.05.2015 was sent to the complainant for his comments/rejoinder vide this Court's letter dated 11.06.2015.

6. Upon considering the respondent's reply dated 12.05.2015 and Complainant's letter dated 11.09.2014, a hearing was scheduled on 27.03.2017.

7. The complainant was absent during the hearing nor any intimation has been received about his inability to attend the hearing despite the fact that the Notice of Hearing was sent to him on 15.03.2017 by Speed Post.

8. During the hearing the respondent vide their written statement submitted that the complainant claimed his seniority in the entry grade of Tax Assistant w.e.f. 03.03.2008, i.e. the date of his joining in the said post in Mumbai region of the department and not from 06.06.2012, i.e. the date of his joining in the Kolkata region on inter-charge transfer. In support of his claim, the complainant has cited the decision of the Hon'ble CAT, Principal Bench, New Delhi, in O.A. No. 2406/2005 dated 24.08.2006. In the said judgement, the Hon'ble CAT has decided in favour of the applicant relying upon the decision of the Hon'ble Apex Court, in Renu Mallick vs Union of India (1994), & 5 SCC 305 Scientific Advisor to Raksha Mantri & vs. V.M. Joseph (1998) with specific reference to the following rule sent by the Hon'ble Apex Court.

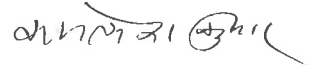
" Even if an employee is transferred at his own request, from one place to another on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place. Eligibility for promotion cannot be confused with seniority as they are two different and distinct factors.' The respondent submitted that a similar judgement was also given by the Hon'ble CAT, Principal Bench, New Delhi in O.A. No.2732/2009 dated 29.09.2010. The respondent submitted that the above mentioned judgement referred by the applicant nowhere speak for counting of service rendered by an employee in his old charge for the purpose of seniority, on joining in his new charge. The respondent also referred to two other judgements of the judiciary dealing with the same issue of seniority of inter-charge transferees, i.e. 1) Judgement of Hon'ble Apex Court in Civil Appeal No. 8017 of 2003 in the se of Union of India & Ors. Vs Deo Narain & Ors and 2) Judgement of Hon'ble CAT, Principal Bench, New

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Delhi, in O.A. No.1647/2012 pronounced on 05.03.2014 in the case of Shri Ashish Kumar vs. Union of India & Ors. It is submitted that in these judgements, it has been crystal clear by the concerned judicial authorities that the services rendered by an inter-charge transferee in old charge cannot be counted for the purpose of fixing seniority in his new region. The respondent submitted that CBDT, New Delhi regarding the transfer of non-gazetted staff from one charge to another vide its instruction dated 14.05.1990, stipulates that 'The service rendered in the old Charge will not be counted in the new charge for the purpose of seniority. He/she will be placed at the bottom of the list of the employees of the concerned Cadre in the new Charge. Seniority in the cadre in the Charge to which person is transferred will start from the day that person reports for duty in that charge. However, he will not rank senior to any official who belongs to a batch selected on merit whose inter-se seniority is not regulated by date of joining.' In compliance to CBDT, New Delhi's direction, the complainant was placed at the bottom of the seniority list on the date of his joining in this charge. The complainant at the time of his inter-charge transfer to Kolkata charge, has given his consent to abide by the said provision of the CBDT, New Delhi, in the matter of fixing his seniority in the new region. The complainant cannot take a divergent stand on the issue at this stage. The complainant was not considered for promotion to the grade of Inspector of Income Tax against the year 2013-14 since the services rendered by him in his old region was not counted even for the purpose of residency period in the feeder grade in view of the specific direction of the CBDT, New Delhi contained in its instruction dated 27.05.2014 and consequently he was not eligible for such promotion to the grade of Inspector of Income Tax against the V.Y. 2013-14 (Crucial dated : 01.01.2013). Even if the services in the old charge rendered by the complainant were being counted for the purpose of residency period/eligibility for promotion, he would not have got such promotion du to his placement at the junior most spot of the feeder grade as on the date of his joining in this charge. The respondent further stated that the issue of counting the services rendered by a person in his old charge for the purpose of determining his eligibility for promotion in his new charge is sub-judice in the Hon'ble Apex Court in the case of Ramesh Kumar Panwar vs Union of India & Ors, and stay has already been granted by the Hon'ble Supreme Court in this matter.

9. In the light of Rule 42(4) of the Persons with Disabilities Rules, 1996, the complaint is dismissed as the complainant was absent.

10. The case is disposed off.



(Dr. Kamlesh Kumar Pandey)
Chief Commissioner
For Persons with Disabilities