



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.: 6298/1021/2016

Dated: 22.09.2017
Dispatch No.....

In the matter of :

Shri Sanjeev Kumar,
Inspector,
Office of the DDIT (Inv.)-I
Directorate of Income Tax (Investigation),
Opp. BVM School,
Kitchlu Nagar,
Ludhiana – 141 001
Punjab
Email<fiven@rediffmail.com>

— R 3742

..... Complainant

Versus

Central Board of Direct Taxes,
(Through the Chairman)
Ministry of Finance,
North Block,
New Delhi

— R 3743

..... Respondent

Date of Hearings : 16.08.2017 and 17.07.2017.

Present :

1. Shri Sanjeev Kumar, Complainant, Present
2. Respondent – Absent.

ORDER

The above named complainant, a person with 55% locomotor disability has filed a complaint under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 hereinafter referred to as the Act, regarding restoring/revising the seniority on Inter-Charge transfer of differently abled non gazetted staff.

2. The Complainant has submitted that he is presently working as Inspector in the Office of the Deputy Director of Income Tax (Inv.)-I, Ludhiana. He joined as Inspector (Group C) on 02.02.2009 at Pune. Thereafter, on transfer he joined the O/o the Chief Commissioner of Income Tax, Ludhiana on 28.03.2011. In the process, he lost his seniority due to inter region transfer which he accepted under compulsion. He further submitted that total nine candidates placed at Sr. Nos.

.....2/-

712, 715, 718, 730, 731, 793, 796, 803 and 807 were all persons without any disability and were given their posting at Chandigarh region while their first preference was not even Chandigarh region whereas complainant's first preference was Chandigarh region. In spite of this, he was given his initial posting at Pune. He submitted that still many seats in the Inspector grade were lying vacant in the NWR Chandigarh region. The complainant was transferred to Chandigarh on his own request. He has requested this Court to take up his complaint with his establishment in order to restore/revise his seniority in Income Tax Inspector cadre and to consider him for ITO promotion.

3. The Complaint was taken up with the Chairman, Central Board of Direct Taxes vide this Court's letter dated 26.05.2016 followed by reminder dated 26.07.2016.

4. The Dy. Commissioner of Income Tax, (Hq.) (Vig.), Chandigarh vide his letter no. Pr,CC/CHD/CB-1/2016-17/129 dated 01.08.2016 stated that the Combined Graduate Level Examination -2005 was conducted by the Staff Selection Commission on all India basis and the applicants were allocated Regions on the basis of their Merit-cum-Preference basis. Accordingly, the applicant was allotted the Pune Region on the basis of his Merit-cum-Preference. Subsequent to the applicant's joining at Pune Charge, he requested for inter-charge transfer to North West Region, Chandigarh. In this regard, it is submitted that in case of inter region transfers, it is made clear to the prospective candidates, who had applied, that they will not get any benefit of past service towards seniority and promotion except pay protection. Once, the applicant has accepted the same, therefore, now he cannot challenge those very conditions after joining at new charge. It is also submitted that the applicant joined on inter-charge transfer to North West Region, Chandigarh (NWR) after giving an undertaking in writing, wherein he agreed to the condition that on inter-charge transfer, his seniority will undergo a change and he will be placed at the bottom of the seniority list of his cadre in the NWR, Chandigarh. As the letter of the Board dated 14.05.1990 very clearly states that in the case of inter charge transfer cases, the service rendered in the old charge will not be counted in the new charge, accordingly the placement of the applicants was fixed in the seniority list prepared in NWR. The said condition in the order was provided so that the existing employees in the region to which and employee is moving on transfer are not placed at a disadvantageous position vis-à-vis the new person

...3/-

coming on inter-region transfer. Therefore, the request of the applicant for inter-charge transfer was allowed and accordingly he was posted as Inspector in North West Region, Chandigarh against the vacancies to be filled in from direct recruitment quota in North West Region, Chandigarh. It was clearly mentioned in the inter-charge transfer orders that the service rendered by the applicant in the parent region will not count towards seniority or the minimum service, if any, prescribed for promotion/appointment to any higher grade or post in North West Region, Chandigarh & his seniority has been fixed accordingly. Keeping view of the above, the seniority for the applicant was fixed correctly. The seniority of the applicant has to be determined as per the principle laid down in para 2 of the CBDT's letter F. No.A-22020/76/89-Ad.VI dated 14.05.1990. Accordingly, by following the above principle, the employees who had joined the N.W. Region after seeking inter-charge/inter-region transfer have been placed at the bottom of the list of the Financial Year in which they had joined NWR. Hence, the contention of the applicant at para 3.3. of the representation that he had to accept the condition under compulsion is not correct and hence not acceptable.

Further the claim of the applicant to determine his seniority along with his counterparts of SSC, CGL-2005 exam working in the North West Region, Chandigarh is not acceptable as the recruitment for the post of Income Tax Inspector is made zone wise which depended upon the vacancies reported by different zones. A candidate who appeared from say Zone 'A' was considered for the vacancies reported by zone 'A' only, independent of the merit list of other zones. The applicant was selected as Income Tax Inspector for the vacancies reported by different zones for which Merit List was prepared zone wise which is totally independent. Hence the selection position is independent of each other in different zones and the seniority in different zones cannot be compared. As regard granting of promotion as ITO by comparing the rank obtained in SSC, CGL-2005 exam with the counterparts working in NWR, Chandigarh is concerned, the Respondent has submitted that the seniority list of Income Tax Inspector had been prepared in accordance with the Board's Advisory which has been issued for the uniform implementation of the decision of Supreme Court's order in the case of N.R. Parmar. Vide point no. 5 of the said Advisory, the O/o DIT(HRD) had clarified that the Seniority of the Officials who had joined a new region after seeking inter-charge transfer from their Parent Charge (Original Charge) is not related to the revision of Seniority List on the basis of the N.R.

...4/-

Parmar decision. The Committee formed for the purpose of Implementation of N.R. Parmar had unanimously approved that the seniority of persons who had joined the NWR, Chandigarh by seeking inter-charge transfer has to be determined as per the principle laid down in para 2(f) of the CBDT's letter F.No.A-22020/76/89-Ad.VI dated 14.05.1990. Accordingly, the employees who had joined the N.W. Region after seeking inter-charge/inter-region transfer have been placed at the bottom of the list of the Financial Year in which they had joined NWR. The applicant has further requested to grant the benefit of reservation pertaining to PH category at the time of conducting the DPC Meeting in the cadre of Income Tax Officer. In this regard, he has directed to inform that no reservation has been provided for PH candidates by the Department of Personnel and Training in Group 'B' and Group 'A' posts by way of promotion. Accordingly, no reservation for Group 'B' posts is provided in N.W. Region for PH category.

5. The Complainant vide his rejoinder dated 16.09.2016 has submitted that while allocating the regions, the provisions/DoP&T's circulars vis-à-vis the Disability Act were ignored and the most needy differently abled candidates like him were allowed to suffer at very far off placed like Pune while it was very easy to accommodate him as per the DoP&T's Circulars vis-à-vis the Disability Act. He submitted that nine seats were still available in NWR Chandigarh region after allocating him the Pune region. Moreover, the nine candidates accommodated in North West Region Chandigarh after him were not differently abled persons and even their first preference was not NWR Chandigarh region while his first preference was NWR Chandigarh region and as per guidelines and DoP&T circulars he was having preference over general candidates for the allocation of NWR Chandigarh Region to him. He further submitted that if the CBDT can accommodate him later on in NWR Chandigarh region, i.e. after transfer on compassionate ground as per its policy vide letter dated 31.12.2010, then why he was not accommodated at the time of allocation of regions against all the nine vacant seats, i.e. lying vacant after allocation of Pune region to him as stated in his representation dated 30.04.2016. At the time of transfer from Pune to Ludhiana (falling under NWR Chandigarh region) after about of 2 years of initial appointment, it is clearly mentioned in the transfer order no. 45 of 2011 dated 09.03.2011,

.....5/-

then as per the Complainant, why he was not considered at the time of allocation of regions against the nine vacant direct recruit seat in NWR-Chandigarh Region, i.e. lying vacant after allotting him the Pune Region while his direct recruit batch-mates allocated these nine seats were not differently abled and even their first preference was not even Chandigarh Region. He submitted that injustice was done to him at the time of allocation of regions and he was deprived off his rights. He submitted that he was selected on all India basis and Regions were allocated on the basis of Merit-cum-preference basis and he was allotted the Pune Region on the basis of his Merit-cum-preference. The Complainant submitted that the Respondent has themselves submitted that the Combined Graduate Level Examination – 2005 was conducted by the Staff Selection Commission on all India basis and the applicants were allocated Regions on the basis of their Merit-cum-Preference basis. He further submitted that his department has not considered any of the issues mentioned in complainant's representation dated 30.04.2016 in the light of the Disability Act and DoP&T's O.Ms.

6. The DDIT (CMD-II), HRD, Directorate of Income Tax vide letter no. HRD/CM/215/04/2016-17/4877 dated 15.09.2016 has stated that SSC had recommended 815 candidates for appointment to the post of ITI against the 817 vacancy notified by CBDT to them. Zone allocation to 815 candidates was carried out as per the Zone and Category wise breadkup. The complainant with Roll No. 1652756 was selected in GLE 2005 under OH category with AIR SLC/00682 and had given zone preference Chandigarh, Jaipur, Delhi, Nagpur, Pune. He was accordingly allotted Pune as per his merit and preference. The allotment zone in the case was made by the Ad VII, Section of CBDT. The relevant file has been issued on transfer to this office. The allocation of region has been done absolutely on the basis of merit cum preference under the guidelines of DoP&T. The complainant was allotted Pune Zone (5th preference) as Chandigarh, Jaipur and Delhi zones were allotted to OH category candidates having higher merit and there was nil vacancy in OH category in Nagpur.

7. The complainant vide his rejoinder dated 17.02.2017 has submitted that he was the first candidate as per merit list (Sr. No.681) under OH category who had opted Chandigarh (NWR) region

....6/-

as first preference while the first two candidates under OH category who were allotted Chandigarh (NWR) region on the basis of seniority, i.e. Shri Shati Singh (Sr. No.86) and Shri Nitin Navin (Sr. No.606) had not even opted for Chandigarh region as their first preference. Shri Shakti Singh's first preference was Kanpur region and Shri Nitin Navin's first preference was Lucknow region. He submitted that this clearly shown that the allotment of region was made in his case against the instructions provided in various O.Ms of DoP&T. The complainant's contention is that if CDBT can accommodate him later on in NWR-Chandigarh region after transfer on passionate ground, then why he was not accommodated at the time of allocation of regions against all the nine vacant seats, i.e. lying vacant after allocation of Pune region to him as stated in his representation dated 30.04.2016. The complainant has mentioned certain case laws in his reply. The complainant has requested this Court to direct his department to restore/revise his seniority in Income Tax Inspector cadre and to consider him for ITO promotion from back date by comparing his SSC-CGL-2005 examination rank with his counterparts in NWR Chandigarh region as 'direct recruit inspector' considering the in-justice done to him at the time of allocation of regions on appointment. He further submitted that his seniority in NWR-Chandigarh region should be re-fixed in between Shri Rajinder Sharma (Rank No. SLC/00612 and appointed at NWR-Chandigarh region before him at the time of allocation of regions) and Shri Vinit Kumar (Rank No. SLC/00713) and appointed at NWR-Chandigarh region after him at the time of allocation of regions). He further requested this Court to direct his department to extend all other benefits, like the decision of Hon'ble Supreme Court in N.R. Parmar case to him as extended to his 2005-batch counterparts in NWR, Chandigarh region as he would be in equivalence with them once his seniority is restored.

8. Upon considering the Respondent's replies dated 01.08.2016, 26.08.2016, 15.09.2016 and Complainant's rejoinder dated 05.10.2016, 17.02.2017, 20.02.2017 and 01.03.2017, a personal hearing was scheduled on 17.07.2017 at 15:00 Hrs.

9. During the hearing, the Complainant reiterated his earlier submission filed vide letter dated 17.02.2017.

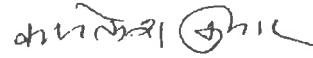
...7/-



10. After scrutiny of the facts and the documents placed on record and hearing both the parties, the Court directed the Respondent to provide the necessary relief to the Complainant in line with that of as provided in case of CBEC vide Deptt. of Revenue, Ministry of Finance's O.M No. C-18012/19/2012-Ad.IIB dated 03.08.2017 while keeping in view the similar facts of the two cases and also that the two wings, i.e. CBDT and CBEC are both falling under the same administrative umbrella of Deptt. of Revenue, Ministry of Finance. The Compliance by the respondent regarding granting of claim on seniority and related benefits as prayed by the Complainant in his original representation dated 13.04.2016 is to be confirmed to this Court by the Respondent.

11. The case is disposed off with the direction to the Respondent to extend all the benefits by exploring the feasibility to provide the said relief under the extant provisions / rules keeping in view the judicial pronouncement of the apex Court on the subject, as mentioned in the abovesaid O.M., with a view to ensure that the bonafide rights of the persons with disabilities are not infringed.

12. The case is accordingly disposed off.



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