

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Allahabad this, the 22th day of April, 2024

Original Application No. 330/575 of 2022
Hon'ble Mr. Justice Rajiv Joshi, Member (Judicial)
Hon'ble Dr. Sanjiv Kumar, Member (Administrative)

1. Smt. Rekha Gupta, a/a 34 years, W/o Shri Kapil Kumar, R/o A

[REDACTED]

2. Ankit Rana, a/a 34 years, S/o Shri Pratap Singh, R/o House

[REDACTED]

3. Sonam Gupta, a/a 35 years, w/o Shri Ankur Garg, R/o S/A-120,

[REDACTED]

4. Shan E Alam, a/a 33 years, S/o Abedin Ansari, R/o Type II

[REDACTED]

5. Kuldeep Singh, a/a 30 years, S/o Shri Govind Singh, R/o Quarter

[REDACTED]

6. Jitendra Kumar, A/a 32 years, S/o Shri Braham Pal Singh, R/o H

[REDACTED]

....Applicants

By Advocate: Shri Pankaj Srivastava

VERSUS

1. Union of India, through its Secretary, Ministry of Finance Department of Revenue, New Delhi 110001
2. The Chairperson, Central Board of Direct Taxes, North Block, New Delhi
3. Principal Chief Commissioner of Income Tax (CCA), U.P. West and Uttarakhand Region, Aayakar Bhawan, 16/69, Civil Lines, Kanpur-208001 Respondents

By Advocate: Shri Chakrapani Vatsyayan

ORDER

By Hon'ble Mr. Justice Rajiv Joshi, Member (Judicial):

The instant Original Application under Section 19 of the Central Administrative Tribunal Act, 1985 has been filed by the applicants for the following reliefs:

- I. " To pass an appropriate order or direction to the respondents department to review the DPC for the year, 2019-20 for the applicants.***
- II. To pass an appropriate order or direction to the respondents department to consider earlier experience/period rendered in previous region to count length of experience /service for purpose of next due promotion.***
- III. To pass an appropriate order or direction to the respondents department to give the effect of the Hon'ble Apex Court's verdict in case of Union of India & Ors. Vs. C.N. Ponnappan 1996 SCC (1) 524.***
- IV. To pass an appropriate order or direction to the respondents department to follow the view/verdict of the Hon'ble Apex Court pronounced its verdict in case of Pratibha Rani & Ors. Vs. Union of India & Ors. In Civil Appeal No.3793 of 2019 (Arising out of SLP (C) No.32988/2018).***
- V. To pass an appropriate order or direction to the respondents department to follow the view of the recent judgment of this Hon'ble Tribunal in O.A. No.330/1279/2015 (Ramesh Chandra Singh & Ors. Vs. Union of India & Ors.)***
- VI. To grant such other and favourable relief(s) which this Hon'ble Tribunal/Court may deem fit and proper in the facts and circumstances of the case.***

VII. Award cost of the Original Application to the applicants.”

2. The brief facts as narrated in the instant O.A. is that the applicants are working to the post of Stenographer-II under the respondents. All the applicants were posted in the different regions of the respondent- Income Tax Department and after working there for sometime, they applied for transfer on compassionate ground, which were allowed and they were transferred and joined under the control of respondents.

3. It is further the case of the applicants that all the applicants filed detailed representations before the respondents to count their services rendered in the previous region for departmental promotion and consider their cases for promotion to the post of Stenographer-I, but no heed was paid. Hence, the applicants have approached this Tribunal, by filing the instant Original Application.

4. On the other hand, counter affidavit has been filed from the side of the respondents and resisted the claim of the applicant.

5. Shri Pankaj Srivastava, learned counsel for the applicant submitted that issue involved in this case has already been decided by the Hon'ble Apex Court in case of **Pratibha Rani & Ors. vs. Union of India &Ors. [Civil Appeal No. 3792 of 2019 arising out of SLP (C) No. 31728/2018] with Civil Appeal No. 3793 of 2019 arising out of SLP (C) No. 32988/2018**, whereby the Hon'ble Apex Court has held that insofar as issue of eligibility of promotion is concerned, the service rendered in the previous region, prior to transfer on compassionate ground, will be counted towards service for eligibility for consideration of

promotion. He further submitted that this Court also after considering the said judgment of Apex Court vide order dated 18.04.2022 passed in O.A. No.427 of 2022, decided the said issue in favour of those applicants and as such, present O.A. may be disposed of in terms of the order passed by the Hon'ble Apex Court.

6. Shri Chakrapani Vatsyayan, learned counsel for the respondents submitted that though counter affidavit has been filed by the respondent, but the issue involved in this O.A. has already been by this Tribunal in O.A. No.427/2022, decided on 18.04.2022.

7. We have considered the submissions so raised by the learned counsel for both the parties and perused the records.

8. It appears that the matter pertains to count of past services rendered by the applicants in other Zones of Income Tax Department prior to transfer on compassionate ground, to be counted towards service for eligibility for consideration of promotion.

9. Further, the issue is now no more res integra as the similar issue fell for consideration before the Apex Court in case of **Pratibha Rani & Ors. vs. Union of India & Ors. (supra)**, wherein the Apex Court has observed and held as under:-

"2. The appellants are working as Tax Assistants and on account of plea of compassionate grounds, they were transferred inter-region. The stand taken by the respondent Department is that as per the administrative instructions, the period spent in case of inter-region transfer in the previous region, could not be counted while posting such a person in a new region for eligibility for promotion.

3. The aforesaid issue is no more res integra in view of the judgment of this Court in the case of Union of India & Ors. vs. C.N. Ponnappan (1996) 1 SCC 524 where this very issue was examined in the factual context of the same department as under :

"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 retiral 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."

4. We may also note that in the context of a different service, on the same principle and noticing C.N. Ponnappan's case (*supra*), in *M.M. Thomas & Ors. vs. Union of India & Ors.* (2017) 13 SCC 722, it was observed as under :

"Having heard the learned counsel appearing for the parties and upon perusal of the record, we are of the view that the words of the aforesaid Rule require five years' regular service "in the respective regions". Thus, these words must be understood to mean that the candidates should have served in the respective regions, that is, the regions where they were posted earlier and the region where they seek promotion all together for five years. Thus if a candidate has served in one region and then transferred to another, and seeks promotion in that region, the rule does not require that the candidate must have acquired experience of five years in the region where he seeks promotion, for being considered eligible. What is necessary is a total experience of five years. This must necessarily be so because the service to which the rival parties belong, is an All-India Service, in which the country is demarcated into several regions. In all-India Service, the officers are posted from one region to the other in a routine manner. The purpose of the rule is that such officers are not deprived of their experience in the feeder cadre merely because they have been transferred from one place to another."

10. Further, similar issue fell for consideration before this Tribunal in O.A. No.427/2022 and this Tribunal vide order dated 18.04.2022 decided the same in favour of those applicants after relying

upon the judgment of Apex Court in case of **Pratibha Rani & Ors. vs. Union of India & Ors. (supra)**.

11. In view of the above, we are of the considered view that the applicants are also entitled for the same benefits and as such, the period spent by the applicants in other regions prior to transfer on compassionate ground, have to be counted for the purposes of eligibility for consideration of promotion.

12. The respondents/competent Authority is directed to convene DPC/Review DPC to consider afresh the cases of the applicants for promotion after counting their regular service in the grade in the erstwhile regions where they were working before transfer for the purpose of eligibility of promotion. The said exercise shall be completed, within a period of three months from the date of receipt of a certified copy of this order.

13. Resultantly, instant O.A. stands allowed.

14. All pending MAs in this O.A are also stand disposed off.

15. No order as to costs.

(Dr. Sanjiv Kumar)
Member(Administrative)

(Justice Rajiv Joshi)
Member (Judicial)

PM/