Guneet Singh Sodhi And Others Vs Union Of India And Others

Civil Writ Petition No. 7619, 7664 Of 2019 (O&M)

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: March 20, 2019

Citation: (2019) 03 P&H CK 0211

Hon'ble Judges: Rajiv Sharma, J; Kuldip Singh, J

Bench: Division Bench

Advocate: Girish Agnihotri, Sakal Sikri, Roja Agnihotri

Final Decision: Dismissed

Judgement

1. By this common judgment, we shall dispose of above mentioned two writ petitions i.e. CWP-7619-2019 titled as 'Guneet Singh Sodhi and others

versus Union of India and others' and CWP-7664-2019 titled as 'Gurpal Singh and others versus Union of India and others' in which same question of

law and facts arises for consideration. For brevity, the facts are being taken from CWP-7619-2019.

Petitioners have challenged the order dated 4.4.2018 and 4.7.2018 (Annexure P-1 and P-2), passed by Central Administrative Tribunal, Chandigarh

Bench, Chandigarh (for short 'the Tribunal') vide which original application i.e. OA No. 060/00887/2017 and review application i.e. RA-60/17/2018

filed by the applicants-petitioners were dismissed.

The short facts required to be noticed are that applicants-petitioners are working as Inspector in Income Tax Department. They were recruited as

Inspector through Combined Graduate Level Examination and were appointed in different regions. It also comes out that as per the directions of the

Central Board of Direct Taxes (for short 'the CBDT'), their seniority is maintained region wise. Between the year 2011-2013, petitioners applied for

inter charge transfer (for short 'the ICT') to Chief Commissioner of Income Tax, Chandigarh in North West Region (NWR). Their request was

accepted by ICT and they were transferred to North West Region.

Now they claim that they have qualified the departmental examination for Income Tax Officer and are now eligible for promotion as Income Tax

Officer. However, they are aggrieved by the seniority fixed by the department. They are claiming seniority from the date, they joined the parent

region/commissionerate. Their representations have already been dismissed. They claim that now their juniors have been considered and promoted.

We have heard learned counsel for the petitioners and have also gone through the case file.

The law point involved in both the petitions is as to whether an employee whose seniority is determined region wise can claim seniority of his previous

region/charge on being transferred on request to another region or not? And in this way get seniority at the bottom in the new region in terms of

CBDT circular dated 14.5.1990 (Annexure A-5) or he will get benefit of previous service in the parent region.

The circular dated 14.5.1990 (Annexure A-5) issued by CBDT governing seniority contains a condition that in case of inter charge transfer (ICT), the

service in the old region will not be considered and will be placed at the bottom of the list of the employees of the concerned cadre in the new charge.

The said circular reads as under: -

Sub.: Transfer of Non-gazetted staff from one charge to another charge under the Central Board of Direct taxes - delegation of powers to Heads of

the Department.

I am directed to refer to Boardâ€Ÿs letter F.No.A-22020/37/86-Ad.VII dated 30.6.1986 regarding transfer of non-gazetted staff from one charge to

another on compassionate grounds.

2. The instructions contained in the above mentioned letter have been reconsidered consequent on the recent changes in the concept of confirmation

and lien. As a result of such reconsideration, it has been decided that requests for intercharge transfer of non gazetted staff on really compassionate

grounds may herein after be considered by the Cadre Controlling Authorities on merits and transfers, where considered necessary, may be effected

subject to the observance of the following conditions:-

(a) No request for inter-charge transfer shall be entertained in respect of posts, recruitment to which is made 100% by promotion (e.g. Tax

Assistants, Head Clerk, Supervisors, Gr.I and II, Stenographers Gr.II and I etc.).

(b) Requests for transfer on compassionate grounds shall be entertained only in respect of posts, recruitment to which is made either by direct

recruitment or partly through direct recruitment and partly through promotion.

(c) No request for inter-charge transfer shall be entertained from a person (who may otherwise be eligible to make such a request under (b) above)

unless he or she has put in at least three years of service, in that grade;

(d) A person who seeks transfer, should apply to the head of the department, chief commissioner director general under whom he is working, who

will, on being satisfied, take up the matter with his head of the department in the charge to which the employee seeks transfer. The latter head of the

department will examine the request on merits and pass necessary orders for absorption of the person seeking transfer. Such request shall be

considered and conceded only against a clear vacancy. His decision in the matter shall be final. No request for re-transfer shall be entertained under

any circumstances

(e) The direct recruits coming on transfers will be shown against direct recruitment quota and promotees, against the promotion quota.

(f) 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.

(g) On transfer, the transferee will forfeit all claims for promotion/confirmation in the old charge. He/she will be eligible for promotion/confirmation in

the new charge in accordance with the seniority allotted to him on transfer.

(h) As far as possible, efforts should be made to retain husband and wife at the same station.

(i) The transferee will not be entitles to any joining time and transfer travelling allowance.

3. Heads of the department shall exercise the powers delegated to them in the matter of effecting inter-charge transfers on compassionate grounds in

accordance with the above terms and conditions. If, in any case, relaxation of these terms and conditions become necessary, prior approval of the

Board should invariably be obtained.

4. The powers delegated to the Heads of the Department in the matter of inter-charge transfer can be exercised only in respect of employees of the

Income-tax department and not in respect of transfer of employees of any other office/department/Ministry.

5. A written undertaking to abide by the requisite terms and conditions may be obtained from the employee seeking transfer in the annexed proforma

before the transfers are actually effected.

6. These instructions take effect from the date of issue and in supersession of earlier instructions issued vide File No.A-22020/37/86-Ad.VII dated

30.6.86"".

Clause 2 (f) of the circular makes it clear that in case of ICT, the employee is to be placed at the bottom of the list of the employees of the concerned

cadre in the new charge. That is what was exactly done by the department. The said circular dated 14.5.1990 was further clarified by CBDT by

issuing a circular in the year 2016 and by circular dated 4.1.2018 whereby certain changes were made.

The Tribunal has taken the view that the circular dated 14.5.1990 still hold the field relating to ICT of the employees.

Learned counsel for the petitioners has argued that there are instructions of Ministry of DOPT dated 11.11.2010. The Ministry of DOPT is the nodal

Ministry. Therefore, on the strength of the said circular issued by Ministry of DOPT dated 11.11.2010, petitioners claim that their service in the

previous region should be counted for the purpose of seniority.

We are of the view that the Tribunal has taken the correct view that the services of the petitioners are governed by the rules and circulars of CBDT.

The instructions of Ministry of DOPT are general in nature and when there are specific instructions of the concerned department, the instructions

issued by the Ministry of DOPT will not be applicable.

In the present case, petitioners were appointed through direct appointment as Inspectors. They sought transfer to North West Region on

compassionate grounds on the basis of the circular issued by CBDT dated 14.5.1990. There was a specific condition in the said circular that they will

be placed at the bottom of the list of employees in the new charge and the same was done. Now they cannot go back and claim that their earlier

service in the previous region should also be treated as service for the purpose of seniority.

It being so, we are of the view that the seniority of the petitioners was correctly fixed and their service in the previous region was rightly excluded for

the purpose of seniority. Consequently, they cannot claim promotion by counting their previous service in the previous region/commissionerate for the

purpose of seniority.

In view of above, we do not find any illegality or infirmity in the orders dated 4.4.2018 and 4.7.2018 (Annexure P-1 and P-2), passed by Central

Administrative Tribunal, Chandigarh Bench, Chandigarh in original application and review application.

Writ petitions are dismissed in limine.

A copy of this order be placed on the connected file.