CENTRAL ADMINISTRATIVE TRIBUNAL GUWAHATI

Order Sheet

Item no.: 6
C.P./24/2017 (GUWAHATI)
[NON COMPLIANCE OF ORDER]
In
O.A./63/2017
PROMOTION
Court No.: 1

No of Adjournment: 18

Order Dated: 11/09/2023

SHRI CHANCHAL NAG
Vs
SUSHIL CHANDRA & OTHERS.

For Applicant(s) Advocate : Dr. G. J. Sharma

For Respondent(s) Advocate : Sri V.K. Bhatra, Sr. CGSC

Order of The Tribunal

Heard Dr. G. J. Sharma, learned counsel for the petitioner and Sri. V. K. Bhatra, learned Sr. CGSC for the alleged contemnors/respondents.

2. The instant CP has been filed by the petitioner being aggrieved with non-compliance of the order dated 04.08.2017 passed by this Tribunal in O.A. No. 040/00063/2017 (Annexure 1), whereby this Tribunal had observed and directed as follows:

"11. In view of the imminent retirement of the applicant on 31.10.2017, if the respondents are not able to finalize the all India inter-se seniority of the ITOS, the applicant will not be able to get the benefit of the judgment of the Hon'ble Supreme Court in the case of N.R.Parmar (supra) and in that case he will suffer irreparable loss. Accordingly, the respondents are directed to antedate the promotion of the applicant to the cadre of ACIT and ICIT from the date his juniors stand promoted and also consider him for further promotion as and when DPC takes place on the basis of provisional seniority. The applicant has specifically quoted the name of Sri Shubhra Jyoti Bhattacharjee along with whom he has claimed promotion to ACIT and JCIT.

Since in the written statement the respondents have not controverted his prayer vis-à-vis Sri Subhra Jyoti Bhattacharjee, the respondents are directed to issue orders accordingly for antedating promotion of the applicant vis-à-vis Sri Bhattacharjee. The exercise shall be complied with, as expeditiously as possible, but not later than the date of retirement of the applicant, that is, 31.10.2017. Needless to mention that all the conditions put forward in the order of the CAT, Ernakulam Bench dated 15.12.2015 passed in OA.180/403/2015 will also apply ipso facto in this case.

12. The OA is disposed of accordingly. There shall be no order as to cost."

3. Today, Sri V.K. Bhatra, learned Sr. CGSC for the alleged contemnors has referred to a compliance report filed on 07.09.2023 and has drawn our attention to the Order dated 25.07.2023 passed by Shri Rajinder Kumar, Deputy Secretary to the Government of India, whereby he has observed the following:

"13. AND WHEREAS, with regard to the direction of the Tribunal for issuing the order for antedating the promotion of Sh. Chanchal Nag vis a vis Sh. Sri Bhattacharjee on the basis of submission made before the Tribunal by Sh. Chanchal Nag claiming to be senior to Sri. Bhattacharjee is concerned, following facts have been noted.

i) Sh. Chanchal Nag was junior to Sh. Subhrajyoti Bhattachargee in the AllSL of ITO Vis-a-Vis Sh. Subhrajyoti Bhattachargee who was promoted to the post of ITO for Vacancy year 1993-94 and Sh. Chanchal Nag was promoted to Vacancy year 1994-95 in the grade of ITO. Accordingly, in the AllSL of ITO, 1999, Sh. Chanchal Nag is placed at SL No 2364 and Sh. Subhrajyoti Bhattachargee is placed at SL no. 1752. Therefore, Sh. Subhrajyoti Bhattachargee is senior to Sh. Chanchal Nag as he is placed above Sh. Chanchal Nag in existing AIISL of ITO.

ii) Sh. Subhrajyoti Bhattachargee was promoted to the post of ACIT on 29th Dec 2006 vide order No. 157 of 2006 that is one year before the promotion of Sh. Chanchal Nag who was promoted to the post of ACIT vide Order No 96 of 2007 dated 29.06.2007.

iii) Sh. Subhrajyoti Bhattachargee was subsequently promoted to the post of JCIT vide Order No. 186 of 2013 dated 1.10.2013 which is almost 3 years before Chanchal Nag who was promoted to the grade of JCIT vide Order NO. 52 of 2016 dated 21.03.2016.

In view of above, Sh. Subhrajyoti Bhattachargee is senior to Sh. Chanchal Nag in the grade of Income Tax Officer (ITO), Assistant Commissioner of Income Tax(ACIT) and Joint Commissioner of Income Tax(JCIT) respectively. Therefore, the submission made by Sh. Chanchal Nag before the Tribunal for antedating promotion vis a vis Sh. Subhrajyoti Bhattachargee does not arise as Shri Subhrajyoti Bhattachargee is senior to Sh. Chanchal Nag. Thus, there has been no discrimination in promoting Sh. Nag in the grade of ACIT vide Order No 96 of 2007 dated 29.06.2007 [SI.No. 108 of the Order] and in the grade of JCIT vide Order NO. 52 of 2016 dated 21.03.2016[SI. No. 37 of the order].

14. This issues in compliance of order date 04.08.2017 of the Hon'ble CAT, Guwahati Bench in OA No. 040/00063/2017 filed by Sh. Chanchal Nag, JCIT(retd.).

15. This issued with the approval of Competent Authority.

(Rajinder Kumar)

Deputy Secretary to the Govt. of India."

However, the said officer, Shri Rajinder Kumar, Dy. Secy to the Govt. of India, has not been arrayed as party respondents in O.A as well as in the instant CP who has observed as such and rejected the claim of the applicant.

4. In view of the above, Sri. V. K. Bhatra, learned counsel for the alleged contemnors has further submitted that they have already complied with the order of this Tribunal and has prayed for dropping of the instant CP.

5. However, learned counsel for the petitioner has vehemently objected to the same. He submits that, in the original order, there was a specific observation and direction of this Tribunal to antedate the date of promotion vis-à-vis Shri Subhrajyoti Bhattacharjee, whereas though the respondent/alleged contemnors had preferred one Review Petition No. 09/2019 before this Tribunal, the same was dismissed by this Tribunal vide order dated 08.06.2020. Being aggrieved with, the alleged contemnors

(respondents) had approached the Hon'ble Gauhati High Court vide WP (C) 3034/2021, which was also dismissed by the Hon'ble Gauhati High Court on 27.03.2023 affirming the order of the Tribunal passed in the said R.A. But even after 6 years, no Writ Petition has been filed before the Hon'ble Gauhati High Court assailing the order passed in O.A 63/2017, therefore, the order of this Tribunal has attained finality. Therefore, as per the applicant, the action of the alleged contemnors is a contemptuous one and has not been complied with.

6. We have heard the parties and perused the records. '

7. It is an admitted fact that no Writ Petition has been filed by the alleged contemnors challenging the original order dated 04.08.2017 passed in O.A. No. 040/00063/2017. From the perusal of the order dated 04.08.2017, it is noted that this Tribunal had clearly observed that the respondents never denied the status of Subhrajyoti Bhattacharjee as junior to the applicant and, in that background, this Tribunal had directed the respondents to antedate the date of promotion vis-à-vis Subhrajyoti Bhattacharjee, however, in contrary to such direction, the Dy. Secretary, CBDT, Government of India, Ministry of Finance, Dept. of Revenue, who is not even a party in the instant application, had observed in total contrary to the facts and rejected the claim of the applicant and submitted that they have complied with the said order of the Tribunal.

8. Therefore, in our considered opinion, the said order of compliance report is totally contrary to the observation and direction of this Tribunal's dated 04.08.2017 and even contemptuous one, as after 6 years, the Dy. Secretary to the Govt. of India, Rajinder Kumar, is passing such order without

preferring any Writ Petition against the original order dated 04.08.2017. Therefore we are rejecting the compliance report.

9. Since 6 years have already lapsed, last chance is granted to the alleged contemnors to comply with the order and file their compliance report, failing which, alleged contemnor no. 6 should be present in court on the next date as it is totally contemptuous.

10. Accordingly, let this matter be listed on 24.11.2023. Plain copy of this order be supplied to both parties as well as alleged contemnor No. 6.

Dr. Sumeet Jerath	**Smt. Urmita Datta (Sen)**
Member (A)	**Member (J)**

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