

CENTRAL ADMTNTSTRATIVE TRTRUNAI : PRTNCTPAI BNCH

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Original Application No. 726 of 2002

New Delhi, this the 25th day of August, 2003

HON'BLE MR. V.K. MAJOTRA, MFBFR (A)
HON'BLE MR. KULDIP SINGH, MFBFR (JUD1)

1. Shri Prem Singh Negi
S/o Late Shri Thepar Singh
R/o 288, Income Tax Colony,
New Delhi.
2. Shri Pratap Singh Bisht
S/o Shri Ram Singh
R/o F-30 Sector-22, Noida.
3. Shri Bijender Singh Tomar
S/o Shri Sunder Lal Singh
R/o D-3/402, Nehru Vihar,
Delhi-110 094.
4. Shri Dan Singh Rawat
S/o Shri M.S. Rawat
R/o D/526 Kidwai Nagar,
New Delhi.Applicants

(By Advocate: Shri R.N. Singh)

Versus

1. Union of India through
Secretary,
Ministry of Finance
(Department of Revenue)
North Block,
New Delhi.
2. The Chairman,
CBDT, North Block,
New Delhi.
3. The Chief Commissioner,
Income Tax,
C.R. Building,
New Delhi.Respondents

(By Advocate: Shri V.P. Uppal)

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Jud1)

Application for joining allowed.

2. The applicants have filed this OA as they are aggrieved by the order dated 22/Personnel/2001 dated

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1.6.2001 issued by respondent No.3 whereby the seniority of the applicants have been depressed as they have been deemed to be regularly promoted as UDC w.e.f. 29.11.1999 instead of their actual date of officiating promotion dated 21.5.1997 on regular basis pursuant to the recommendations of the DPC against the vacancies of the year 1997-98.

3. Facts in brief, as alleged by the applicants are, that the applicants after fulfilling the conditions of eligibility, i.e., after passing the Ministerial examination for promotion to the post of UDC and on the basis of their seniority were promoted against vacancy year of 1997-98 on the recommendations of the DPC as UDC's on regular basis w.e.f. 21.5.1997 and they have been working in that capacity till date.

4. It is also stated that they had been assigned seniority in the UDC cadre respectively.

5. But vide the impugned order dated 1.6.2001 their seniority has been depressed and their date of promotion as have been promoted w.e.f. 29.11.1999 instead of having been promoted them w.e.f. 2.7.1997.

6. The applicants allege that their seniority cannot be depressed or their date of promotion cannot be changed to their prejudice without issuing any show cause notice to the applicant and the respondents cannot be



allowed to deprive the applicants of their vested right to continue with the original seniority in the cadre of UDC. Even on merits they cannot be denied promotion.

7. Respondents are contesting the OA. The respondents submitted that when the applicants were promoted it was clearly mentioned that they are liable to be reverted at any time and this order does not indicate about their inter-se seniority. Some promotions had been made in the past to the cadre of UDC on the basis of eligibility list. Since the seniority list of LDCs was finalised only on 19.4.99 so promotions made prior to this date were not in the exact order of seniority in the cadre of LDC. To rectify the discrepancy, a review DPC was held and accordingly their seniority was fixed correctly.

8. Respondents further submitted that earlier the seniority list of LDC was circulated on 12.3.1986 which included LDCs who have joined or were promoted till December, 1985. Then another seniority list Part-II in respect of LDCs who have joined after that was finalised in accordance with principles enunciated by the DOP&T vide its OM dated 7.2.1986 and second OM 3.7.1986 was issued only on 19.4.99.

9. It is further stated that promotion to the cadre of UDC prior to 19.4.99 were made on ad hoc basis on the basis of eligibility list which were not strictly in accordance with the seniority list as there was no seniority list in the cadre of LDC after 12.3.86. So after the finalisation of the seniority list it had



become necessary to hold a review DPC and applicants were disempanelled as they could not get selected. The applicants were empanelled in the review DPC held on 28.5.2001 to review the DPC held on 25.11.1999 and the review DPC recommended their deemed promotion from 29.11.1999.

10. We have heard the learned counsel for the parties and gone through the records of the case.

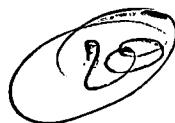
11. The main contention of the learned counsel of the applicants is that the applicants have not been put to notice so a notice in this case has to be issued to them when their seniority had been depressed as 1988 year of promotion has been changed.

12. The applicants counsel also contend that by order dated 2.7.1997 when applicants were promoted on the same basis and they are still continuing so it has become their vested right to have promotion and seniority with effect from that date.

13. We have considered the contention of the parties.

14. It would be pertinent to point out that promotions which were given to the applicant vide an order dated 2.7.97 specifically stated that the applicants were promoted to "officiate" only as UDC and in this promotion order it was further stated that they are liable to be reverted any time. It was also made clear in that order that this does not indicate their

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inter-se seniority in the cadre of UDC and further promotions were subject to the final outcome of the Court's order in CW No.25/1979, CW No.860/1979 and CW No.1490/1981. Thus the promotion order clearly shows that first of all the applicants were not promoted on regular basis; and secondly they were also notified that they were liable to be reverted at any time and their seniority had not been fixed in accordance with the seniority.

15. The impugned order shows now that the effective date of regular promotion as indicated is necessitated because of the finalisation of the seniority list in the year 1999 whereas the earlier seniority list was issued in the year 1986.

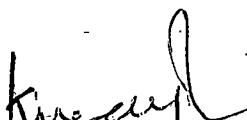
16. Now coming to the question whether any show cause notice was required to be given in this case. The perusal of the order dated 2.7.97 vide which the applicants were promoted on officiating basis as UDC goes to show that the applicants were notified at the time of promotion itself that they are liable to be reverted and their seniority was not properly reflected in the promotion order so we are of the considered opinion that no further notice was required if seniority was to be rectified. As the applicant had already been duly notified as thier promotion was subject to certain terms as mentioned in the oder itself so no furtehr notice was required. Nor any principles of natural justice have been violated.

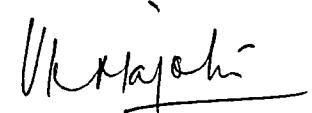


17. The counsel for the respondents also pointed out that before issuing the impugned order the applicants were reverted on the same day and thereafter promoted on the same date goes to show as if no final seniority list has been prepared and since the department had a right to revert them at any point of time so the applicants have no grievance.

18. In our view the order dated 2.7.97 itself indicates clearly that it was not based on any seniority basis and the department had a right to rectify the seniority list and moreover the promotion given to the applicants were only on officiating basis and not a regular promotion. Regular promotion has been given only by the impugned order so we do not find that applicants have any justifiable claim to challenge the same.

19. In view of the above, OA has no merits and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER(JUDL)


(V.K. MAJOTRA)
MEMBER (A)

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