

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.No.2718/99

Hon'ble Shri S.R.Adige, Vice-Chairman(A)  
Hon'ble Shri Kuldip Singh, Member(J)

New Delhi, this the 20<sup>th</sup> day of March, 2002

Shri Jagdish Prasad  
s/o Sh. Matadeen  
R/o Q. No.339 Type-II  
I.T. Colony, New Pritampura  
Delhi - 110 034. ... Applicant  
(By Advocate: Shri D.R.Gupta)

Vs.

1. Chief Commissioner of Income-Tax  
C.R.Bldg., I.P.Estate  
New Delhi.
2. Commissioner of Income-tax, Delhi-I  
HQrs. Admn.II, New Delhi. ... Respondents  
(By Advocate: Shri V.P.Uppal)

ORDER

By S.R.Adige, VC(A):

Applicant impugns respondent's order dated 29.11.1999 (Annexure A-1) regularising him as UDC w.e.f. 29.11.1999 and ~~regularisation~~<sup>sec 13</sup> regularisation as UDC w.e.f. 12.4.1996 itself on which date he was promoted as UDC on ad hoc basis.

2. Heard.

3. Applicant has not denied in rejoinder the specific averments of respondents in their replies to paras 4.1 to 4.5 of the OA that he was regularised as LDC w.e.f. 2.3.1994. It is not also denied that 3 years regular period as LDC is required for eligibility for promotion/regularisation as UDC. Having been regularised as LDC on 2.3.1994, applicant ~~does~~<sup>does</sup> not have 3 years regular service as LDC to be eligible for promotion as UDC on 12.4.1996.

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4. Applicant relies upon the case of one Madan Singh, who was granted inter charge transfer from Rajasthan to Delhi on 2.1.1995. By respondents order dated 24.5.1995 (Annexure RA-II) one time relaxation was given in the Recruitment Rules for his promotion as UDC against "diverted" vacancies if so available, by counting the service rendered by him in the previous charge, provided he was otherwise eligible and provided that all other LDCs in Delhi Charge had already been considered and promoted as UDCs. He was promoted as UDC in the meeting of the DPC's recommendation dated 27.11.1995. Applicant contends that <sup>as</sup> ~~upon~~ Shri Madan Singh had been transferred from Rajasthan to Delhi, on his own request, he took bottom seniority and thus became junior to applicant, and if he was considered for promotion and also promoted, applicant has an enforceable legal right to be considered for promotion in terms of DoPTs order dated 19.7.1989 which required all Ministries/Departments to insert a Note in the Recruitment Rules for various posts to the effect that when <sup>a</sup> junior <sup>who n</sup> ~~also~~ has completed the eligibility period <sup>u n</sup> ~~and~~ considered for promotion, then seniors would also be considered, irrespective of whether they have completed the requisite service, provided they have completed the probation period.

5. We have considered these contentions carefully.

6. We note that Shri Madan Singh was promoted as UDC w.e.f. 27.11.1995 which is a date even prior to the date applicant claims regularisation as UDC,

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i.e., 12.4.1996 in the OA. That apart, it is not denied that promotion to the grade of UDC is to be made on non-selection basis and persons senior to applicant have not been promoted/regularised as UDC w.e.f. 12.4.1996. Directing respondents to regularise applicant as UDC w.e.f. 12.4.1996 would thus make applicant's seniors, junior to him, without good reason and without their having been made a party, which itself would be illegal and arbitrary.

7. That apart, the circumstances under which ad hoc service can count towards seniority have been laid down by Hon'ble Supreme Court in the case of Direct Recruit Class-II Engineering Officers' Assn. Vs. State of Maharashtra, (1990) 2 SCC 715 which has been discussed in detail in the Hon'ble Supreme Court in State of West Bengal and Others Vs. Aghore Nath Dey and Others, (1993) 3 SCC 371. It is clear that applicant's claim for counting the ad hoc service put in by him as UDC from 12.4.1996 till 29.11.1999 is squarely hit by the corollary to conclusion A of the Direct Recruitment's case (supra).

8. Applicant has cited certain judgements, copies of which have been taken on record, but in the light of the aforementioned two rulings referred to above, which squarely cover the present case and in the light of the foregoing discussion the OA warrants no interpretation.

9. The OA is dismissed. No costs.

  
(Kuldip Singh)  
Member(J)

  
(S.R. Adige)  
Vice-Chairman(A)