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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 563 of 1991

New Delhi this the 3rd day of October, 1996

HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)
HON'BLE SHRI T.N. BHAT, MEMBER (J)

1. Shri Ramesh Chander
S/O Shri Mohar Singh
R/o 985, Sector VII,
R.K. Puram,
New Delhi.
 2. Shri Chamman Lal
S/o Late Shri Tek Chand
F-292, Vikas Puri,
New Delhi.
- ..Applicants

Shri M.M. Sudan

Versus

1. Cheif Commissioner of Income Tax (Admn.),
C.R. Building,
New Delhi.
 2. Commissioner of Income Tax,
Delhi-I, C.R. Building,
New Delhi.
 3. Central Board of Direct Taxes through
Secretary, North Block,
New Delhi.
 4. Union of India through Secretary,
Ministry of Finance,
North Block,
New Delhi.
- ..Respondents

By Advocate Shri R.S. Aggarwal

ORDER (ORAL)

Hon'ble Shri K. Muthukumar, Member (A)

Heard the learned counsel for the parties.

2. The facts in this case are briefly as under. The applicants were working as Head Clerks at the time of filing of this O.A. They are aggrieved by the action of the respondents by order dated 9.1.1991, whereby their representation for consideration of promotion for refixation of seniority and scraping of the panel for promotion to the cadre of Inspectors on the basis of the old seniority list was rejected. They have also prayed that they should be given the benefit of the judgment in the case of Rafat Ullah - O.A. No. 439 of 1986 to the applicants as well. The short point involved in the decision contained in Rafat Ullah's case - O.A. No. 439 of 1986 which was decided on 23.5.1990 was, that the applicant in that case who was also similarly placed as the applicants in the present O.A. and also belong to the same Department under the same respondents, the respondents were directed to determine the seniority not with reference to the date of confirmation but from the date of entry into the service as UDC (Upper Division Clerk) and it was held that the correct seniority may be fixed in the light of this principle. It was also held that the applicant in that case would be entitled to consequential benefits.

3. The applicants in this O.A. have sought

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the benefits on the lines of the judgment in the aforesaid case.

4. The learned counsel for the respondents has produced before us the order dated 20.02.1996 issued by the Additional Commissioner of Income Tax in the office of the Chief Commissioner of Income Tax, by which Shri Ramesh Chander, applicant No.1 is deemed to have been promoted as Head Clerk in the pay scale (pre-revised) of Rs.425-700 with effect from 2.9.1983. The learned counsel also submits that similar order has also been passed in the case of Shri Chamman Lal, applicant No.2 and he has also been similarly promoted on the deemed basis as Head Clerk w.e.f. 29.8.1981. The said orders which are produced before us, are taken on record. It should be noted here that before these orders were passed, the applicants had already been promoted as Inspectors w.e.f. 8.6.1989 in respect of Shri Ramesh Chander, applicant No.1 and w.ef. 8.4.1988 in respect of Shri Chamman Lal, applicant No.2.

5. The learned counsel for the applicant during the arguments submitted that while it is no doubt true that the respondents promoted the applicants after redertermining their seniority in accordance with the order passed in Rafat Ullah's case (Supra), but they have denied the arrears

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of pay and allowances for the intervening period. The learned counsel also brought to our attention that the respondents have followed pick and choose policy and cited the instances of respondents passing order in similar case, i.e., in respect of Shri N.K. Malhotra who was similarly placed as the applicants in this case and who was also retrospectively promoted on deemed basis w.e.f. 10.07.1990 by order dated 12.6.1991 vide Annexure-9 to the rejoinder and in that case have also allowed arrears of pay for the intervening period. The learned counsel, therefore, submits that the applicants had been discriminated against by the respondents and prays that since the prayer in the application is for similar benefits arising out of the judgment in Rafat Ullah's case, he argued that the respondents should be given a direction for allowing the applicants the pay and allowances for the intervening period, as was allowed in other cases.

6. The learned counsel for the respondents, however, submits that since the order dated 20.02.96 passed by the Commissioner of Income Tax should have been passed after taking into account the facts and circumstances of the case and, therefore, he has no further submissions to make in this behalf with regard to payment of pay and allowances

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for the intervening period.

7. We have heard the learned counsel for the parties and have carefully considered the issue.

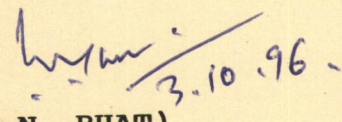
8. The short point is whether the applicants in the light of the orders passed in Rafat Ullah's case as well as in the case of N.K. Malhotra, UDC, should be allowed on the date of deemed promotion arrears of pay and allowances as the consequential benefits. Taking into account the observations of the Apex Court in U.O.I. etc. etc. Vs. K.V. Jankiraman etc. etc., JT 1991 (3) SC 527 (although this case referred to the notional promotion preceding the actual promotion), we are of the considered view that it would be appropriate for the applicants to make a fresh representation to the respondents by bringing all the facts and particulars in that representation and for drawal of payment of arrears of pay and allowances as consequential benefits on their promotion as Head Clerks and Inspectors from the respective dates. We accordingly direct the applicants to make such representation within a period of 2 weeks' from the date of receipt of a copy of this order and the respondents are also directed to consider

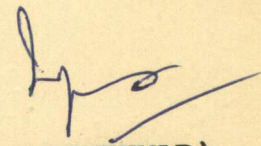
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this representation within a period of 3 months and pass a reasoned and speaking order in this behalf and after issue of such an order, it will be open to the applicants to seek appropriate remedy as may be available under the law.

9. The application is disposed of with the above directions. There shall be no order as to costs.


(T.N. BHAT)
MEMBER (J)


(K. MUTHUKUMAR)
MEMBER (A)

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