CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.1744/2004
With
O.A. NO.1825/2004

This the 18th day of July 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

O.A. NO.1744/2004

Uma Vaidyanathan, L.D.C.,
ITAT, Delhi Bench,
Income Tax Appellate Tribunal,
11th Floor, Lok Nayak Bhawan,
Khan Market, New Delhi. ... Applicant

(By Shri Sudershan Rajan, Advocate)

versus

1. Union of India through
Secretary, Ministry of Law and Justice,
Department of Legal Affairs,
Shastri Bhawan, New Delhi.

2. President,
Income Tax Appellate Tribunal,
Old CGO Building,
Maharishi Karve Road,
Mumbai-400020.

3. Registrar,
Income Tax Appellate Tribunal,
Old CGO Building,
Maharishi Karve Road,
Mumbai-400020. ... Respondents

(By Shri N.K.Aggarwal with Mrs. Promila Sahya, Advocates)

O.A. NO.1825/2004

Sushila Butola W/O Dilwar Singh Butola,
R/O 207, Lodi Road Complex,
New Delhi-110003. ... Applicant

(By Shri A.K.Behera, Advocate)

versus

1. Union of India through
Secretary, Ministry of Law & Justice,
Department of Legal Affairs,
Shastri Bhawan, New Delhi-110001.

2. The Registrar,
Income Tax Appellate Tribunal,
Old CGO Complex,
Maharishi Karve Road,
Mumbai-400020.

(By Shri N.K.Aggarwal with Mrs. Promila Safaya, Advocates)

ORDER (ORAL)

By Hon'ble Shri V.K.Majotra, Vice-Chairman (A):

The facts and legal issues being similar in these two cases, they were taken up together for disposal by a common order.

2. These applicants had earlier on approached this Tribunal through OA No.1442/99 challenging respondents' orders dated 13.5.1999 modifying in turn order dated 6.1.1994 to the effect that applicants would continue to be appointed on *ad hoc* basis for a period of six months or till the posts got filled up on regular basis by candidates nominated by the Staff Selection Commission (SSC), whichever was earlier. The OA was disposed of without interfering with respondents' orders. Applicants had carried the matter before the High Court through CWP No.1399/2001. Tribunal's orders were set aside vide High Court's orders dated 17.4.2002 directing fresh consideration of the matter by the appropriate authority giving proper show cause notice to applicants herein. Consequently, respondents issued show cause notice dated 30.12.2002 (Annexure A-9) and thereafter passed the impugned orders dated 19.7.2004 cancelling the appointment of applicants as LDC on regular basis w.e.f. 30.7.2004 on the ground that they had been appointed by an incompetent authority, i.e., by Deputy Registrar, Income Tax Appellate Tribunal (ITAT) instead of the competent authority, i.e., Registrar, ITAT, and also that their names were not sponsored by SSC.

3. The learned counsel of applicants contended that applicants had been appointed as LDC on regular basis and on probation for a period of two years by the President, ITAT and not by Deputy Registrar. At the time when applicants were appointed, the post of Registrar was vacant and the President himself had approved appointment of applicants. Secondly, referring to the Income Tax Appellate Tribunal (Group 'C' Posts) Recruitment Rules, 1984 (hereinafter referred to as the 1984 rules), the learned counsel maintained that these rules do not prescribe any requirement of recruitment on the post of LDC through the agency of SSC.

4. The learned counsel of respondents, on the other hand, stated that respondents had consulted the Department of Personnel & Training which advised by their note dated 18.6.2001 (pages 89-90) that the selection to the post of LDC in ITAT is made through SSC and that there is no provision of by-passing the SSC in making regular appointments against the post of LDC on direct recruitment basis.

5. To our pointed query to refer to the specific rule relating to requirement of selection to the post of LDC in ITAT through SSC, the learned counsel of respondents could not bring to our notice any such rule or instructions.

6. We have considered the respective contentions of the parties.

7. Mere reference to the opinion of DOP&T to the effect that there is no provision for by-passing the SSC in making regular appointments in the Government against the posts of LDCs on direct recruitment basis is not enough. The 1984 rules do not provide for recruitment to the post of LDC on direct recruitment basis in ITAT through the agency of SSC. In the absence of any specific rule regarding regular appointment of LDCs on direct recruitment basis through SSC, such a requirement cannot be considered to be a good ground for termination of the appointment of applicants. Furthermore, it has not been

rebutted on behalf of respondents that at the appropriate time when applicants were appointed, the position of Registrar was vacant. Though the appointment orders of applicants were signed by Deputy Registrar, the orders clearly state that applicants had been appointed with the approval of the President, ITAT. The ground of applicants having been appointed by an incompetent authority shall also not hold good when the President, ITAT had permitted applicants' appointments.

8. It is also observed that applicants were appointed more than a decade ago. Appointments made in such a distant past cannot be disturbed. Reliance is placed in this behalf on (2001) 3 SCC 328 – ***Buddhi Nath Chaudhary & Others v Abahi Kumar & Others***.

9. In the light of the above discussion, both the grounds taken by respondents for cancelling appointments of applicants having been found bad and also the fact that applicants were appointed more than a decade ago, we find substantial merit in the OAs. As such, the impugned orders dated 19.7.2004 are quashed and set aside directing respondents to reinstate the applicants forthwith with all consequential benefits.

10. OAs are allowed in the above terms.

(Shanker Raju)
Member (J)

(V. K. Majotra) 18.7.05
Vice-Chairman (A)

/as/

Court Officer
Central Administrative Tribunal
Principal Bench, New Delhi
Faridkot House
Copernicus Marg
New Delhi 110001