

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH :: ALLAHABAD

ORIGINAL APPLICATION NO.79 OF 1996
ALLAHABAD THIS THE 3rd DAY OF June, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A.K. BHATNAGAR, MEMBER-J

Ashok Kumar Gupta,
S/o P.D. Gupta,
working as Sector Officer III,
Central Excise, Range Urban III,
Division II, Allahabad,
R/o No.149-A,
Baghambari Housing Scheme,
Allapur,
Allahabad.

.....Applicant

(By Advocate Shri Pulak Ganguly)

Versus

1. The Union of India,
through Chairman,
Central Board of Excise & Customs,
New Delhi.
2. The Commissioner,
Central Excise & Customs,
Allahabad.
3. The Dy. Commissioner,
Central Excise & Customs,
Allahabad.
4. Sri Maqsood Hussain,
Inspector Central Excise,,
Range Urban-I,
Office of the Dy. Commissioner,
Central Excise & Customs, Division-II,
Allahabad.Respondents

(By Advocate Km. S. Srivastava)

O R D E R

HON'BLE MAJ GEN. K.K. SHIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for a direction to the respondents to grant consequential benefits of service including the difference of pay and allowances so computed and accrued on promotion to the post of UDC in the grade of Rs1260-2040; then promotion to the post of Tax Assistant in the grade of Rs1350-2200 and promotion to the post of Inspector of Central Excise in the scale of Rs1640-2900.

2. The facts, in short, are that the applicant was appointed as Lower Division Clerk on 05.07.1974 in the respondents establishment. He was involved in a criminal case on 31.03.1980. The applicant was placed on suspension on 21.06.1980. The order of suspension was revoked and the applicant was reinstated in service on 27.06.1980. As per applicant, on 05.04.1988 his immediate juniors namely Shri Yogesh Chandra and Maqsood Hussain were promoted as Upper Division Clerk. He made a representation on 12.04.1988 against his supersession by his juniors on 15.12.1990. He was allowed to appear in the selection of Inspector from Sports quota. He qualified in the test and ^{now} _{interview} but because of the court case pending, his result was withheld and his juniors were appointed. The applicant was promoted as Upper Division Clerk after selection and passing the test. In the criminal case no.1198/91 the Vth ACJM, Varanasi, by judgment dated 04.01.1992 acquitted the applicant. The applicant represented for correction of his seniority and the same was corrected by order dated 05.08.1992. He was placed above Shri Yogesh Chandra and Maqsood Hussain in the seniority list dated 01.01.1989 (Annexure A-8). The



applicant was promoted as Tax Assistant in the scale of Rs1350-2200/- on 25-08-1992 and was further promoted as Inspector of Central Excise on 05.07.1993.

3. The grievance of the applicant is that since he was implicated in a criminal case which was not related with his employment and he was acquitted in the same, he is entitled for each promotion from the date his immediate juniors ^{& now} were promoted. Learned counsel for the applicant submitted that the respondents should have followed 'sealed cover procedure' in regard to the applicant whenever the case of promotion of his juniors was considered for Tax Assistant and Inspector Central Excise. The denial of promotion to the applicant merely on account of pendency of a court case is illegal and the applicant is entitled to each stage of promotion from the date when his juniors were promoted.

4. Learned counsel for the applicant also submitted that the applicant appeared in the written test and Viva-voce for the post of Inspector Central Excise and his result was withheld during the year 1990. On acquittal he is entitled for promotion from the retrospective dates.

5. Resisting the claim of the applicant, Km. S. Srivastava, learned counsel for the respondents submitted that promotion from Upper Division Clerk to the grade of Inspector Central Excise is based on selection criterion as per guidelines contained in Ministry of Finance dated 09.05.1991 and 18.12.1989 (Annexure CA-1 & 2). The applicant did not pass the departmental examination which his juniors passed in November 1991,

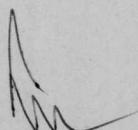


therefore, he was not considered for promotion. He passed the departmental examination in August 1992 and consequently he was promoted to the post of Tax Assistant and thereafter in July 1993 he was promoted to the post of Inspector.

6. The learned counsel for the respondents further submitted that there is not relationship between sports quota selection and promotion. On acquittal of the applicant in the criminal case, his case was considered for promotion to the UDC cadre and the applicant was promoted to the UDC cadre from the date his juniors were promoted. The applicant should have no grievance in this regard.

7. We have heard counsel for the parties, considered their submissions and perused records.

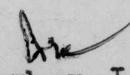
8. The applicant's contention that because of his seniority he should have been granted promotion as Tax Assistant as well as Inspector Central Excise is not correct. As per rule on the subject for promotion from UDC to that of Inspector one has to clear the selection. The applicant's juniors Shri Yogesh Chandra and Maqsood Hussain had cleared the departmental promotion examination and were promoted in the month of November 1991 whereas the applicant passed the same only in August 1992. In our opinion, there is no illegality in the action of the respondents in promoting the applicant as Tax Assistant and thereafter as Inspector in July 1993 after the applicant passed the departmental examination in August 1992. The applicant has pleaded that he appeared in the examination in 1990 and he cleared written as well as

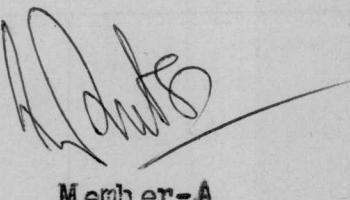


Viva-voce but his result was withheld because of pendency of criminal case against him. This plea of the applicant is also not based on facts and the respondents in para 19 of the Counter Reply have clearly stated that the applicant appeared in the sports quota examination for the post of Inspector but since he did not come in merit he was not selected. We would also like to observe that the respondents very correctly restored the seniority of the applicant as UDC by order dated 05.08.1992. The applicant has prayed for the arrears of pay and allowances of UDC cadre because of the assignment of his seniority from retrospective date. We do not consider that the same can be granted at this stage because the orders regarding his promotion as UDC from retrospective effect was issued on 05.08.1992 and the applicant ~~has~~ kept ^{in quietus} for about three years. He has raised the issue only by filing this O.A. on 19.01.1996.

9. In the facts and circumstances and our aforesaid discussions, we do not find any good ground for interference. The O.A. is devoid of merits and is liable to be dismissed. The O.A. is accordingly dismissed.

10. There will be no order as to costs.


Member-J


Member-A

/Neelam/