

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH**

Original Application No. 1339 of 2004

....., this the 5th day of September 2006

C O R A M :

**HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MR. A.K. SINGH, ADMINISTRATIVE MEMBER**

1. Vikash Kumar Gupta,
S/o. Shri Jai Prakash Gupta,
R/o. 128/140, Y-Block,
Behind Lucy Transport,
Kedwai Nagar, Kanpur.
2. Manoj Sridhar,
S/o. Late S.N. Shridhar,
R/o. 2/59-A, Yashoda Nagar,
Kanpur, C/o. Shri P.L. Tripathi,
Kanpur Nagar, Kanpur. Applicants.

(By Advocate Shri O.P. Gupta)

v e r s u s

1. Union of India through Secretary,
Ministry of Finance, Govt. of India,
New Delhi.
2. Chief Commissioner of Income Tax,
Aay Kar Bhawan, 16/69, Civil Lines,
Kanpur.
3. Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.
4. The Secretary,
Department of Personnel & Training,
Government of India, New Delhi. Respondents.

(By Advocate Shri S. Singh)



O R D E R
HON'BLE MR. K B S RAJAN, JUDICIAL MEMBER

This is the second round of litigation. The earlier round of litigation, when the applicant had challenged the order dated 15-04-2002, through OA 554/2002 was completed when the said OA was disposed of on 21-05-2004 with a direction to the respondents to dispose of, by a speaking order, the pending representations preferred by the applicants. The representation filed by the applicants having been rejected vide order dated 02-09-2004 , the applicants have come up in this OA seeking the following relief(s):-

- (a) Quashing and setting aside of the impugned orders dated 15.04.2002 and 02-09-2004.
 - (b) Direction to the respondents to consider the case of the applicants for promotion as UDC w.e.f. 07-10-1996 when the juniors to the applicants were promoted and to allow consequential benefits of pay and allowances as well as consideration for further promotion to the post of Sr. Tax Assistant.
2. Some bare minimum details of the facts of the case would be useful at this juncture. The applicants were selected through Staff Selection Commission for the post of LDC and accordingly they joined their duties respectively on 05-10-1993 and 21-10-1993. Their seniority position in the list published as on 01-01-1995, on the basis of their merit in the LDC exam
- [Handwritten signature/initials over the last sentence]*

was respectively 214 and 218. Some other LDCs though joined anterior to the date of joining of the applicants had been rightly shown as juniors as seniority in respect of direct recruitment was based on merit in the examination. The late joining of the applicants would not thus affect the seniority position and correspondingly the promotion prospects as well. In fact, by a letter dated 19-07-1989, the DOPT had issued instructions to the effect that first October of the DPC year would be taken as the cut off dates for working out the completion of requisite years of service in the feeder grade. It has also provided that if the seniors did not possess the requisite years of service, whereas the juniors had, then the seniors too would be considered. The applicants had completed three years of service respectively on 04-10-1996 and 20-10-1996 while some of their juniors had completed the requisite years of service prior to the applicants. In the panel for promotion to the post of UDC for which DPC was held in October, 1996 and February 1997, the applicants were not considered while their juniors had been and consequently, the panel contained the names of the juniors while the applicants were ignored. It was however, only in the panel for promotion as UDC for which DPC was held on 03-06-1998 that the name of the applicant figured and in the gradation list of UDC, the erstwhile juniors who were promoted as UDC prior to the applicants had been shown as seniors. This resulted in the applicants' filing representation, which came to be rejected by order dated 15-04-2002 whereafter the applicants had preferred another representation, which having not been disposed of, the applicants

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on the direction of Sub Committee

had moved OA No. 554/04 and as stated at the outset, the ~~same~~ was disposed of by the Respondents vide impugned order dated 02-09-2004. The contention of the respondents is that as per the advice of DOPT, OM dated 19-07-1989 was only advisory and it is for the department to first take a decision and then amend the relevant Recruitment Rules. Unless the relevant Recruitment Rules are amended to provide the clause relating to seniors, juniors for purpose of promotion/placement, these provisions cannot be invoked. As at the relevant time, the recruitment rules were not amended, the provisions of order dated 19-07-1989 was not invoked, the same not being compulsory. It is this order that is under challenge along with the earlier order dated 15-04-2002.

3. Respondents have contested the OA. According to them, the crucial date for determination of eligibility for promotion being 1st October of the year where ACRs were written financial year-wise, the applicants were not considered in the DPC held on 04-10-1996 and 14-02-1997, as the applicants had not completed three years of service by 01-10-1996.

4. The applicants had filed the rejoinder in which they had cited references of the past promotion, where the orders of 19-07-1989 were taken into account and individuals who did not fulfill three years of service, while their juniors had fulfilled the requisite condition of three years of service were considered and thus, stated that the contention of the

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respondents that unless the recruitment rules were amended, the provisions of order dated 19-07-1989 was not to be implemented is untenable. Documentary evidence in this regard had also been made available. In addition, the applicants have filed supplementary rejoinder, wherein they had annexed a copy of the revised recruitment rule dated 02-09-2003, whereby provisions to the effect that if a junior person is considered for promotion on the basis of his completing the prescribed qualifying period of service in that grade, all persons senior to him in the grade shall also be considered for promotion notwithstanding that they may not have rendered the prescribed qualifying period of service in the grade but have completed successfully the prescribed period of probation, had been incorporated (i.e. the provisions of order dated 19-07-1989 were incorporated). Further, the applicants had annexed a copy of the order dated 08-07-2002 whereby in an identical case, notional promotion as UDC in respect of one Shri Parvez Ahmed, was issued by the Chief Commissioner of Income Tax, Jaipur.

5. Arguments were heard. The question for consideration is whether the OM dated 19-07-1989 could be pressed into service in the case of the applicant in the facts and circumstances of the case. Earlier recruitment rules (1990) were silent about the senior being considered. After the aforesaid Rules, it is the 2003 Rules that have substituted the earlier rules.

Order dated 19-07-1989 specifically provides as under:-



*In this connection, attention is also invited to para 3.1.2 of this Department's O.M. No. AB-14017/12/87-Est (R.R) dated 18th March, 1988, in which all Ministries/Departments etc., had been requested to insert a note in the recruitment rules for various posts to the effect that when juniors who have completed the eligibility period are considered for promotion, their seniors would also be considered irrespective of whether they have completed the requisite service provided they have completed the probation period. In order to ensure that seniors who might have joined later due to various reasons are not overlooked for promotions, necessary action for amendment of recruitment rules may please be taken **urgently** wherever this has not been done by now.*

5. *These instructions may please be brought to the notice of all concerned including attached and subordinate offices for guidance and compliance.*" (underlining supplied)
6. It is not disputed that crucial date for determining the eligibility of officers for promotion as 1st October of the year where ACRs are written financial yearwise was pressed into service in the case of promotion to the post of UDC in the year 1996 by the respondents. This crucial date is on the basis of order dated 19-07-1989 only. This is evident from para 3 of the counter reply, wherein the respondents have admitted, "*In terms of DOPT O.M. Dated 19-07-1989, prior to recruitment year 1999-2000, the crucial date for determination of eligibility for promotion was 1st October of the year where ACRs were written F.Y.wise.*" Thus, the provisions of OM dated 19.07.1989 were invoked when there was no corresponding provision in the Recruitment Rules. When the said OM contains two provisions viz one relating to the crucial date and the other relating to the senior being considered for promotion when juniors were considered, there is no logic in

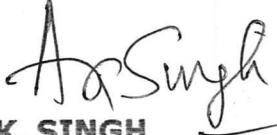
not adopting the second provision also. Resisting the contention of the applicant that the DOPT OM dated 19-07-1989 was only advisory and as such need not be followed is meaningless when the department had actually invoked the provisions of the said OM in respect of crucial date. Secondly, if the Chief Commissioner, Jaipur had invoked the provisions in an identical case, vide order dated 08-07-2002, there is no reason as to why the same should not be adopted by the Chief Commissioner of Income Tax, Kanpur, since the all are guided by the same set of rules and regulations. Thirdly, the recruitment Rules have also been amended vide Rules of 2003 which means that there is full rationale in the said provision. Thus, viewed from any angle, the claim of the applicant is fully justified and the resistance by the respondents in this regard has no rational basis. As such, the **OA deserves to be fully allowed and we order accordingly.**

7. Respondents are directed to consider the applicants for promotion in the 1996 year panel and if the applicants are found fit for promotion, they be promoted with effect from the date their immediate junior had been promoted and their pay fixed notionally from the date of promotion. This notional fixation of pay would be upto the period they had not been actually promoted i.e. 03-06-1998, whereafter the pay fixation shall be on actual basis. Their seniority shall also be fixed accordingly and in case their juniors were considered for promotion as Sr. Tax Assistant, the applicants shall also be considered accordingly and the benefits out of the same such as



placement in the higher pay scale etc., would accrue. This pay fixation too shall be notional for the period the applicants had not functioned as Sr. Tax Assistants and actual from the date they are holding the post. This drill shall be performed within a period of six months from the date of communication of this order.

8. Under the circumstances, there shall be no orders as to costs.



A.K. SINGH
ADMINISTRATIVE MEMBER



K B S RAJAN
JUDICIAL MEMBER