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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABA

ORIGINAL APPLICATION NO. 1547 OF 2005

ALLAHABAD THIS THE 11th DAY OF MAY, 2007

HON'BLE DR. K.B.S. RAJAN, MEMBER-J
HON'BLE MR. P.K. CHATTERJI, MEMBER-A

Muse Ram, S/o late Hira Lal, R/o Village Kairaijpur
Post Harahua, Varanasi

. Applicant

By Advocate: Shri Vinod Kumar

Versus

1. Union of India through the Secretary, Ministry of Finance, New Delhi.
2. Chief Commissioner of Income Tax (CCA), Lucknow.
3. Commissioner of Income Tax, Varanasi.

. Respondents

By Advocate : Shri S. Singh

O R D E R

BY DR. K.B.S. RAJAN, MEMBER-J

The applicant herein, initially was appointed as LDC in 1973 and later on was promoted to the post of UDC, Head Clerk and then Office Superintendent, but in 1994 the applicant himself volunteered to inform the Respondents that his promotions under the reserved quota was erroneous as he belonged to General Category. Result, he was pushed back to the grade of LDC and departmental action initiated. However, on the sole ground that the applicant was truthful and he himself volunteered to come out to inform the Respondents of the erroneous promotions

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granted to him, the Disciplinary Authority thoroughly exonerated him. The question then was as to how to fit him in the ladder of cadre in the general category. The applicant was placed as UDC in 1988 with notional seniority, duly interpolated between 181 and 182 in the seniority list published in 1996, vide order No. 132 dated 22-04-2002. The applicant was in the said grade of UDC till recently and has since July, 2006 been stated to be functioning as Office Superintendent Gr. II.

2. There are two channels of promotion beyond UDC. One is the clerical cadre of Office Superintendent and above and the other is Tax Assistant, Inspector, etc., the executive side. In so far as the latter cadre is concerned, one has to have qualified in the departmental examination and those who qualified securing the specified percentage would be eligible for consideration as Inspectors while, those who secured the minimum 40% and above, but less than that prescribed for Inspectors would be considered for promotion to the post of Tax Assistant. The applicant on the strength of his having functioned as UDC and above before his reversion in 1994 had appeared in the qualifying examination held in 1985, 1991, 1992 and 1993. By the time the result of 1992 examination was to be declared, as he was, as stated above, reverted to the post of LDC in 1994, the said result in respect of the applicant was withheld. Ultimately, this result was disclosed on 13-09-2002

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(Annexure 1 to the rejoinder affidavit) but he was declared as not having qualified for Inspector. However, his marks were above 40%.

3. Securing 40% and above enables one to be considered for the post of Tax Assistant on the basis of seniority in the post of UDC and in turn, and thus, the applicant requested for the same. However, his request for promotion to the said post was declined by the department, as according to them, during the relevant period (i.e. 1992) he was only LDC as reversion took place in 1994. The question thus to be decided in this OA is what is the actual entitlement of the applicant in this regard.

4. Respondents have contested the OA. They have stated that the petitioner, after being reverted to the post of LDC vide order dated 21-03-1994 was considered for promotion to the post of UDC and vide order dated 26-09-2001, he was promoted as UDC w.e.f. 30-10-1995 considering him as a general candidate and further, vide order dated 22-01-2002, he was given the notional seniority from 25-11-1988. As the applicant was not holding the post of UDC with requisite years of service in the grade at the time when he appeared for the examination in 1985, 1991, 1992 and 1993, the results of the applicant were held to be withdrawn and hence, the question of his being considered for promotion to the post of

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Tax Assistant did not arise, notwithstanding his having qualified in the 1992 exam with 40% in the specified subject of Income Tax Lat - I/II, OT & OP. (Para 3(B), 3(D) and 10 of the counter refer.)

5. Counsel for the applicant argued that when the applicant was given the notional seniority as UDC w.e.f. 25-11-1988, there is no logic in postponing his promotion as UDC to be effective from 30-10-1995. When the applicant was given notional seniority in 1988, he became eligible for appearing for the departmental qualifying examination w.e.f. 1991 onwards and thus, for the 1992 examination he was fully ripe to participate as a general candidate. Since in that examination he had admittedly secured 40% in the specified subjects, he should be considered for promotion to the post of Tax Assistant with attendant consequential benefits.

6. Counsel for the respondents justified the action the respondents. He had specifically invited the attention of the Tribunal to para 3 B, D and 10 of the counter, as referred to above.

7. Arguments were heard and documents perused. After reverting the applicant to the post of LDC, all that the exercise that was to be conducted was to treat him right from the beginning as a General candidate, afford him the seniority with attendant



benefits as such in respective grade. For this purpose the clock was to be set back. When in 1973 the applicant was appointed as LDC, treating him as a general candidate, his turn for promotion to the post of UDC must have come in 1988 as it was on that basis that the applicant was given notional seniority in the grade of UDC sandwiching his position between 181 and 182 in the seniority list of UDC published in 1996. In other words, had the applicant been, right from the beginning, treated as a general candidate, in the normal course, along with those at Serial No. 181 and 182, he would have been promoted as UDC. Recourse to notional seniority was to be taken as his position in the general category was worked out as late as in 2001-2002. However, when notional seniority as UDC is given, there cannot be promotion as UDC from a subsequent date and as such, the contention that the applicant was promoted as UDC w.e.f. 30-10-1995 is incorrect. For, seniority notional or actual in a particular grade or post could be possible only when the individual entered into the service of that cadre or post. In other words, **a claim of seniority could only be from the date one is borne in service.** (See *Vijaya Kumar Shrotriya v. State of U.P.*, (1998) 3 SCC 397 , at page 402). Since in the instant case, of their own, the respondents have afforded the applicant seniority in the grade of UDC w.e.f. 25-11-1988, it amounts to the fact that the applicant was deemed to have been serving as UDC since that date in which

event, he was fully ripe to take up the qualifying examination for Tax Assistant on from 24-11-1991 onwards. Thus, the earliest when the applicant could qualify in the exam is 1992 which he did. Hence, he is certainly entitled to be considered, in accordance with the extant rules, for promotion to the post of Tax Assistant on and from 1992, based on his inter-se seniority of UDCs who had qualified in the departmental examination for the said post.

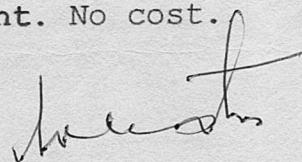
8. Though the applicant has challenged order dated 20-07-2005 (Annexure 1) and Order dated 05-08-2005 (Annexure 2), apart from claiming promotion to the post of Tax Assistant from 1993 plus consequential benefits, the first part of the prayer cannot be acceded to as there was no pleading as to the challenge of the same, much less any justifiable grounds thereof. Hence, prayer at 8(a) (i.e. To issue an order/direction in the nature of writ of certiorari quashing the impugned order dated 20-07-2005 passed by respondent No. 2 and order dated 05-08-2005, passed by the Respondent No. 3) is rejected. However, his prayer for consideration for promotion to the post of Tax Assistant on or from 1993 is allowed. It is declared that the applicant is entitled to be considered, in accordance with the rule on the subject, for promotion to the post of Tax Assistant on the strength of his seniority in the grade of UDC w.e.f. 25-11-1988 coupled with his having qualified in the departmental examination for

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the said post in the 1992 examination. Respondents shall work out the same and the date of promotion of the applicant in the said grade of Tax Assistant would be notional and from the date any of the juniors (in the inter-se seniority amongst the departmental-exam-qualified UDCs) had been promoted. The consequence of this promotion would be that the seniority of the applicant in the grade of Tax Assistant would be accordingly fixed and he would be entitled to be considered for further promotion to the higher post for which Tax Assistant is a feeder grade and such promotion shall also be on notional basis from the date any of the junior to the applicant had been promoted. Such notional promotion(s) would crystallize as actual from the date the applicant was/is asked to ensoulde the higher responsibility in any of the higher posts.

9. The above drill shall be accomplished within a period of four months from the date of communication of this order. **The OA is allowed to the above extent.** No cost.



MEMBER-A



MEMBER-J

GIRISH/-