

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 3rd day of December 2001

Original Application no. 1525 of 1993.

Hon'ble Mr. Justice RRK Trivedi, Vice-Chairman
Hon'ble Maj Gen KK Srivastava, Administrative Member

Sheo Shanker Tripathi, S/o (Late) Sri SR Tiwari,
R/o 9-B (8/16) Louthier Road,
Georgetown,
Allahabad.

... Applicant

In person


Versus

1. Union of India through the Revenue
Secretary, Ministry of Finance,
Govt. of India, North Block,
NEW DELHI.
2. Chairman, Central Board of Direct Taxes,
North Block,
NEW DELHI.
3. Chief Commissioner of Income Tax,
LUCKNOW.
4. Commissioner of Income Tax,
ALLAHABAD.

... Respondents

By Adv : Shri Amit Sthalekar

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O R D E R

Hon'ble Maj Gen KK Srivastava, AM

filed

In this O.A. under section 19 of the Administrative Tribunal's Act, 1985, the applicant Shri SS Tripathi has prayed that the respondents be directed to make payment of dues in arrear on the basis of seniority given w.e.f.

14.2.1961 with consequential benefits on deemed promotion in the grade of Head Clerk, Supervisor Grade II, Inspector, Income Tax Officer ~~Class~~ II and Income Tax Officer ~~Class~~ I, w.e.f. 1.6.1979, 1.9.1980, 1.4.1981, 1.4.1986 & 1.4.1992 respectively with regard to the salary and allowances. He has also prayed that the respondents be directed to give benefit of pension, gratuity and leave encashment w.e.f. 1.6.1993 to 29.2.2000 and onwards with interest @ 24% pa.

2. This case has a chequered history of litigation. As per the applicant, he entered in Central Government services on 16.9.1955 and continuously worked upto 6.12.1961 as UDC & LDC. The applicant joined Income Tax Department as LDC on 7.12.1962 on which he was working in his previous appointment. He was promoted as Upper Division Clerk (UDC) on 12.8.1966. The applicant passed the departmental examination of Income Tax Inspector in the year 1976 but on account of non fixation of seniority he was not promoted. Feeling aggrieved the applicant filed Civil Misc. Writ Petition no.3243 of 1979 before Hon'ble High Court at Allahabad but the said petition was dismissed by the Hon'ble High Court at Allahabad by order dated 5.2.1981 on the ground that the petition was barred by laches. Thereafter, he filed representation to the Hon'ble President of India that his past services rendered by the applicant equivalent to the

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to the grade of UDC were liable to be counted for determining the seniority. He was informed by letter dated 21.2.1985 that his review petition to the Hon'ble President of India had been dismissed. He was given first promotion as Tax Assistant w.e.f. 31.5.1978 vide order dated 14.11.1981 and his seniority was fixed. The applicant maintained that on fixation of seniority he is deemed to be confirmed as Tax Assistant w.e.f. 27.4.1981 as others who were promoted as Tax Assistant by order dated 31.5.1978 (Ann. A-3). He filed Writ Petition no. 7050 of 1986 before the Hon'ble High Court at Allahabad, praying that his previous Central Government services from 16.9.1955 to 6.12.1962 should be counted for the purpose of seniority by Income Tax department. The Hon'ble High Court vide order dated 8.9.1986 granted the relief to the applicant. The respondents filed SLP no. 11845 of 1998 before the Hon'ble Supreme Court of India against the Judgment of Hon'ble Allahabad High Court dated 8.9.1986 which was dismissed on 14.10.1986. At the time of hearing of the said SLP before the Hon'ble Supreme Court of India the Attorney General promised on behalf of respondents that seniority and promotions would be given to the applicant. Consequently, the seniority in the grade of UDC was allowed by the respondents w.e.f. 14.02.1961, vide Chief Commissioner Income Tax order no. 81 dated 4.12.1986 as is evident from endowment in Service Book records (Ann. A-10). However, the applicant was denied promotion and his juniors were promoted in various grades. Charge Sheet dated 26.2.1987 was served on the applicant for the charges pertaining to years 1968 to 1973 imputing that the applicant constructed a house at Ghazipur City and purchased scooter in 1993 without permission of the competent authority as required under conduct rules 1964. The charge sheet was dropped and as per recommendation of the screening committee

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dated 3.3.1987, the applicant was compulsorily retired by order dated 1.4.1987 under rule 48 (i) (b). The applicant challenged order dated 1.4.1987, compulsorily retiring him by filing O.A. 928 of 1987. The order of the respondents dated 1.4.1987 of compulsory retirement was quashed by this Tribunal's order dated 12.12.1988, directing the respondents to reinstate the applicant and treat him in continuous service with all consequential benefits. The applicant was reinstated on 16.12.1988. The respondents filed review petition no. 45 of 1989 before this Tribunal which was dismissed on 31.3.1989. The respondents reopened the issueⁱⁿ of misconduct on the part of the applicant in order to deny promotions and again served old and closed charge sheet dated 26.2.1987. As a result of disciplinary proceedings, the applicant was awarded punishment of 'censure' vide order dated 1.12.1992 and the same was confirmed by the ⁱⁿauthority vide order dated 23.3.1993. Before retirement the applicant sent representation on 8.5.1993 to the Chairman Central Board of Direct Taxes with no response. The applicant states that all juniors to the applicant were again promoted vide order dated 18.5.1993.

3. The applicant superannuated on 31.5.1993. He filed the present O.A. no. 1525 of 1993 seeking relief that he be granted notional promotion and pensionary benefits. ^{Meanwhile} ^{the} view of this Tribunal at Lucknow bench in SM Raza, Tax Assistant Vs. Union of India & others, ⁱⁿ ^{Razmi} ^{MR-1994 SC 805} that the seniority in the Tax Assistant grade is to be taken into consideration for promotion to the post of Head Clerk, Supervisor Grade II and Inspector etc, was set aside by Hon'ble Supreme Court in special leave appeal (c) no. 13214 of 1991 holding that the post of UDC in Income Tax Department

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is ⁱⁿ the feeder category according to recruitment rules 1969 and the post of tax assistant is excluded from it. Pursuant ^{to} the said decision, the respondents issued instructions on 7.12.1993 that the post of UDC is feeder category for promotion as Income Tax Officer and the post of Tax Assistant ^{is} excluded from it. Therefore, the applicant revised the claim of consequential benefits of promotion and salary etc, as per seniority of the applicant in UDC cadre fixed w.e.f. 14.02.1961. The present OA was dismissed on 29.5.1997 as barred by time. The applicant again approached the Hon'ble High Court ^{at} Allahabad through Writ Petition no. 29975 of 1997 against the judgment dated 29.5.1997 of the Tribunal. The Writ Petition was allowed and the judgment of the Tribunal dated 29.5.1997 has been set aside by the Hon'ble High Court ^{at} Allahabad, by its order dated 4.2.2000. The applicant filed Misc. Appl. no. 981 of 2000 for condonation of delay which has been accepted by the Tribunal's ^{order} dated 3.4.2000. The applicant also filed an amendment application no. 1686 of 2000 on 23.3.2000. The amendment application no. 1686 of 2000 was dismissed as barred by limitation under section 21 of the Administrative Tribunal's Act, 1985 on 17.5.2000. The applicant ⁱⁿ again filed writ petition no. 32570 of 2001 ⁱⁿ before Hon'ble Allahabad High Court ^{for} allowing amendment application which was dismissed by the Tribunal on 17.5.2000. The writ petition was allowed by the Hon'ble High Court ^{at} Allahabad by order dated 16.2.2001 setting aside order of the Tribunal dated 17.5.2000. The applicant filed Misc. Appl. no. 1270 of 2001 before this Tribunal to allow the amendment application no. 1686 of 2000 in pursuance ^{to} the order of Hon'ble High Court dated 16.2.2001 which has been allowed and the amendment as per amendment application no. 1686 of 2000 have been incorporated. and the present application

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in its amended form is before us for adjudication. The claim of the applicant has been contested by the respondents. They have filed counter affidavit. The applicant who appeared in person and the learned counsel for the respondents submitted written arguments ^{also}.

4. The applicant, Shri SS Tripathi, through his written arguments made the following submissions :-

i. that the Hon'ble ^{Allahabad} High Court vide its order dated 08.09.1986 in Writ Petition no. 7050 of 1985 allowed the seniority of the applicant with all consequential benefits against which the respondents filed SLP no. 11845 of 1986 before the Hon'ble Supreme Court. The Hon'ble Supreme Court dismissed the SLP ^{on} 14.10.1986 and therefore order dated 08.09.1986 of Hon'ble Allahabad High Court became final. The respondents allowed the seniority in the grade of UDC by counting the past service w.e.f. 14.02.1961 but denied him the consequential benefits of promotion and his juniors were promoted in various grades. Therefore, the applicant has right to promotion from the date his juniors were promoted and is entitled for back wages as laid down by this Tribunal Ahmedabad Bench in CR Samajpati Vs State of Gujarat Gandhinagar (1990) 12 ATC 471. He is entitled for arrears of emoluments as held by the Apex Court in Vasant Rao Roman Vs Union of India through the Central Railway Bombay & Ors 1993 (2) SLR (SC) 289.

ii. It has been submitted that his supercession has been wrongful and hence the respondents be directed to promote the applicant with full benefits as has been laid down by Ernakulam Bench of this Tribunal in A Damodaran Nambiar Vs

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Secretary, Ministry of Home Affairs & Ors (1990) 12 ATC 32
 It has also been submitted that he is entitled to the highest pay which his juniors have got. ^{Mr. Swiche} His juniors were promoted as Income Tax Officer **Class I** on 1.4.1992, he is entitled to the scale of Income Tax Officer **Class I**. He has placed reliance on judgment of Hon'ble Allahabad High Court in RK Dubey Vs State of UP & others (2000 (2) ESC 785 (ALL)).

iii. The applicant has further submitted that the respondents deliberately denied promotion to him and started harassing him. Respondents initiated disciplinary proceedings against him and he was served charge sheet dated 26.2.1987 for lawful actions of applicant pertaining to years 1963 to 1973 i.e. after 13 years. In between the chargesheet dated 26.2.1987 was dropped and the applicant was compulsorily retired w.e.f. 1.4.1987. He was reinstated on 16.12.1988 by this Tribunal's order dated 12.12.1988 in O.A. no. 928 of 1987 quashing the order of compulsory retirement dated 1.4.1987. On reinstatement ^{on 26.12.1988} he was again served the old charge sheet dated 26.12.1987 and awarded 'Censure' vide order dated 23.3.1993. Since 'Censure' is no bar for promotion as held by Full Bench of Central Administrative Tribunal 1991-1994 FBJ (CAT) Vol III page 398 he is entitled to grant of promotion retrospectively on conclusion of proceedings and is entitled to the pay and allowances ^{from} the date he was wrongly denied promotion. In support of his argument the applicant has relied upon the judgment of Jodhpur Bench of this Tribunal in RK Gautam Vs. Union of India & others 1993 (6) SLR 478.

iv. It has been submitted that as per decision of Hon'ble Supreme Court setting aside the order of this Tribunal Lucknow Bench in ^{Raza} SM/Kazmi Vs Union of India AIR 1994 SC 805 that post

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of UDC in Income Tax Department in the Feeder Category for promotion to Head Clerk etc and the post of Tax Assistant is excluded from it and similar instructions dated 7.12.1993 of Govt. of India in pursuance to the decision of Hon'ble Supreme Court, he is entitled for the promotion prayed for in relief clause keeping in view the applicant's seniority in UDC cadre w.e.f. 14.02.1961.

v. It has been pleaded that the respondents neither filed any counter before Hon'ble High Court At Allahabad in Writ Petition no. 32570 of 2001 for allowing amendment application claiming consequential benefits w.e.f. 1.6.1979, 1.9.1980, 1.4.1981, 1.4.1986 and 1.4.1992 in the grade of Head Clerk, Supervisor Grade II, Inspector, Income Tax Officer Class II and Income Tax ^{Officer} Class I nor any objection before the Tribunal against the above claim in amendment application no. 1686 of 2000, therefore, the respondents have admitted the version of the petition as the legal position is well settled based on the decision of Hon'ble Allahabad High Court in Rayeen Fruit Company & Ors Vs. State of UP and Ors 2000 (3) AWC 2001 & decision of the Hon'ble Supreme Court in Smt. Naseem Bano Vs State of UP & Ors AIR 1993 SC 2592 & ~~hon'ble Supreme Court~~ ~~decision~~ in TR Dhananjaya Vs J Vasudaran AIR 1996 SC 302. The applicant has also submitted that he was not permitted to appear in Income Tax Officers Examination right from 1976 to 1993. The respondents cannot take the stand that ~~since~~ he is not eligible for promotion to the post of Income Tax Officer because firstly he was not allowed to appear in Income Tax Officer's Examination and secondly the respondents never objected the claim of the petitioner for promotion upto the post of Income Tax Officer class I.

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vi. It has finally been submitted that the applicant is entitled to special cost and the interest on arrears accruing due to consequential benefits and also on the terminal benefits ^{in reliance on} placing the decision of their lordships of Supreme Court in Renu Mullick Vs Union of India 1994 SC 1152 (Para 13) and in Shreedharan Kallat Vs Union of India AIR 1996 SC 640 (para 6).

5. While contesting the claim of the applicant Sri Amit Sthalekar the learned counsel for the respondents has submitted that the claim of the applicant that he be promoted to the post of Head Clerk, Supervisor Inspector, Income Tax Officer Class II and Income Tax Officer Class I w.e.f. 1.6.1979, 1.9.1980, 1.4.1981, 1.4.1986 & 1.4.1992 respectively is misconceived. He is not entitled for the above promotions as he was promoted as UDC on 12.8.1966 and he was not found fit for confirmation in the UDC cadre by successive DPCs upto February 1978. He was confirmed as UDC w.e.f. 21.12.1978 by the DPC held in 1982. Even as Tax Assistant the applicant's seniority was refixed on 20.9.1988 with reference to the date of his confirmation ^{held in} in UDC cadre. It has also been submitted that DPCs/July 1986 ~~and~~ and January 1987 ~~and~~ kept their findings in sealed cover and therefore ^{he} he could not be promoted.

6. Sri Amit Sthalekar submitted that through the applicant is aggrieved by his non promotion and the promotion of his alleged junior ^{by} by the order dated 18.5.1993 passed by the CCIT Lucknow, he has now ^{here} challenged the said order dated 18.5.1993. Even through amendment application the applicant has not challenged the order dated 18.5.1993 and hence the OAL ^{is} barred by limitation.

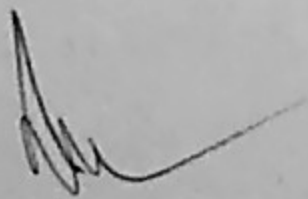
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7. It has also been submitted ^{by Sri Sthalekar} that the order of Hon'ble High Court Allahabad dated 8.9.1986 was duly complied with by giving the petitioner benefit of seniority in the grade of UDC vide order dated 4.12.1986. The applicant should have approached the tribunal in 1986 or 1987 claiming the aforesaid reliefs which he did not. He filed this OA in 1993 and therefore the delay condonation application is liable to be rejected.

8. Sri Amit Sthalekar, learned counsel for the respondents finally submitted that Administrative Tribunal Act 1985 is special act which provides for the period of limitation for filing of an O.A. in section 21 (3). The applicant has failed to satisfy the tribunal that he had sufficient cause for not making the application within such period. The Limitation Act 1963 has no application to proceedings under the Administrative Tribunals Act. He has placed reliance on the decision of the apex court (1999) 8 SCC 304 Ramesh Chandra Sharma Vs Udham Singh Kamal. Since the applicant has failed to file ^{an} application under section 21 (3) of the Administrative Tribunal's Act 1985 seeking condonation of delay, the OA should be dismissed on this ground alone.

9. We have heard the applicant in person and Shri Amit Sthalekar the learned counsel for the respondents. We have also minutely gone into the pleadings of the parties as well as the submissions made in the written arguments and perused records.

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10. We have given due consideration to the submission made by the parties and perused records. The applicant's main grievance is that he has not been given promotion inspite of direction dated 8.9.1986 of the Hon'ble Allahabad High Court, promise given by the Attorney General of India before the Hon'ble Supreme Court at the time of hearing of SLP 11845 of 1998, the direction of the Tribunal dated 12.12.1988 in O.A. no. 928 of 1987 to reinstate with all consequential benefits. It is an accepted fact that the applicant was given seniority in UDC cadre w.e.f. 14.12.1961 by counting his service from 16.9.1955 to 06.12.1961. However, we do not find from the records that respondents took any action to examine if the applicant was entitled for promotion. We do not agree with the submission of the learned counsel for the respondents that the applicant was promoted as UDC on 12.8.1966. The learned counsel for the respondents has also submitted that the applicant was not found fit for confirmation in the UDC cadre by successive DPCs upto February 1978 and he was confirmed as UDC w.e.f. 21.12.1978. This can be accepted if the date of promotion of the applicant as UDC is taken as 12.8.1966. In the present case the situation changed completely when the seniority of the applicant in UDC cadre was fixed as 14.12.1961. It was obligatory on the part of respondents to have reexamined the case of the applicant in respect of his confirmation in the UDC cadre and subsequent promotion to the post of Head Clerk and above. Therefore, the plea of the learned counsel for the respondents, that the applicant has not challenged the order dated 18.5.1993 promoting his juniors even though his amendment application, OA is barred by limitation, is not relevant and we reject this argument and we are convinced that in view of the facts and circumstances OA is not barred by limitation.

11. We would like to observe that respondents were

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unjustified in issuing the chargesheet dated 26.2.1987 for the acts pertaining to year 1968 to 1973 ^{offer} ~~for~~ a lapse of 13 years. If there was any case of misconduct on the part of applicant for which disciplinary action was contemplated against the applicant, he should not have been promoted as Tax Assistant on 31.5.1978. Not only this, it is highly irregular on the part of the respondents to have re-served chargesheet dated 26.12.1987 on 09.12.1990 on reinstatement of the applicant on 16.12.1988 after the order dated 1.4.1987 compulsorily retiring the applicant was quashed by this Tribunal order dated 12.12.1988.

12. The Hon'ble Supreme Court while deciding SLP (C) no. 13214 of 1991 in SM Raza Kazmi case (supra) has held that Tax Assistant is promotion post vis-a-vis UDC. However, for the purpose of promotion to post of Head Clerk, Tax Assistants are treated at par with UDCs. They are not given any preference in matter of seniority. Pursuant to the decision of apex court respondents have issued instructions on 7.12.1993 to this effect. As the legal position is well settled it is a fit case for re-examination by the respondents whether applicant is entitled for promotions as claimed by him in the relief clause.

13. Sri SS Tripathi, ^{ln} ~~learned counsel~~ ^{ln} for the applicant has cited number of cases decided by the Tribunal, ^{ln} and Hon'ble Allahabad High Court and the apex court in support of his contentions. On careful consideration of each case we find that the same are not applicable in the facts and circumstances of the present case.

14. In view of the aforesaid observations, the OA is finally disposed of with the direction to the respondents that the case of the applicant for promotion to the post of

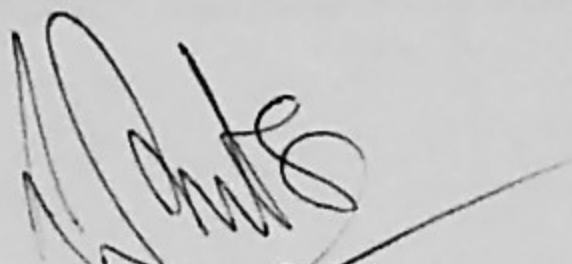
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Head Clerk and above will be re-examined keeping in view the seniority of the applicant in UDC cadre w.e.f. 14.2.1961 as per the extant rules. In case, as a result of review, the applicant is entitled for any arrears, the respondents shall pay interest @ 12% p.a. on such arrears from the date it accrues to the date of payment.

15. The entire exercise will be completed by the respondents within a period of 6 months from the date of communication of this order and the applicant will be kept informed of the outcome by a detailed and reasoned order.

16. There shall be no order as to costs.


Member-A


Vice-Chairman

/pc/