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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH, JODHPUR

.....

DATE OF ORDER : 30.03.1999.

O.A.NO. 504/1995

Shri A.M.Lunia S/o Late Shri U.M.Lunia, C/o 32, Sahelia Nagar, Udaipur, retired Assistant Commissioner of Income Tax, Investigation Circle 2, Jodhpur.

.....APPLICANT

VERSUS

1. Union of India through Secretary, Finance, Government of India, Ministry of Finance, Department of Revenue (North Block), Central Secretariate, New Delhi.
2. The Chairman, Central Board of Direct Taxes, Central Secretariate (North Block), New Delhi.
3. The Union Public Service Commission, Dholpur House, New Delhi.
4. The Chief Commissioner of Income Tax, Central Revenue Building, Jaipur.
5. The Commissioner of Income Tax, Income Tax Department, Jodhpur.
6. The Deputy Commissioner, Income Tax Range-2, Jodhpur.

..... RESPONDENTS

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Mr. B.C.Mehta, Advocate, for the Applicant.

Mr. M.L.Kala Advocate, Brief Holder for Mr. U.S.Bhargava, for Respondents 2 and 4 to 6.

None present for Respondents No. 1 and 3.

CORAM

HONOURABLE MR. A.K.MISRA, JUDICIAL MEMBER

HONOURABLE MR. GOPAL SINGH, ADMINISTRATIVE MEMBER

*Gopal Singh*

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ORDER

PER HONOURABLE MR. GOPAL SINGH :

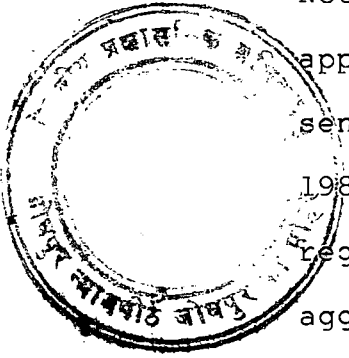
Applicant, A.M.Lunia, has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs :

- A) That by an appropriate, order or direction the Respondents may kindly be directed to grant Senior scale to the petitioner either from the year 1986 or at least from 1.4.88 and the Government Notification dated 31.3.95 issued by the under Secretary to the Government of India, Ministry of Finance, Department of Revenue, New Delhi, appointing the petitioner to officiate as Assistant Commissioner of Income Tax (Senior Scale) with effect from 20th October, 1994 (Ann.A-1) may kindly be suitably amended or modified for granting Senior Scale either from the year 1986 or from 1.4.88.
- B) That the Respondents may kindly be directed to give the promotion to the petitioner on the post of Deputy Commissioner of Income Tax, from the month of Feb, 1994 keeping in view the order No. 19 of Feb, 1994 by which the Juniors to the petitioner have been promoted.
- C) That the Respondents may kindly be directed to effect the fixation of the pay of the petitioner, fixing the pay of the petitioner of Rs. 4375/- instead of Rs. 4250/- under Fundamental Rule 22(I) (a) (1), after grant of two stagnation increments on 1.1.93 and 1.1.95 in the pay scale of Rs. 3000/- to Rs. 4500/- and the order dated 17th August, 1995 passed by the Deputy Commissioner of Income Tax, Range - 2, Jodhpur (Annex.A-2) may kindly be set aside or quashed or suitably amended or modified.

2. Applicant's case is that on selection by the U.P.S.C. applicant was appointed as Income Tax Officer Class II and joined the services in the year 1970. He was promoted as Income Tax Officer/Assistant Commissioner of Income Tax in Group A services in the year 1982 on ad hoc basis and his services were regularised after being selected by the U.P.S.C. in the year 1984. That one Shri B.L.Boliya, lodged a false complaint against the applicant on 30th December, 1984 before the Superintendent of Police, Special

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Establishment, Jaipur, making various allegations. The case was investigated by the C.B.I., Jodhpur and it was held by them that no case of abuse of official position by the applicant is made out for want of sufficient evidence. However, the case was referred to the Department for departmental action. The Department in turn issued a Chargesheet dated 23rd March, 1987. The Inquiry Officer appointed to inquire into the charges levelled against the applicant, held the official not guilty of any of the charges mentioned therein. However, the competent disciplinary authority in consultation with the U.P.S.C., imposed the penalty of censure on the applicant. The promotion of the applicant to the post of Assistant Commissioner of Income Tax (Senior Scale) w.e.f. 20th October, 1994 was released by the Government of India Notification dated 31st March, 1995. The contention of the applicant is that he was eligible for promotion to the senior scale in the year 1986 or atleast from 1st April, 1988. The applicant submitted a representation in this regard to the authorities but to no avail. Feeling aggrieved the applicant has approached this Tribunal.



3. Notices were issued to the respondents and in their reply they have stated that the applicant could not be granted promotion to the senior scale in the year 1988 as a Chargesheet had already been served upon him in the year 1987 and the Departmental Promotion Committee was obliged to keep its findings in a sealed cover and further that the sealed cover would have been opened had he been exonerated in the departmental proceedings. It may be mentioned that the penalty of censure was imposed upon the applicant on culmination of the disciplinary proceedings against him.

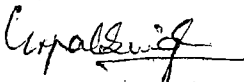
*Capal Singh*

On conclusion of the disciplinary proceedings, the applicant was duly promoted to the senior scale.

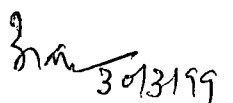
4. We have heard the learned counsel for the parties and perused the record of the case.

5. The disciplinary proceedings against the applicant and imposition of the penalty of censure upon the applicant has been separately dealt with by us in O.A. No. 490 of 1995 wherein it has been held that imposition of the penalty of censure upon the applicant was without any basis and accordingly the punishment has been set aside. Since the penalty of censure has been set aside, the same would not stand in the way of promotion of the applicant. We are, therefore, of the view that the sealed cover containing the recommendations of the Departmental Promotion Committee in respect of the applicant be opened and acted upon as if no penalty was imposed upon the applicant. In case, the Departmental Promotion Committee has recommended his promotion to the post of senior scale subject to his exoneration in disciplinary proceedings case, the applicant should be given the benefit of promotion from the date it fell due. We also find that the applicant has since retired on 30th September, 1995. In case there is no post of senior scale available to accommodate the applicant in senior scale from the due date a supernumerary post be created personal to the applicant to accommodate him on promotion to the senior scale. The applicant would also be entitled to fixation of pay as per rules.

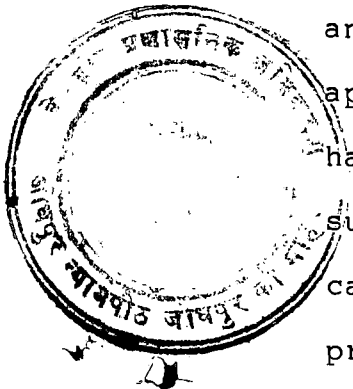
6. The Original Application is accordingly disposed of with the above observations. The parties are left to bear their own costs.

  
(GOPAL SINGH)  
Member(A)

MEHTA

  
(A.K. MISRA)  
Member(J)

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Part II and III destroyed  
in my presence on 3-7-2006  
under the supervision of  
section officer (1) as per  
order dated 16/5/2006

[Signature]  
Section officer (Records)