

73

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**Original Application No.215/2008  
and**

**Original Application No.105/2010  
with**

**Misc. Application No.72/2010**

**Date of Order: 22.12.2011**

**CORAM:**

**HON'BLE Dr. K. B. SURESH, JUDICIAL MEMBER**

**HON'BLE Mr. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

**1. O.A. No.215/2008**

Ashok Kumar Solanki S/o Shri Shantilal Solanki, aged about 40 years, R/o 135-B, Prithivipura Rasala Road, Jodhpur. Official Address: Tax Assistant, Commissioner of Income Tax (II), Jodhpur.  
...Applicant.

**Mr. Kamal Dave, Counsel for Applicant.**

**Versus**

1. The Union of India, through the Secretary, Ministry of Finance, Department of Revenue & Government of India, New Delhi.
2. The Chief Commissioner of Income Tax, Central Revenue Building, Bhagvandas Road, Jaipur.
3. The Chief Commissioner of Income Tax, Jodhpur.
4. Ravindra Singh, Tax Assistant, through the Chief Commissioner of Income Tax, Jodhpur.
5. Amin Khan Kathat, Senior Tax Assistant, through Income Tax Officer, Rajsamand.
6. Suresh Chandra Menaria, Tax Assistant, through the Chief Commissioner of Income Tax, Udaipur.

...Respondents.

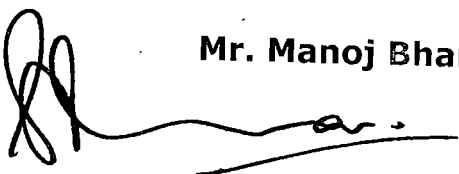
**Mr. Varun Gupta, Counsel for Respondents No.1 to 3.  
None present for other Respondents.**

**2. O.A. No.105/2010**

Ashok Kumar Khatri S/o Shri Jassu Ramji, aged about 43 years, by caste Khatri, resident of C/o Income Tax Office, Rajasthan Housing Board, Suratgarh, District Sriganganagar, presently working as Senior Tax Assistant in the Income Tax Department.

...Applicant.

**Mr. Manoj Bhandari, Counsel for Applicant.**



**Versus**

1. The Union of India, through the Secretary, Ministry of Finance, Department of Income Tax and Revenue, Government of India, North-Block, New Delhi.
2. The Chief Commissioner of Income Tax, Central Revenue Building, Bhagwandas Road, Jaipur.
3. The Commissioner of Income Tax, Income Tax Department, Room No.5, Rani Bazar, Bikaner.
4. The Assistant Commissioner, Income Tax, Headquarters in the office of Chief Commissioner of Income Tax, Jodhpur.
5. Shri Rajendra Kumar Chouhan, Senior Tax Assistant, C/o Assistant Commissioner of Income Tax, Circle One, N.C.R. Building, Near Statue Circle, Bhagwandas Road, Jaipur (Raj.).

...Respondents

**Mr. Varun Gupta, Counsel for Respondents No.1 to 4.  
None present for Respondent No.5.**

**ORDER**

**( Per Sudhir Kumar, Administrative Member )**

These two cases were filed with the time gap of two years, and the first case O.A. No.215/2008 was even heard in part on 06.09.2011, when it was pointed out that the case is inter linked to the second case O.A.No.105/2010. Thereafter, both the cases were linked together for final hearing from 13.09.2011 onwards. These cases were finally heard together and reserved for orders together, and hence are being disposed of through a common order.

2. The applicants of both these cases were Group 'D' employees of the Income Tax Department, represented by the official respondents No.R/1 to R/3 in the first O.A., and respondents No.R/1 to R/4 in the second O.A. The private respondents No.R/4, R/5 & R/6 in the first O.A., and respondent No.R/5 in the second

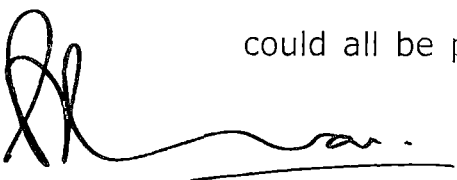


O.A., have been chosen by the applicants to be impleaded as party respondents in representative capacity, because of the principle of seniority vis-à-vis them being involved.

3. The civil services in Union of India are divided into four broad categories of Group 'A', Group 'B', Group 'C' and Group 'D'. But these broad categories still have some level of sub-categorization in between them, and, as a result, it is possible for an element of upgradation or promotion even within the relevant group itself. As has been pointed out by the respondents in their reply written statement filed in the first O.A. No.215/2008, within the Group 'D', employees are categorized as follows:-

S. No	Post	Grade from which promotion to be made	Pay Scale
1.	Junior Gestetner Operator	Peons/Hamals/Watchmen /Farash/Sweeper/Malis	2610-60-2910-65-3300-70-4000
2.	Daftry	Peons	2610-60-2910-65-3300-70-4000
3.	Jamadar	Peons	2610-60-2910-65-3300-70-4000
4.	Peon	Hamals/Watchmen /Farash/Darwan /Safaiwala/Mali	2550-55-2660-60-3200
5.	Hamal/Watchmen/ Farash/ Darwan/ Safaiwala & Mali	Direct Recruitment	2550-55-2660-60-3200

4. Therefore, there could be an element of promotion within Group 'D' from the pay scale of Rs.2550-3200 to Rs.2610-4000, from the posts of Peons / Hamals / Watchmen / Farash / Sweepers / Malis, to the posts of Jamadar, Daftry, and Junior Gestetner Operator. It has further been made out by the official respondents that while recruitment for the posts of Hamal / Watchmen / Farash / Darwan/ Safaiwala and Mali, was by direct recruitment, they could all be promoted to the post of Peons, within the same pay-

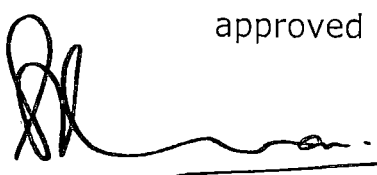
26

scale, and then those Peons were in turn eligible for promotion as Jamadar, Daftry, and Junior Gestetner Operator in the next higher pay scale. This distinction is important to be mentioned here because it is very relevant for the facts of both the instant cases.

5. The applicant of the first O.A. No.215/2008 was initially appointed as a daily rated employee, and then his services were regularized as Chowkidar/Watchman at the Income Tax Office, Nagaur, w.e.f. 29.03.1993. He appeared in the qualifying examination held in the year 2002 for promotions to the post of LDC in Group 'C', and also in the computer knowledge examination, and was promoted as Tax Assistant w.e.f. 05.03.2004.

6. The applicant of the second O.A. No.105/2010 was initially appointed as a Peon w.e.f. 08.03.1994, and joined duties on 28.03.1994. He also passed the computer knowledge test in the year 2002, and he was conferred promotion as Tax Assistant on adhoc basis through order dated 09.03.2004, which order further mentioned that his promotion was purely provisional, and seniority will be fixed later on, and if his promotion was found to be beyond the number of vacancies available, then he would be reverted, and that he would be on probation for a period of two years, and if his work was not found suitable, then also he would be reverted back to Group 'D'.

7. It may be pointed out here that in the year 2001, the Department of Income Tax had undertaken a restructuring plan for filling up the posts in Group B, Group C, and Group D, which was approved by the Union Cabinet, and instructions for filling up the





restructured posts were issued first on 04.06.2001, which were later modified through a circular dated 19.07.2001, produced as Annexure-R/1 in the second O.A. According to this, the cadre of Tax Assistants, with cadre strength of 8895 in the year 2000-2001, stood restructured from the recruitment year 2001-2002 onwards, with the same cadre strength of 8895, with the following rules being prescribed in this regard:-

	RECRUITMENT YEAR 2000-01	RECRUITMENT YEAR 2001-02	REMARKS
Cadre	Tax Assistant	Tax Assistant	-
Pay Scale	4000-100-6000	4000-100-6000	-
Cadre Strength	8895	8895	-
Method of determining vacancies	(Not reproduced here)	1. Sanctioned Strength (TA+DEO A) 2. Working Strength (TA+DEO+Pre restructuring LDCs waiting to acquire computer skills) 3. (1)-(2) above. 4. Out of 3, 25% to be filled by promotion and 75% by direct recruitment. 5. Method of direct recruitment to be notified later. 6. 75% of the Balance to be filled up by direct recruitment. However, these vacancies are to be reported to the implementation cell and no requisition is to be made to the staff for filling these vacancies until further order	Till such time the Pre restructuring LDCs acquire the computer skills prescribed, they will work against the post of TA but will draw the scale of pay of LDCs and continue to be designated as LDCs.
Feeder Cadres and eligibility conditions	(Not reproduced here)	By promotion (25%) 1. Eligible LDCs (new cadre) who are matriculate and have acquired data entry qualification of 5000 key depression per hour 2. Eligible notice servers who are matriculates and have acquired data entry qualification of 5000 key depression per hour 3. Eligible Recordkeeper who are matriculates and have acquired data entry qualification of 5000 key depression per hour. 4. Eligible group "D" employees who are matriculates and have acquired data entry qualification of 5000 key	-



728

		depression per hour.	
		By Direct Recruitment (75%) to be notified	
Composition & inter-se seniority	(Not reproduced here)	DEO Grade A will merge with the new cadre of Tax Assistant in accordance with the date of entry in the respective cadres except pre restructuring cadre of LDCs who will be deemed to get seniority w.e.f. 2000-01. Such of the restructuring LDCs who have not cleared the computer skills required will get neither the pay scale nor the designation unless they actually acquire the date entry skills prescribed.	Such of the LDCs who acquire the computer skills subsequently will regain their seniority in TA cadre vis a vis their junior promoted earlier to the cadre of TA from the pre restructuring LDC cadre.

8. Accordingly itself, the Gazette Notification dated 02<sup>nd</sup> September, 2003, notifying the Income Tax Department (Group "C") Recruitment Rules, 2003, (GSR 321), were published in the Gazette of India dated 13.09.2003, page Nos.1975-1994, which substantively reflects the contents of the letter dated 19.07.2011 (Annexure-R/1) of the second O.A. In the row & column of Feeder Cadres and Eligibility conditions for promotions to Group "C", one of the eligibility conditions as reproduced above at point No.4, reproduced once again here, states that (4) Eligible group "D" employees who are matriculates and have acquired data entry qualification of 5000 key depression per hour. In these rules, as Gazette notified, no mention had been made about the inter-se seniority within Group "D" cadres, and the only requirement mentioned at para No.12 was as follows:-

"12. Group 'C' employees viz., Lower Division Clerk Notice Server, record keepers and Senior Gestetner Operators with a combined service of five years in Group 'C' and 'D' and all Group 'D' employees with a regular service of five years in Group 'D' who:



72

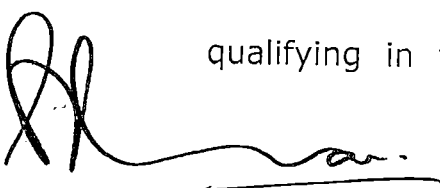
- (i) have passed Matriculation or equivalent examination;
- (ii) have qualified the prescribed departmental examination for data entry skill of 5000 key depressions per hour.
- (iii) Group 'D' employees promoted against vacancies arising during 2000-2001 till 2004-2005 will be allowed a period of three years from the date of promotion to acquire data entry qualifications of 5000 Key Depressions per hour failing which they will not be allowed any future increment. After the year 2004-2005, this qualification will be a pre-condition for promotion as Tax Assistants.

It is provided 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 that grade but have completed successfully the prescribed period of probation."

9. The case of the applicant of the first O.A. is that over a period of three years, in the seniority list of Tax Assistants as on 01.01.2005, 01.01.2006 and 01.01.2007, his seniority was correctly mentioned. But, the respondent department then, through letter dated 24.06.2008 (Annexure-A/6), circulated a proposed revised seniority list of Tax Assistants as on 01.01.2008, where the seniority placement of the applicant was shown much below where it ought to have been in accordance with the previous three years seniority lists.

10. The applicant has further pointed out that the channel of promotion from LDC to Tax Assistants is different from the channel of promotion from Group "D" to Tax Assistants, and without qualifying in the computer eligibility test, even an LDC is not



eligible for promotion as Tax Assistant, and the respondents have therefore erred in placing the LDCs above him in the revised seniority list (circulated through Annexure-A/6), some of whom he has impleaded party respondents in representative capacity.

11. The applicant filed his objection to this revised seniority list as on 01.01.2008, on 15.07.2008 through Annexure-A/7, but the respondent No.2 rejected his objection, alongwith the objection of six other employees, through his order dated 28/29.07.2008. He has assailed that the respondent authorities have interpreted the Rules contrary to the plain and simple meaning arising out of the Recruitment Rules as notified in the Gazette.

12. The applicant of the first O.A., therefore, prayed that the change brought about by the official respondents in the final seniority list is ex facie illegal, arbitrary, discriminatory, and has been brought about without any opportunity of being heard being afforded to the applicant. He further took the ground that after having been selected for the post of Tax Assistant, the seniority in the cadre of Tax Assistants is required to be assigned only as per the order of selection for promotion to the posts of Tax Assistants, and all those who were promoted as Tax Assistants subsequent to the applicant, or who had not yet been promoted as Tax Assistants, and were still holding the post of LDC on the date he became a Tax Assistant, cannot allowed higher seniority vis-a-vis the applicant, and, in view of this, the impugned seniority list deserves to be quashed and set aside.



10

13. He has further submitted that the official respondents have erred in unilaterally changing the date of joining of the applicant at the post of Tax Assistant from 05.03.2004 to 28.10.2005, thereby denying to him the effect of his having held the post of Tax Assistant from 05.03.2004 to 27.10.2005, which amounts to virtual reversion without any notice or inquiry, and it is contrary to the Constitutional safeguards under Articles 14 and 16 of the Constitution of India. He reiterated that the Department had correctly drafted the seniority list of Tax Assistants from 2005 onwards, and had now departed from the established norms, and passed the impugned seniority list in an illegal and arbitrary manner, without showing as to what was the basis or the foundation for deviation from the final position as interpreted in the previous seniority lists.

14. He further took the ground that since the Lower Division Clerk were also in the pay scale of Rs.3050-4590, and find a place as one of the channels of promotions to the post of Tax Assistants in the pay scale of Rs.4000-6000, their posts are different from the posts of Tax Assistants, and the two posts cannot be included in one seniority list, in a manner by which the incumbents drawing lesser pay scales, as well as holding lower posts, are placed above him, when he was already drawing higher pay scale of the promotional post, and therefore, he prayed for the impugned seniority list to be quashed and set aside. He had framed his reliefs also accordingly.

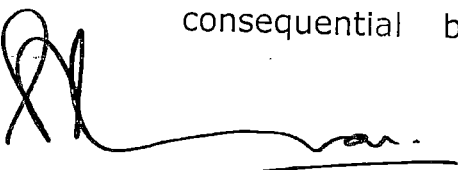
15. On the other hand, the applicant of O.A. No.105/2010 had a grievance that he and the private respondent No.R/5 had passed



2/32

the Computer Knowledge Test together in the year 2002, and were therefore entitled to be considered for promotion in the year 2002 together, yet he has been superseded at that stage by the private respondent No.R/5. He submitted that while the private respondent No.R/5 was promoted as Tax Assistant through order dated 08.07.2008 (Annexure-A/2), the applicant was discriminated against, and even though he had passed the eligibility test of computer knowledge through order dated 02.05.2002 (Annexure-A/6), he was promoted as Tax Assistant only through Annexure-A/7, dated 09.03.2004, nearly two years after the private respondent No.R/5. The applicant of this O.A. has, therefore, assailed the action of the respondents in having superseded him in the process of appointment to the post of Tax Assistant in an arbitrary, unreasonable, and discriminatory manner, which is violative of Articles 14 & 16 of the Constitution of India.

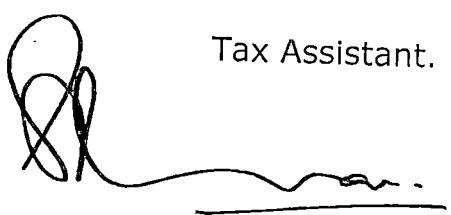
16. He has submitted that since he was senior in the list of Peons than the private respondent No.R/5, he also should have been promoted in the year 2002, and the respondents could not have counted the length of the service rendered by private respondent No.R/5 as a Chowkidar, to count the total length of service, and to thereby give him priority among Group "D" employees for promotion to the post of Tax Assistant. He also further prayed for the same impugned seniority list of Tax Assistants issued on 24.06.2008 to be quashed, and for the official respondents to be directed to consider his case for promotion from the date the private respondent No.R/5 was promoted, with all consequential benefits, including seniority, and subsequent



2/15

promotion to the post of Senior Tax Assistant. He assailed the actions of the official respondents and stated that they cannot be permitted to approbate and reprobate while considering the case of the incumbents working in the respondent department, and that they cannot be allowed to supersede him, while granting promotion to his junior. He had, therefore, made out his prayers for reliefs accordingly.

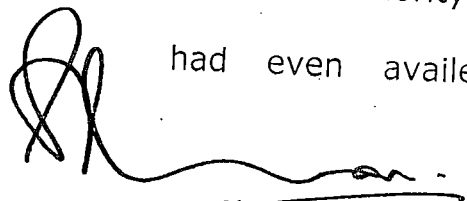
17. The official respondents filed their reply written statement on 12.02.2009 in O.A. No.215/2008, and on 21.10.2010 in O.A. No.105/2010. In both the replies, the official respondents had emphasized on the aspect of seniority within the cadre of Group 'D' itself, and submitted that the inter-se seniority of the incumbents within the various Group 'D' cadres was not taken into account in the DPCs held for the Recruitment Year 2003-2004, 2004-2005 and 2005-2006, but instead, the date of appointment in the department was taken as the basis for determining the inter-se seniority of all Group 'D' officials for the purpose of promotion to Group 'C', which was apparently erroneous. They further submitted that a review DPC was convened on 05.08.2008, to correct the anomaly created by promoting officials from Group 'D' on a wrong interpretation of the Rules, and the DPCs for the above mentioned Recruitment Years 2003-2004, 2004-2005 and 2005-2006 were reviewed, and correct seniority was assigned to the officials. In the case of applicant of the first O.A., they submitted that while conducting this review DPC, his correct seniority in the cadre of Chowkidars was considered for promotion to the cadre of Tax Assistant.



2/34

18. It was further submitted that the issue regarding the placement of LDCs in the seniority list of Tax Assistants is a separate issue, and has no bearing here. It was submitted that the posts of LDCs were re-designated as Tax Assistants in the restructuring of the Department in the year 2001, and all LDCs, who were working at that time, were to work against the posts of Tax Assistants, but they were to draw the pay scale of LDCs, and were to be designated as LDCs till the time they acquired the computer skills prescribed. It was submitted that the rules of inter-se seniority provide that as and when these LDCs acquire computer skills, they would regain their original seniority in the restructured Tax Assistants' cadre, vis-à-vis their juniors promoted earlier to the cadre of Tax Assistants from the pre-restructuring LDC cadre.

19. It was denied that the applicant of O.A. No.215/2008 had been discriminated against in any manner, and it was submitted that the date of his holding the post of Tax Assistant was changed to 28.10.2005, as this was the date of the original DPC in which the applicant was found to be eligible for promotion to the post of Tax Assistant, when the DPCs for the recruitment years 2003-2004, 2004-2005 and 2005-2006 were reviewed. It was further submitted that in the review DPC, the Peons, who had completed the computer skills exam, were considered to be senior to the applicant, who had been appointed only as Chowkidar, and had not been promoted as Peon. It was further submitted that an opportunity had been given in the form of obtaining objections for the draft seniority list, and that the applicant of O.A. No.215/2008 had even availed of that opportunity by submitting his



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representation against the draft seniority list, and it was considered. It was, therefore, submitted that the O.A. was without any merit, and it was prayed that it should be dismissed with costs.

20. In reply para 4.4 of the first O.A. No.215/2008, the official respondents had submitted as follows:-

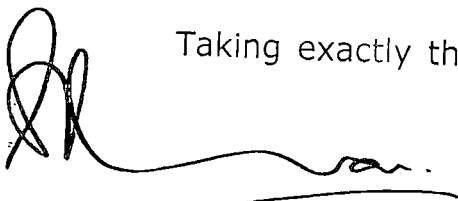
"Since the applicant had joined the department as a Chowkidar, his name would be placed below the officials who were Daftry/Jamadar and Peon in the eligibility list of officials who were to be promoted as Tax Assistants."

21. However, in their reply to the second O.A. No.105/2010, the official respondents changed their stand slightly, to state as follows:-

"Shri Rajendra Kumar Chouhan joined the department on the post of Chowkidar on 16.05.1991, whereas Shri Ashok Kumar Khatri joined the department on the post of Peon on 22.03.1994. Therefore, Shri Chouhan, being the senior in the Group "D" post, was rightly promoted as Tax Assistant prior to Shri Khatri. A copy of letter dated 19.07.2001 is annexed herewith and marked as **Annexure-R/1.**"

22. As has been cited above, in their reply to the O.A. No.215/2008, the official respondents had taken a stand that since Peon is senior to the Chowkidar, and, therefore, if Peon and Chowkidar both are qualified, since Shri Ashok Kumar Solanki, the applicant of O.A. No.205/2008 had joined the department as a Chowkidar, and had not been promoted as Peon, his name would be placed below the officials who were Daftry/Jamadar in the eligibility list of the officials, who were promoted as Tax Assistants.

Taking exactly the reverse stand, and counting only the length of

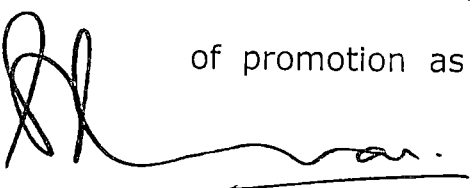


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total service in the various Group 'D' post alone, in their reply to the second O.A. No.105/2010, as cited above, the official respondents had said that since the private respondent No.R/5 had joined the department on the post of Chowkidar on 16.05.1991 earlier than the applicant of that O.A., and the applicant had joined the department on the post of Peon on 22.03.1994, therefore, the Chowkidar, private respondent No.R/5, being the senior in the Group "D" post (by taking both the Group 'D' posts as equivalent) was rightly promoted as Tax Assistant prior to the applicant of that O.A., who had joined on the post of Peon later. They had, thereby, once again submitted that in the DPCs held for the recruitment years 2003-2004, 2004-2005, and 2005-2006, the seniority criteria was not correctly appreciated, and, therefore, the review DPC was convened on 05.08.2008 to correct the anomaly, but they contradicted their reply once again by stating as follows:-

"Shri Amin Khan Kathat was appointed as Peon on 01.08.1997 and he cleared the computer skills exam in the year 2002. He was earlier promoted in the year 2005-2006 on the incorrect interpretation of the rules. However, in the review DPC, since he was a peon, he was considered to be senior to the applicant who had been appointed as Chowkidar. Therefore, the case of Shri Khatri cannot be compared with Shri Solanki due to the facts discussed above."

23. The applicant of O.A. No.215/2008 had filed a rejoinder. He reiterated his points more or less as per the O.A., and pointed out that even prior to the DPC for the period before 2003, always, all Group 'D' employees were considered collectively for the purpose of promotion as Tax Assistants, irrespective of the category of



Group "D" post held by them. It was further submitted that the administrative decision of providing inter-se seniority amongst the Group "D" officials, to be carried into the promotional cadre of Tax Assistants also, has no legal sanction, as it is not provided for in the Rules Gazette notified on 13.09.2003, and no seniority position can be assigned in an arbitrary manner beyond the scope of statutory rules. It was further pointed out that Peon is having the same pay scale as of the Chowkidar, and therefore there is no question of promotion within the same pay scale as the factum of promotion necessarily incorporates the enhancement of the status in the official hierarchy as well as an increase in pay.

24. The applicant of O.A. No.105/2010 had filed a Misc. Application for condonation of delay in filing of the O.A. and had submitted that he had filed repeated representations, which were not disposed of by the official respondents, and, therefore, there was no delay in filing of the present O.A., but only by way of abundant precaution, he had filed the Misc. Application for condonation of delay, and prayed for, the delay if any, to be condoned.

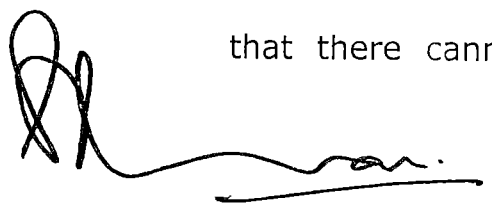
25. Heard the learned counsels of both the cases in great detail. Seniority is an aspect which is determined and recognized on the basis of higher status in the hierarchy, and also higher pay.

26. It is seen from the table as given by the official respondents themselves, as reproduced in para 3/ante above, that the pay scale of Chowkidar/Watchmen and Peons are the same, even though it has been mentioned that Chowkidar can be promoted as Peon. It

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28

appears that the use of the word "promotion" there is not very happy or appropriate, since the pay scale remains the same for such "promotion" from the post of Hamal/ Watchmen/ Farash/ Darwan/ Safaiwala and Mali to the post of Peon. It appears only that while the above six categories of posts of workmen have been shown to be available for direct recruitment, the posts of Peons in the office are shown to have to be recruited by promotion, within that grade. Similarly, while promotions for the posts of Daftry and Jamadar in the pay scale of Rs.2610-4000 can be made only from the posts of Peons, the Hamal/ Watchmen/ Farash/ Darwan/ Safaiwala and Malis, can have two channel of promotion as per the table furnished by the official respondent, firstly to the post of Peon, within the same grade, and secondly alongwith the Peons, as Junior Gestetner Operators, because, for the posts of Junior Gestetner Operators in the pay scale of Rs.2610-4000, all the seven categories of employees, the Peons/ Hamals/ Watchmen/ Farash/ Darwans/ Sweepers and Malis have been taken to form one single feeder grade.

27. Therefore, it appears that the distinction made out at the bottom of the table in para No.3/ante is artificial, illusory and having no bearing on facts. It is clear that the Hamals/ Watchmen/ Farash/ Darwan/ Safaiwala and Mali can directly go on promotion to the posts of Junior Gestetner Operators in the pay scale of Rs.2610-4000, without becoming a Peon, as Peon is only one of the seven categories from which promotions to the posts of Gestetner Operators Group "D" can be made. Therefore, it is clear that there cannot be any concept of any inter-se seniority in






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between the Peons, on the one hand, and Hamals/ Watchmen/ Farash/ Darwan/ Safaiwala and Malis, on the other hand, for determining their eligibility for the purpose of five years' of service in Group "D", as prescribed in the Income Tax Department (Group "C") Recruitment Rules, 2003 (GSR No.321), produced by the official respondents as Annexure-R/2 in O.A. No.105/2010. The Recruitment Rules, as reproduced in Para-7 above from 2001-2002 onwards, clearly state the eligibility criteria for promotion to the post of Tax Assistant as being "eligible Group "D" employees, who are matriculates and have acquired data entry qualification of 5000 key depression per hour".

28. The Rules already provide, as cited in Para 7/ante, that Group 'C' LDC personnel were allowed only a window of five years from 2000-2001 till 2004-2005, in which, even if they could get promotion as Tax Assistants on the strength of having passed matriculation or equivalent examination, they had to acquire the further qualification of data entry skill of 5000 key depression per 1 hour within a period of three years, failing which they were not to be allowed to be continued any longer as Tax Assistants.

29. The proviso in the Rules stated 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 that grade, but have completed successfully the prescribed period of probation. The Rules, therefore, clearly prescribed for the grade to be the determining



750

factor, and not the designation of the post which was held by the Group "D" employees. Therefore, it is clear that the official respondents should not have issued the order impugned at Annexure-A/1 in O.A. No.215/2008 by trying to import the supposed seniority concept in Group "D" cadres into the process of recruitment to the posts of Tax Assistants, when it was not prescribed by the Income Tax Department Group 'C' Recruitment Rules, 2003 (GSR No.321).

30. Therefore, Annexure-A/1 of O.A. No.215/2008 is set aside as illegal, and the subsequent orders Annexure-A/2 etc. passed on the basis of a review DPC, which review DPC could not have been held by the official respondents, and was held only on the basis of a mistaken notion of a concept of inter-se seniority of Group "D" being importable into the process of promotion to the posts of Tax Assistants, are also held to be illegal. The date of joining in the pay scale of Rs.2550-3200 would alone determine the seniority for the purpose of computation of eligibility criteria of five year for promotion to the post of Tax Assistant. Anybody who joined the initial pay scale of Rs.2550-3200 earlier was senior, and anybody who joined later, was junior, irrespective of the nomenclature of the post in Group "D" which he has held.

31. On the basis of the same finding, which the respondents themselves had adopted as the guiding principle in the second O.A. No.105/2010, in their reply written statement, as cited in paragraph 21/ante, that second O.A. No.105/2010 cannot succeed. The respondents were correct in treating the qualifying period as having been completed earlier in the case of Shri Chouhan, who



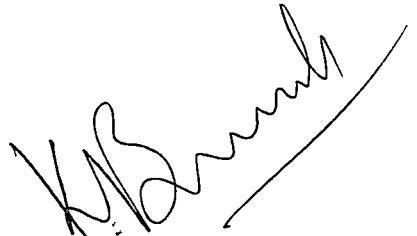
2/51

had joined as Chowkidar on 16.05.1991, than the applicant of that O.A, who had joined the Department later, on 22.03.1994, though on the post of a Peon.

32. The O.A. No.215/2008 is, therefore, allowed and O.A. No.105/2010 is, therefore, dismissed as not maintainable, and there shall be no order as to costs.



**(SUDHIR KUMAR)**  
**ADMINISTRATIVE MEMBER**



**(Dr. K.B. SURESH)**  
**JUDICIAL MEMBER**

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