

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.445/2010

Reserved on 27.08.2014.

Pronounced on 09.09.2014.

**HON'BLE MR. NAVNEET KUMAR, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)**

Smt. Raj Kumari Singh aged about 56 years W/o Sri S.B. Singh, presently posted as Sr. Tax Assistant (Adhoc) O/O The Commissioner of Income Tax-I, Lucknow.

...Applicant.

By Advocate: Sri A.K. Srivastava.

Versus.

1. Union of India, through Secretary in the Department of Revenue, Ministry of Finance, North Block, New Delhi.
2. Chief Commissioner of Income Tax (CCA), Aayakar Bhawan, 5 Ashok Marg, Lucknow.
3. Additional Commissioner of Income Tax (Vigilance), Aaayakar Bhawan, 5 Ashok Marg, Lucknow.
4. Chairman, Departmental Promotion Committee, Office of Chief Commissioner of Income Tax, 5 Ashok Marg, Lucknow.
5. Sri G.K. Shukla, Administrative Officer, Office of the Commissioner of Income Tax (CIB), Gomti Nagar, Lucknow.

...Respondents.

By Advocate: Sri Pankaj Awasthi for Sri R. Mishra.

J. Chandra

ORDER**Per Ms. Jayati Chandra, Member (A).**

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

"(I). This Hon'ble Tribunal may kindly be pleased to quash the order dated 27/28.09.2010 passed by the office of Chief of Commissioner of income tax on the representation of the applicant dated 23.07.2010 whereby it was rejected.

(II). This Hon'ble Tribunal may kindly be pleased to direct the opposite party No.2 to open the sealed cover procedure adopted by them in the case of the applicant in respect to the grant of benefit of promotion to the post of Senior Tax Assistant and Office Superintendent.

(III). This Hon'ble Tribunal may kindly be pleased to direct the opposite party No.2 to grant the benefit of promotion to the applicant to the post of Senior Tax Assistant and Office Superintendent with effect from the date when her junior were promoted on the said posts.

(IV). Any other relief (s) which this Hon'ble Tribunal deem fit proper under the circumstances of the case may also be passed in favour of the applicant and against the opposite party No.2.

(V). Cost of the applicant may kindly be awarded in favour of the applicant against the opposite party No.2."

2. The facts of the case as presented by the applicant are that she joined Income Tax Department as Lower Division Clerk (LDC) in 1975. She was promoted as Upper Division Clerk (UDC) in the year 1984 and presently the applicant is working as Senior Tax Assistant (Ad-hoc) w.e.f. 22.03.2009. The case of promotion the applicant alongwith said Gopal Krishna Shukla for the post of Senior Tax Assistant/Office Superintendent was considered by the DPC in its meeting

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held on 13.07.2001 and 26.07.2001. The recommendations of DPC in her case and in the case of G.K. Shukla were kept in the sealed-cover. The same has been done in view of a pending Case No.185/1999 in the Court of Special Judicial Magistrate, CBI, Lucknow, she alongwith Sri Gopal Krishna Shukla (Resp.No.5) and one Sri D.K. Mehendiratta one of the co-accused in the same case. However neither has she been convicted nor any departmental proceedings have been instituted against her.

3. The similarly situated person namely Gopal Krishna Shukla filed O.A.No.130/2010, which was allowed on 05.05.2010 wherein the order dated 09.12.2009 is set aside and the opposite parties were directed to open the sealed-cover envelope containing the recommendations of Departmental Promotion Committee. This order was complied with and Sri Shukla was given all consequential benefits. Being similarly placed, the applicant approached the Chief Commissioner of Income Tax by her representation dated 23.07.2010 requesting for opening of sealed-cover pending since July, 2001 and granting her regular promotion to the post of Senior Tax Assistant and Office Superintendent. However, by order dated 27./28.09.2010, the Chief Commissioner of Income Tax rejected the representation of the applicant. The ground of such rejection has been held to be that sealed-cover in the case of Gopal Krishna Shukla (Respondent No.5) was opened in compliance with the judgment and order dated 05.05.2010 passed in O.A.No.130/2010. She has also stated that Sri D.K. Mendiratta, co-accused in the pending case before the Special Judicial Magistrate

S.Chandrashekar

CBI, Lucknow was also considered and he was given promotion. Further all retirement dues consequent upon his retirement were also paid to him. Thus, she has averred that there is discrimination between her case and that of Gopal Krishna Shukla and D.K. Mendiratta. Hence this OA.

4. The respondents have filed their Counter Affidavit and Supplementary Counter Affidavit whereby they have basically not denied the averments of the applicant in as far as they relate to date of appointment, promotion to the post of UDC and Ad-hoc promotion Senior Tax Assistant and the matter of holding of DPC. However, they have stated that the case of Gopal Krishna Shukla stands on a different footing from that of the applicant as the sealed-cover was opened in the case of Gopal Krishna Shukla in compliance of the order dated 05.05.2010 passed in O.A.No.130/2010. In case of D.K. Mendiratta, the sealed cover was opened as the vigilance department had given full vigilance clearance to him but the vigilance department has not given any clearance in the case of the applicant. Moreover, due to pendency of the Criminal case the full and final exoneration have not been made available to D.K. Mendiratta and certain post retiral dues have been held back. Moreover, the case of Gopal Krishna Shukla has not yet been finalized as Writ Petition No.2395/1992 has been filed against the O.A.No.130/2010, which is still pending for disposal before the Hon'ble High Court at Lucknow Bench.

5. The applicant has filed a Rejoinder reply more or less reiterating his contentions as raised in the OA.

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6. We have heard the learned counsel for both the parties and perused the entire material available on record.

7. In this case, it is main hurdle in the case of applicant appears to be pendency of Complaint Case No.185/1999 before the Court of Special Judicial Magistrate, CBI, Lucknow and non-availability of vigilance clearance. We failed to understand how she had given ad-hoc promotion in 2009 in the absence of vigilance clearance and during the pendency of the said case. Moreover, we also failed to understand how and under what circumstances Gopal Krishna Shukla and D.K. Mendiratta were given vigilance clearance since the admitted position is that all three are co-accused in CBI case. There is nothing on record to show that the applicant apart from being co-accused in common case both of them i.e. Gopal Krishna Shukla and D.K. Mendiratta has any other disqualifying parameter. In fact, the respondents have simply taken the shelter of the order passed on 05.05.2010 in O.A.No.130/2010 for opening of sealed-cover in the case of Gopal Kriahna Shukla and have denied such a request to the applicant thereby encouraging her to agitating her grievance before the judicial forum.

8. In view of the above, the OA is disposed of with a direction to the respondents to open the sealed-cover pending in the case of the applicant being similarly situated person like Respondent No.5 within a period of

J. Chaudhary

one month from the date of receipt of the copy of this order and implement the recommendation so given by the DPC. No order as to costs.

J. Chandra
(Ms. Jayati Chandra)
Member (A)

U.R. Agarwal
(Navneet Kumar)
Member (J)

Amit/-