

Central Administrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 308 of 2006

This the 8th day of June, 2007

HON'BLE SHRI A.K. SINGH, MEMBER (A)
HON'BLE SHRI M. KANTHAIAH, MEMBER (J)

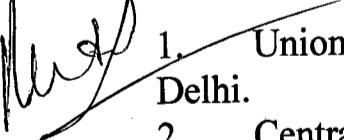
1. Uma Kant Mishra aged about 46 years son of Sri Balram Prasad Mishra, r/o 555 Kha, Bhola Khera, Alambagh, Lucknow.
2. Neeraj Srivastava aged about 40 years son of Sri Vidya Nath Singh, r/o 31, Vishnu Puri Church Road, Aliganj, Lucknow.
3. Amit Gupta, aged about 36 years son of Sri Om Prakash Gupta, r/o 7/217, Vikas Nagar, Lucknow.
4. Mirza Farhan Beg, aged about 34 years son of late Mirza Zaffar Beg, r/o 155/129 Ka, Hata Suleman Quadar, Molviganj, lucknow.
5. Prem Nath Gupta aged about 56 years son of Sri Shambhoo Nath Gupta, r/o 472/8 Ka Deen Dayal Nagar, Khadra Sitapur Road, Lucknow.
6. Akhilesh Kumar Nigam, aged about 34 years son of late Sri Hanuman Prasad Nigam, r/o F-20, Income Tax Colony, Wazir Hasan Road, Lucknow.
7. Manoj Kumar Srivastava aged about 45 years son of late Raghuvir Prasad Srivastava r/o 828/196, Sarai Thok West, Hardoi.
8. Sanjay Kumar Vidyarthi, aged about 37 years son of Sri Ravinder Kumar Vidyarthi, r/o 64, IIM Crossing, Bhitouli Chungi, Sitapur Road, Lucknow.
9. Smt. Rajani Sharga aged about 51 years son of Sri Prem Nath Raina, r/o 394/20 Manohar Niwas, Kashmiri Mohall, Lucknow.

Applicants

By Advocate: Sri D.K. Upadhyaya along with Sri Shobhit Mohan Shukla

..Applicant

Versus



1. Union of India through Secretary in the Ministry of Finance, New Delhi.
2. Central Board of Direct Taxes (CBDT), New Delhi through its Chairman.
3. Chief Commissioner of Income Tax, Ashok Marg, Lucknow.
4. Central Administrative Tribunal, Lucknow Bench, Lucknow, through its Registrar.
5. Sri Anindya Chaudhary, son of Dr. B.L. Chaudhary, resident of C-852, Sector 'C' Mahanagar, Lucknow.
6. Smt. Archana Chaudhary d/o Sri K.S. Chaudhary, resident of 529/G, Kamla Nehru Nagar, Ring Road, Lucknow.
7. Smt. Bharti d/o late Sri R.R. Shukla r/o 3/42, BHAR-B, Sahara Estate, Jankipuram, Lucknow.

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8. Sri R.K. Diwan, son of late K.L. Diwan, r/o Sector L, House No. 6, LDA Colony, Kanpur Road, Lucknow.
9. Sri Shiv Sharan Dhaundhiyal, son of late D.P. Dhaundihiyal, r/o S-7, Income Tax Colony, Wazir Hasan Road, Lucknow.

..Respondents

By Advocate: Sri Vishal Chaudhary for Km. Asha Chaudhary for R. No.1 to 3.
Sri Raj Singh for R.No. 4 to 9.

ORDER

By Hon'ble Shri A.K. SINGH, MEMBER (A)

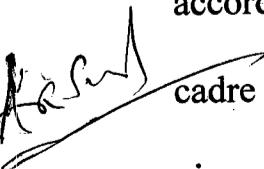
The Original Application bearing No. 308/2006 has been filed by • Uma Kant Mishra and 8 others (of the address given in the notice) against the action on the part of the respondents in re-initiating process of promotion of the applicant afresh to the post of Office Superintendents on which they have already been regularly promoted as per order dated 28.7.2005.

2. The brief facts of the case are that applicant No. 1 Uma Kant Mishra was initially appointed as Lower Division Clerk on 8.4.1983. The applicant No. 5,7 and 9 were initially appointed as Lower Division Clerks on 10.1.1978, 25.9.1982 and 15.2.1980 respectively. Rest of the applicants were initially appointed as Upper Division Clerks on different dates between 1991 to 1993.

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3. The applicant No. 1 has presently posted in the office of Additional Commissioner of Income Tax Range III, Lucknow. The applicant No. 2 to 4 are presently posted in the office of Chief Commissioner of Income Tax, Lucknow. The applicant No. 5 is posted in the office of DTRTI, Lucknow and applicant No. 6,7 and 8 are posted

in the office of Additional Commissioner of Income Tax Range IV, V and Central Circle respectively. Smt. Rajani Sharga is serving in the office of Director General of Income Tax, Lucknow. According to the applicants, the CBDT vide their circular dated 4.6.2001 circulated Recruitment Rules for the post of Office Superintendent for the year 2001-2002. According to the aforesaid Rules for the year 2001-02, the Officer Superintendents were to be promoted from eligible incumbents in three categories. The first category comprised of all Senior Tax Assistants having two years of service as Assistant/ Head Clerks. The second category comprised Data Entry Operator Group 'C' having two years of service in the grade and having qualified the ministerial staff examination. The third category of eligible candidates consisted of Tax Assistants having three years service in the grade and Data Entry Operators Group 'B' having three years of service in the grade and having qualified the Ministerial Staff Examination. Applicant further submits that third category i.e. category 'C' as given in the Recruitment Rules and circulated by Circular dated 4.6.2001 comprised pre-structured cadre of Tax Assistants and Data Entry Operators Group 'B'.

4. The applicants further submit that the ministerial cadre in the Income Tax Department was restructured in the year 2001. As a result of this restructuring, an order dated 26.7.2001 was issued by the CBDT, according to which, the Tax Assistants were elevated to restructured cadre of Senior Tax Assistants in the pay scale of Rs. 5000-8000. In view of the CBDT's order dated 26.7.2001, the applicants were redesignated as Senior Tax Assistants in the above mentioned pay scale. The



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CBDT issued another circular on 20.10.2003, for making adhoc promotions in respect of certain categories of posts, including the post of Office Superintendent. The criteria for preparing the zone of eligibility in the circular dated 20.10.2003 was however, altered. The earlier criteria available in the circular dated 4.6.2001 was departed. According to circular dated 20.10.2003, the ministerial cadre employees who had put in three years of regular service in their respective cadres became eligible for being considered for promotion to the post of Office Superintendent on adhoc basis.

5. According to this criterion, the three years service in the cadre had to be counted till first of January of the Recruitment Year. On the basis of the aforesaid criteria in the circular dated 20.10.2003, a Departmental Promotion Committee was convened for considering the promotion of eligible incumbents to the post of Office Superintendent on 4th November, 2004 on adhoc basis. Since the Departmental Promotion Committee was held on 4th November, 2004, the three years eligibility criteria ought to have been counted till 1.1.2004. According to the applicants. None of the Senior Tax Assistants who were so promoted on adhoc basis in pursuance of the Departmental Promotion Committee held on 4th November, 2004, fulfilled the eligibility criteria of three years as laid down in the circular dated 20.10.2003. Certain promotions were made on the post of Inspector too on adhoc basis in terms of Circular dated 20.10.2003. The applicants further submit that though adhoc promotions were made in pursuance of the Departmental Promotion Committee meeting held as above but no regular promotions were however, made during the year 2002-03, 2003-04 and onwards. Hence, the CBDT issued

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another circular on 7.3.2005 in which it was stated that the Departmental Promotion Committee for considering the promotions to the post of Office Superintendents for the years 2002-03 and onwards (on a regular basis) may be held in accordance with the instructions applicable during the recruitment years 2001-02. In the aforesaid circular dated 7.3.2005, it was specifically provided that for making regular promotions to the post of Office Superintendents, the Recruitment Rules pertaining to the year 2001-02, shall be applied. The Recruitment Rules for the year 2001-02 were circulated vide circular by CBDT letter dated 4.6.2001.

6. The applicants submit that they became eligible for promotion to the post of Office Superintendents falling in category 'C' in accordance with circular dated 7.3.2005 read with Recruitment Rules for the year 2001-02. In the mean time, certain persons promoted, on adhoc basis, on the basis of the recommendations of the Departmental Promotion Committee held in November, 2004 filed an Original Application before this Hon'ble Tribunal bearing No. 279 of 2005 (Anindya Chaudhary and others Vs. UOI and others) praying therein inter-alia to quash / set aside the circular dated 7.3.2005 and further not to hold any Departmental Promotion Committee meeting in pursuance of order dated 7.3.2005 and also to direct the respondents that adhoc promotees who have been promoted on the basis of recommendation of Departmental Promotion Committee held on 4.11.2004, be allowed to continue till regular Departmental Promotion Committee meeting is held after finalisation of new Recruitment Rules. This Tribunal vide, an interim order, directed that applicants in O.A. No. 279 of 2005 be considered for promotion to the post of Office Superintendent/ Income Tax Inspectors and their



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results would be kept in sealed cover and will be declared after final orders of this Tribunal. The said O.A. is still pending before this Hon'ble Tribunal.

7. The applicants further submit that on the basis of circular dated 7.3.2005, an eligibility list was prepared and a requisition was sent on 27.4.2005 from the office of Chief Commissioner of Income Tax, Lucknow. The name of the applicants figure at Sl. Nos. 47, 28, 44, 45, 22, 26, 48 ,35 and 38 of the list of Tax Assistants (Pre-restructuring) for promotion to the post of Office Superintendent and Income Tax Inspectors.

8. On the basis of the aforesaid eligibility list and circular dated 7.3.2005, the applicants along with other similarly placed incumbents, were promoted vide order dated 28.7.2005 on the post of Office Superintendents, on regular basis on the recommendations of the Departmental Promotion Committee. The applicants have joined the post of Office Superintendents in pursuance to the above mentioned order dated 28.7.2005 and have been continuously working on the aforesaid post since then and have been receiving their salary in the pay scale of Rs. 5500-9000. The applicants further submit that they were promoted against vacancies for recruitment year 2002-03 and 2003-04. Applicant No.1 Uma Kant Mishra applicant No. 3 Amit Gupta, applicant no., 4 Mirza Farhan Beg, applicant No. 7 Manoj Kumar Srivastava, applicant No. 8 Sanjay Kumar Vidyarathi and applicant No. 9 Smt. Rajani Sharga were promoted against the vacancies of Recruitment Year 2003-04 whereas rest of the applicants were promoted in the Recruitment Year 2002-03. In view of the above facts and circumstances, the applicants submit that they were

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regularly promoted on the post of Office Superintendent vide order dated 28.7.2005 and as such there is no rational basis for reconsidering them for promotion to the same post, again.

10. The entire confusion, according to the applicants has arisen due to issue of yet another circular dated 8.12.2005 by the CBDT for holding Departmental Promotion Committee for promotion to the post of Office Superintendent, which inter-alia provided that earlier instructions issued in accordance with recruitment rules for Recruitment Year 2001-02 should not be applicable to the pre-restructuring cadre of Tax Assistants and Data Entry Operators Grade 'B' as their interest had already been taken care of in the recruitment instructions of Senior Tax Assistants. According to the new instructions contained in Circular letter dated 8.12.2005, the promotions to the post of Office Superintendent were to be made in accordance with draft recruitment rules as approved by the CBDT as well as by the Deptt. of Personnel and Training. The respondents without applying their mind now intend to apply the provisions of the aforesaid circular dated 8.12.2005 for re- deciding promotion to the post of Office Superintendents even against vacancies for the year 2002-03 against which the applicants have already been promoted on substantive basis, in accordance with the then existing instructions. CBDT letter clarified vide circular dated 17.3.2006 that all promotions for the period prior to 8.12.2005 were to be effected in pursuance of the instructions issued by the Board under their letter dated 7.3.2005. All subsequent promotions thereafter, were to be made in accordance with the draft Recruitment rules approved by the CBDT and DOP&T. Thus, from the above two circulars, it becomes abundantly clear

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that draft Recruitment Rules as approved by CBDT/DOP&T for making promotions to the post of Office Superintendent were to be applied in respect of vacancies arising after 8.12.2005. The entire confusion, according to the applicants have arisen due to the above mentioned ambiguity in the aforesaid circular dated 8.12.2005, which provides that pre-structured Tax Assistants, who were made Senior Tax Assistants in consequence of restructuring in the year 2001-02, cannot be considered for promotion to the post of Office Superintendent under category 'C' of Recruitment Rules 2001-02. According to the applicants, this provision will apply only to the vacancies available for the period on and after from 8.12.2005 . Despite this fact, the respondents have prepared another eligibility list by misinterpreting the provisions of rules as well as established law on the subject. The said eligibility zone has been prepared by the respondents as per letter dated 12.4.2006. The name of the applicants appears at Sl. No. 100,61,63,79,36,113 80 and 107 of the said list. Since the applicants have already been promoted on regular basis and in accordance with CBDT's circular dated 7.3.2005 read with Recruitment Rules for the year 2001-02, the action of the respondents in re-considering them for promotion on the post of Office Superintendent is absolutely illegal and unlawful and therefore, deserves to be quashed and set aside. The applicants further submit that on the basis of their regular promotion to the post of Office Superintendent on 28.7.2005, they are also eligible for consideration for the post of Income Tax Inspectors. They will ,therefore, be subjected to irreparable loss and injury, if the respondents are not prevented from taking such an unlawful course of action in their case, as explained above. On the basis of the above, the applicants seek the following reliefs in the O.A.:-

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- i) To direct the respondents not to hold the Departmental Promotion Committee for re-considering them for promotion on the post of Office Superintendent in pursuance of letter dated 12.4.2006 of the Chief Commissioner of Income Tax.
- ii) To direct the respondents not to disturb their regular promotion on the post of office Superintendent issued as per order dated 28.7.2005.
- iii) To direct the respondents to allow the applicants to continue to hold the post of Office Superintendent and to work on the said post and to pay them regular salary and allowances of the aforesaid post , every month.
- iv) To direct the respondents to consider and promote the applicants on the post of Income Tax Inspector treating themm to have been regularly promoted on the post of Office Superintendent as on 28.7.2005 against existing vacancies for the year 2002-03.
- v) To issue any other writ, order or direction which this Tribunal may deem just and proper under the circumstances of this case.
- vi) to allow this Original Application with costs in favour of applicants.

11. Respondents contest the Original Application. According to Respondent No. 1 to 3, the applicant has been promoted to the cadre of Senior Tax Assistants as a result of re-structuring vide office letter dated 26.7.2001 and his name figures at S.No. 126,81,83,100,43,64,140, 101 and 134 in the promotion list for the post of Tax Assistants. They also submit that the applicants was promoted to the post of Office Superintendent in the year 2002-03 and 2003-04. Subsequently, a circular letter dated 8.12.2005 was issued by CBDT for holding DPC for promotion to the grade of Office Superintendent. As per this letter, Tax Assistants who got

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their promotions as Senior Tax Assistants in 2001-02, could not be considered for promotion to the post of Office Superintendent under category 'C'. Hence, the petitioners were not entitled to get promotion to the post of Office Superintendent in as much as their seniority of the cadre of Tax Assistants had been counted which he had discarded by them long ago. Respondents, therefore, submit that in view of the Board's letter dated 8.12.2005, the applicants were not eligible for promotion to the post of office Superintendent against vacancies arising during the year 2002-03. They are entitled for promotion to the post of Office Superintendent only for the Recruitment Year 2004-05. Since the promotion of the applicants on the post of Office Superintendent itself was erroneous, therefore, they have no vested right to continue on the aforesaid post in view of settled law in this regard. The applicants are, therefore, not entitled for any relief as prayed for by him in the Original Application.

12. The respondent No. 4 to 9 submit that the petitioner have been trying to mislead this Hon'ble Tribunal by saying that their promotion to the cadre of Senior Tax Assistant is only a fitment. The respondents No. 4,5,7,8,9 were promoted on the post of Office Superintendent in the scale of pay of Rs. 5500-9000, on adhoc basis while respondent No. 6  was promoted as Income Tax Inspector and that too on adhoc basis only. Subsequently, the CBDT issued another circular dated 7th March, 2005 for holding DPC meeting for promotion to the post of Office Superintendent from Grade 'C' and 'D' posts stating therein that DPC for promotions to the post of Income Tax Inspectors, Office Superintendents and Stenographers Grade I for the year 2002-03 onwards

should be held according to DOMS instructions as applicable for the year 2001-02. This virtually amounted to reversion of respondent No. 4 to 6 and 9 and hence they have filed an Original Application No. 279 of 2005 before this Hon'ble Tribunal for quashing the circular dated 7.3.2005.

13. The counsel for respondents No. 4 to 9 further submits that promotion of the applicants on the post of Office Superintendent was made by respondent No. 3 by misinterpreting the provisions of circular dated 7.3.2005, in as much as Tax Assistants, who got their promotions as Senior Tax Assistants on 26.7.2001 could not be considered for promotion to the post of Office Superintendent under category 'C' as they were not entitled to get promotion to the higher grade by counting their seniority of a cadre which they had discarded long ago. The Board's circular dated 8.12.2005 clarifies that all such pre-structured Tax Assistants who got their promotion as Senior Tax Assistants as on 26.7.2001, cannot be considered for promotion to the post of Office Superintendents as their interests had already been taken care of by their promotion to the cadre of Senior Tax Assistant. Accordingly, private respondents No. 4 to 9 submit that O.A. No. 193 of 2006 is devoid of any merit and deserves to be dismissed.

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14. The applicants as well as respondents were heard through their respective counsels on different dates. Sri D.K. Upadhyaya along with Sri Sobhit Mohan Shukla appeared on behalf of the applicants. Sri S.P. Singh and Shri Vishal Chowdhary holding brief for Km. Ahsa Chowdhary appeared for official respondents No. 1 to 3 and Sri Raj Singh appeared

for private respondents No. 4 to 9. In their oral submissions, learned counsel only reiterated their submissions as above.

15. We have given our anxious consideration to the submissions made by the learned counsels on both sides and have also perused the records of the case.

16. We find that the applicants in this O.A. have been duly promoted as per order dated 28.7.2005 of the respondents in accordance with rules/ executive instructions existing on the subject. They were also promoted on the post of Office Superintendent on a regular /substantive basis. The recommendation of a valid Departmental Promotion Committee as per order dated 28.7.2005 of the competent authority. In this regard it may also be noted that CBDT had circulated Recruitment rules for promotion to the post of Office Superintendents vide circular dated 4.6.2001 in respect of vacancies arising during the year 2001-02. According to the above mentioned rules, the Office Superintendents were to be promoted from amongst eligible employees working in three different categories, which included the cadre of Senior Tax Assistants having two years of service as Assistants/ Head Clerks in the first category. The second category comprised Data Entry Operator Group 'C' having two years of service in the grade and having qualified the ministerial staff examination. The third category of eligible candidates consisted of Tax Assistants having three years service in the grade and Data Entry Operators Group 'B' having three years of service in the grade and having qualified the Ministerial Staff Examination. As specified in circular letter dated 4.6.2001, the 3rd category i.e. Category 'C' (as

provided in the Recruitment Rules under circular dated 4.6.2001) , comprised pre-structuring cadre of Tax Assistants and Data Entry Operators Group 'B'. It is on record that ministerial cadre in the Department was re-structured in the year 2001 and in consequence to the same, CBDT issued an order dated 26.7.2000. The cadre of Tax Assistants was re-structured and elevated to the cadre of Senior Tax Assistants in the pay scale of Rs. 5000-8000 and since the entire cadre of Tax Assistants was upgraded / elevated to the cadre of Senior Tax Assistants, it will not be correct to regard this upgradation as a case of individual promotion. Our above view finds support from the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. Ashok Kumar Srivastava and another (SLP No. 11801 of 1987) [Reported in 1987 (4) ATC 385]**, wherein the Hon'ble Apex Court while upholding the decision of the Central Administrative Tribunal had held that "Upgradation of all the posts in a cadre, does not involve selection or promotion." In fact what has happened in this case is only an upgradation of a cadre and it can never be considered as a case of individual promotion. What happens in case of restructuring is only a re-distribution or readjustment of posts in accordance with the need and requirement of an organization. It does not involve any separate creation of any additional posts. As held by the Apex Court in **All India Non SC/ST Employees Association (Railways) Vs. V.K. Agrawal and others (Contempt Petition No. 304/1999 in Civil Appeal No. 1481/1996 decided on 31.1.2001)** that in case of restructuring of a cadre ".....it would be a case of upgradation of posts and not a case of additional vacancy or post being created". Hence the benefit of reservation too, in case of reserved categories does not apply in case. In view of

this settled law on the subject the applicants are correct in holding that up-gradation of the entire cadre of Tax Assistants to Senior Tax Assistants as a result of restructuring is a mere case of fitment and does not constitute 'Promotion in the strict legal sense of the term. The arguments of the respondents No.1 to 3 as well as of private respondents no. 4 to 9 that all such pre-structured Tax Assistants who got their promotions as Senior Tax Assistants on 26.7.2001 could not be considered for promotion to the post of Office Superintendent under category 'C' as they cannot legally avail the benefit of seniority of the cadre of Tax Assistants, since they discarded the same long ago, does not hold any water and is accordingly rejected.

17. In the second place, we also find that the promotion of the applicants to the post of Office Superintendent vide order dated 28.7.2005 has been made in accordance with the existing rules and instructions on a regular and substantive basis, by an authority competent to do so and that too on the basis of the recommendations of a Departmental Promotion Committee as provided under rules. It is on record that the cadre of Senior Tax Assistants and Date Entry Operators Group 'B' constituted one of the feeder cadres for promotion to the post of Office Superintendent. It is also on record that as a result of restructuring and instructions issued vide order dated 26.7.2001, in consequence thereof the cadre of Tax Assistants was upgraded to structured cadre of Senior Tax Assistants in the pay scale of 5000-8000. It is also on record that 12 similarly placed persons were promoted on the post of office Superintendent against vacancies for the year 2001-02 and were also further promoted to the post of Income Tax Inspectors vide order dated

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8.1.2003. It is also on record that certain adhoc promotions were also made from the eligibility list on the basis of vacancies ensuing during the year 2002-2003. It is also on record that a Departmental Promotion Committee, was held in the month of January, 2004 to consider their case for promotion on the post of Office Superintendent. It is also on record that no regular promotions were made on the aforesaid post during the years 2002-03, 2003-04 and onwards.

18. At this stage, the CBDT issued a circular dated 7.3.2005 with a direction contained therein to convene a Departmental Promotion Committee to consider regular promotions of eligible incumbents on the post of Office Superintendent for the years 2002-03 onwards in accordance with the instructions applicable in the year 2001-02 until further orders. It is clearly mentioned therein that while considering the question of regular promotion to the post of Office Superintendent, the recruitment rules pertaining to the year 2001-02 shall be applied. These rules, as we have mentioned earlier, were duly circulated vide circular letter dated 4.6.2001. As a result of it the applicants became eligible for promotion on the post of Office Superintendent as per circular dated 7.3.2005, along with other similarly placed incumbents. Accordingly he was substantively promoted on the post of Office Superintendent as per instructions contained in the above mentioned circular. Their promotion on the post of Office Superintendent was duly recommended by a validly constituted Departmental Committee as provided under Rule and the orders of the promotion in their case was issued by competent authority vide order dated 28.7.2005. The applicants joined the said post and have been working on the same till date and are also receiving their

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normal salary etc. in the pay scale of Rs. 5500-9000. Since the applicants have been promoted on a regular basis and in accordance with Departmental instructions existing at the material point of time, there is no question of considering them again for promotion to the aforesaid post of Office Superintendent , a post on which they have already been promoted substantively i.e. on a regular basis, as per rules and instructions in force at the material point of time.

19. In the case of **Abraham Jacob and Others Vs. Union of India** [Reported in 1998 (4) SCC 65], the apex Court has held in para 3.3 of the judgment that “ It is a too well settled rule that the service conditions of employees , in the absence of a statutory rule could be governed by administrative instructions. There was, therefore, no illegality in giving promotion to the Junior Engineers to the post of Assistant Engineer because of the aforesaid administrative decision of the Govt.”

20. It is also on record that the applicant was promoted on the post of Office Superintendent through a valid and lawful order dated 28.7.2005 issued by the competent authority . From the record it clearly transpires that CBDT's circular dated 8.12.2005, wherein a departure was made from the earlier instructions in force during Recruitment year 2001-02 relating to the cadre of Tax Assistants and Data Entry Operators Group 'B' is largely responsible for confusion in the matter. According to this circular, Tax Assistants and Data Entry Operators Gr. B could not be considered for promotion to the post of Office Superintendent as the interest of these cadres were already taken care of in their elevation to



the post of Senior Tax Assistants. We are unable to agree with this position. It is an established law that every rule and instructions has only a prospective and no retrospective application. This fact has also been affirmed by CBDT themselves as per their circular dated 17.3.2006 wherein, it has been clearly stated that all promotions for the period prior to 8.12.2005 were to be effected in pursuance of instructions issued by the Board vide letter dated 7.3.2005 and all subsequent promotions thereafter were to be made in accordance with recruitment rules approved by the CBDT. The relevant extracts of the relevant communication are reproduced hereunder:-

“F.No. 41015/19/2005-Ad.VII (Pt. II)
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes

New Delhi, dated the 17th March, 2006

To

The Chief Commissioner of Income Tax,
Lucknow.

Sir,

Sub: Holding of DPC for promotion to the grade of Office Superintendent Clarification reg.

I am directed to refer to your letter No. F.No. Estt. C. No. 32/CC/2005-06 dated 7/10-2-2006 on the subject cited above and to say as under:

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All promotions for the period prior to 8.12.2005 were to be effected in pursuance of the instructions issued by the Board's letter dated 7.3.2005 and subsequent promotions are to be made in accordance with the draft recruitment rules approved by the DOP&T (copy enclosed).

For the financial year 2002-03 and 2003-04, if no eligible candidates were available then such vacancies cannot be filled up. As per Board's letter dated 7.3.2005, the DOMS's instructions dated 4.6.2001/19/7-2001 in respect of year 2001-02 were to be applied in respect of cadres

which were in place during the recruitment year 2002-03 and onwards. All such pre-restructuring Tax Assistants (Rs. 4500-7000) who got their promotions as Senior Tax Assistants in 2001-02 cannot be considered for promotion to the grade of office superintendent under the category 'C' as they can no longer get promotion to higher grade by counting the seniority of such cadre which they discarded long ago.

All the Senior Tax Assistants who were promoted by 31.12.2001 in pursuance of DOMS's instructions dated 4.6.2001 and 19.7.2001, were eligible for promotion to the grade of Office Superintendent in the year 2002-05, as they were having two regular service as on the actual date i.e. 1.1.2004.

Yours faithfully,

Sd/-

(S.R. Meen)

Under Secretary to the Govt. of India

Tel No. 23365535"

21. It is our considered view that once a person is promoted on a substantive basis in accordance with rules/executive instructions in force by an authority competent to do so, he acquires a vested right to hold the post and to continue on the same and is also entitled to the protection of Article 311(2) of the Constitution of India. The applicant thereafter, can neither be reverted nor reconsidered for promotion on the same post i.e. on which he had already promoted on a regular basis through a valid order dated as in this case. We rely on the decision of the Apex Court in the case of Union of India Vs. Arun Kumar Roy [Reported in 1986 SCC (L&S) 354] in which the Hon'ble Supreme Court has affirmed the same principles. The action of the respondents in convening a fresh DPC for the aforesaid purpose on the basis of a fresh eligibility list is, consequently illegal and in complete disregard of settled law on the subject and therefore deserves to be quashed and set aside. On the basis of the above, we pass the following orders:-

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i) That the applicant will be allowed to continue on the post of Office Superintendent, a post on which they have been regularly promoted vide order dated 28.7.2005 in accordance with rules and relevant instructions in force at the material point of time.

ii) Any DPC held to reconsider their promotion of applicant on the post of Office Superintendent, is held as illegal and in violation of established law on the subject. Respondents are therefore, restrained from holding any fresh DPC, in the matter, in future..

iii) Since an Office Superintendent is also eligible for promotion to the post of Income Tax Inspector, respondents will consider the case of the applicant for promotion to the aforesaid post provided they are otherwise suitable for the post and in case they have already been considered for promotion to the above mentioned post, the sealed covers containing the recommendations of the DPC be opened and acted upon by the respondents.

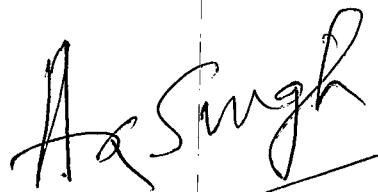
iv) Parties will bear their own cost.

21. ~~With these observations~~ ^{In consequence} the O.A. No. 308 of 2006 is allowed with consequential relief in favour of the applicants as prayed for by them in the O.A.

Member (J)

6.6.07

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Member (A)