

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
LUCKNOW BENCH,  
LUCKNOW.**

**Original Application No. 132 of 2009**

Reserved on 23.4.2014

Pronounced on 2<sup>nd</sup> May, 2014

**Hon'ble Mr. Navneet Kumar, Member -J**  
**Hon'ble Ms. Jayati Chandra, Member-A**

Jhabbar Yadav, aged about 60 years, S/o late Sri Ram Roop Yadav, permanent resident of Mohalla Bishunpurwa, Gandhi Nagar Basti (Presently residing at Kalyanpur West Lucknow) (last working as Senior Tax Assistant in the Come Tax Office, Basti)

.....Applicant

By Advocate : Sri Prashant Kumar Singh

Versus.

1. Union of India through the Secretary, Ministry of Finance, New Delhi.
2. Chief Commissioner of Income Tax, Lucknow.
3. Commissioner of Income Tax, Faizabad.
4. Additional Commissioner of Income Tax, Gonda Range, District Gonda.
5. Sri S.C. Gangwar, Chief Commissioner of Income Tax, Lucknow.
6. Sri O.P. Sachan the then Commissioner of Income Tax Faizabad, C/o Chief Commissioner of Income Tax, Lucknow.

.....Respondents.

By Advocate : Sri Asheesh Agnihotri.

**O R D E R**

**Per Ms. Jayati Chandra, Member-A**

The applicant has filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

"(a) issuing/passing of an order or direction to the respondents to consider the case of the applicant for promotion to the post of Office Superintendent (Scale Rs. 500-175-9000) and to promote him to the said post of Office Superintendent from the date his juniors were promoted viz. 4.11.2004 (recruitment year 2004-05) and to the next higher post during the recruitment year 2005-06), if otherwise eligible, as was issued vide order dated 19.7.2006 with all consequential benefits and to revise his post retiral benefit claims accordingly within a period of two months.

*J. Chandra*

(b) .....

(c) ....."

2. The facts of the case are that the applicant was initially appointed as LDC in 1969 in the office of Income Tax, Bulandshahr. He was promoted to the post of UDC in the year 1988. The applicant worked at Basti and was transferred to Azamgarh. Thereafter, the transfer order was amended to Gonda where he joined in September, 1994. The issue of transfer and its effect etc. was adjudicated by means of Original Application No. 423 of 2004 filed at Allahabad Bench of this Tribunal. The applicant by means of this O.A. has sought promotion to the post of Office Superintendent (in short OS) in the scale of Rs. 5500-9000/- w.e.f. 4.11.2004. The applicant has stated that by means of order dated 19.7.2006 issued by the Chief Commissioner of Income Tax promotion to various posts including that of OS in the recruitment year 2004-05 and 2005-06 have been made. Although persons junior to the applicant were promoted to the post of OS w.e.f. 4.11.2004 (recruitment year 2004-05), but the applicant was left out. From the perusal of Annexure no.5, it is seen that Sri Anoop Kumar Mukherjee who is at sl. No.6 and below the name of the applicant in the seniority list of Senior Tax Assistant has been promoted. The apparent cause of such supersession is the chargesheet, which was issued to the applicant by order dated 18.8.2006. The applicant filed O.A. No. 427 of 2006 against the chargesheet. The Tribunal vide interim order dated 18.9.2006 stayed the disciplinary proceedings for a period of three months with a direction to both parties to get ready for disposal of main application itself during this period.

3. Finally the O.A. was disposed of vide judgment and order dated 16.10.2008 whereby chargesheet dated 18.8.2006 and consequential disciplinary proceedings initiated against the applicant were quashed. The applicant retired from service w.e.f. 30.11.2008. The respondents filed Writ petition no. 1889 (SB) of 2008 against the order dated 16.10.2008, but the Writ petition has not been admitted nor any interim order has been granted. The applicant preferred a representation dated 8.12.2008 to the respondent no.5 by name and requested for promotion to the post

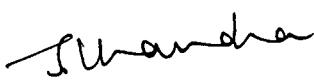
*J. Umar*

of OS w.e.f. 4.11.2004 with all consequential benefits, but nothing has been done, hence this O.A.

4. The respondents have filed Counter Reply by which they have stated that the case of the applicant for promotion to the post of OS against the recruitment year 2004-05 was considered in 2006 by the DPC in his meeting held on 14.7.2006. However, in view of the fact that vigilance clearance was not given by the competent authority, his name was kept in sealed cover as the disciplinary proceedings were contemplated against the applicant. The Tribunal vide order dated 16.10.2008 passed in O.A. no. 427 of 2006 has quashed the chargesheet and disciplinary proceedings pending against the applicant. Against the said order, the respondents filed Writ petition no. 1889 (SB) of 2008, which is still pending.

5. Rejoinder reply has also been filed by the applicant refuting the averments made by the respondents in their Counter Reply and reiterating the stand taken in the Original Application.

6. The main issue which emerges out after hearing the learned counsel for the parties is that whether the applicant was eligible for consideration for promotion to the post of OS in the Grade of Rs. 5000-9000/- against the recruitment year 2004-05 or not. The only reason why the case of the applicant for promotion to the post of OS was not considered, was the pendency of the chargesheet against him, as a result of which, the result of DPC was kept in sealed cover. The respondents have stated that they had filed Writ petition before the Hon'ble High Court against the order of this Tribunal whereby the chargesheet and disciplinary proceeding were quashed. They have been unable to obtain any stay order from the Hon'ble High Court. In such event and also in view of the fact that the applicant has already superannuated from service on 30.11.2008 the disciplinary action, even if they were sought to be initiated during his service time would now be considered under CCS (Pension) Rules which would require certain formalities to be completed. Since the applicant has already retired long back, no fruitful purpose would be served by keeping the recommendations pending in the sealed cover.



Therefore, in this view of the matter, the respondents are directed to open the sealed cover containing the recommendations of DPC for promotion of the applicant to the post of OS and if found fit, his pay may be notionally fixed and the pensionary benefits be calculated accordingly. The above exercise shall be completed within a period of four months from the date of receipt of a certified copy of this order. It is made clear that the above direction shall be subject to outcome of the Writ petition No. 1889 (SB) of 2008.

7. In view of the aforesaid directions, the O.A. stands disposed of with no order as to costs.

*J. Chandra*

**(Ms. Jayati Chandra)**

Member-A

*VR. Arvawal*

**(Navneet Kumar)**

Member -J

Girish/-