

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 7th day of April, 2005

ORIGINAL APPLICATION No.268/2003

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR.A.K.BHANDARI, MEMBER (ADMINISTRATIVE)

D.C.Saini
s/o late Shri Ram Kishore Saini,
aged about 52 years
r/o P.No.4-Ram Nagar,
Bajrang Colony,
Sodala, Jaipur,
presently working as O.S.
at Chief Commissioner I.T. Office,
Jaipur.

.. Applicant

(By Advocate: Shri Y.K.Sharma)

Versus

1. Union of India through
the Secretary,
Ministry of Finance,
New Delhi.

2. The Chief Commissioner,
Department of Income Tax,
Income Tax Building,
N.C.R. Building,
Statue Circle,
Jaipur.

.. Respondents

(By Advocate: Mr. Gaurav Jain)

ORDER (ORAL)

The applicant has filed this Original Application
against non-consideration of his candidature for

promotion to the post of Administrative Officer Grade-II against the orthopaedically handicapped category as also rejection of legal notice dated 16.9.2002 vide impugned communication/order dated 17.10.2002 (Ann.A1) whereby claim of the applicant for promotion to the post of UDC prior to his promotion on 8.7.87 and to the post of Head Clerk w.e.f. July, 92 was rejected. In relief clause, he has prayed for the following reliefs:

- i) "It is therefore respectfully prayed that this Tribunal court graciously be pleased to accept and allow this original application and further be pleased to direct the respondents to consider the applicant's candidature on the post of Administrative Officer grade-II against the orthopedically handicapped category after providing consideration him for promotion in group 'C' category posts with all consequential benefits. It is pertinent to mention here that the post of Administrative Officer grade II is still vacant and the applicant is fully eligible for consideration on the same post against the physically handicapped category. Any other appropriate order or direction which this Tribunal thinks just and proper in the facts and circumstances of the case even the same has not been prayed for but which is necessary to ensure ends of justice may kindly also be passed in favour of the applicant. Cost of the applicant may also be awarded in favour of the applicant."

2. Briefly stated, the applicant was initially appointed on the post of Lower Division Clerk (LDC) on 11.7.1973 and thereafter he was promoted on the post of UDC on 8.7.87. The applicant was promoted to the post of Office Superintendent on 25.6.2001. It is further contended that the applicant belongs to orthopaedically handicapped category and as per instructions issued by the Ministry of Home Affairs, Department of Personal and Administrative Reforms vide circular issued from time to time 3% reservation is

provided to physically handicapped person in the post of Group 'C' and 'D' category. It is further stated that the applicant applied for promotion to the post of UDC under physically handicapped category on 19.2.1987. However, the case of the applicant was never considered in the physically handicapped category for promotion on the post of UDC, though he was granted promotion as UDC on 8.7.87 in the general category. It is further stated that further promotional avenues from the post of UDC is to the post of Head Clerk. For that purpose the applicant has made representation on 29.8.91 for consideration of his candidature for promotion to the post of Head Clerk in the physically handicapped quota. In reply to the above representation, the applicant was informed vide letter dated 30.10.91 by the respondents that he had not completed 5 years of service in the cadre of UDC which is essential qualification for promotion to the post of Head Clerk. However, the applicant was later on promoted to the post of Office Superintendent on 25.1.2001 in general category. The grievance of the applicant is that the applicant was eligible for consideration for promotion on the post of Head Clerk against the physically handicapped category in July, 1992 when he had completed 5 years service in the regular cadre of UDC in substantive capacity. Further grievance of the applicant is that his case may also be considered for promotion to the post of

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Administrative Officer Gr.II against the orthopaedically handicapped category. It is on this basis that the applicant has filed this OA, praying for the aforesaid reliefs.

3. The respondents have filed reply. The fact that the applicant was promoted as UDC on 8.7.87 and further promoted to the post of Office Superintendent on 25.6.2001 has been admitted. The respondents have categorically stated that the applicant was not entitled for promotion to the post of UDC against the physically handicapped quota as promotion in the year 1985 was given to one Shri J.N.Krishnani, an orthopaedically handicapped person in Group 'C' cadre whereas one Shri Shishupal Bansawal another orthopaedically handicapped person was promoted to the post of UDC in the year 1986, who was senior to the applicant. It is further stated that case of the applicant was considered in the year 1987 and he was promoted as UDC on 8.7.87. Regarding promotion to the post of Head Clerk, it is stated that eligibility criteria for promotion to the post of Head Clerk from the post of UDC is 5 years continuous service in the grade of UDC and the applicant had completed 5 years of service as UDC in July, 1992. It is further stated that the applicant could not be considered for promotion to the post of Head Clerk by the DPC held in 1993 to 1998 as his name did not fall in the zone of

consideration. However, in 1999 he got the benefit of ACP in the scale of Head Clerk. However, he was promoted as Office Superintendent on 25.6.2001 which post is higher than the Head Clerk. Thus, according to the respondents, the case of the applicant in orthopaedically handicapped category was always kept for consideration and he was granted promotion as and when he became eligible and fulfilled the condition of being in consideration zone. It is further stated that promotion to the post of Administrative Officer Gr.III will also be granted to him as per rules.

4. The applicant has filed rejoinder. In the rejoinder, the applicant has mentioned names of S/Shri R.P.Bhadwaj, Lala Ram Verma, M.L.Bhatia, Madan Singh Panwar, D.K.Shukla, L.N.Atoliya, Gopi Lal Bairwa, Mardana Meena and S.G.Tandon who were promoted prior to the applicant in the category of UDC, though they were junior to the applicant.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

5.1 We are of the view that the applicant has not made out any case for grant of relief. Admittedly, the applicant could not be promoted to the post of UDC in the year 1985-86 against the orthopaedically handicapped quota as persons senior to the applicant namely Shri J.N.Krishnani and Shri Shishupal Bansiwala

were granted promotion under the said category being senior to the applicant. It is also apparent from the record that the case of the applicant was considered in the year 1987 and he was promoted on the post of UDC on 8.7.87 when the applicant moved an application for promotion to the post of UDC on 19.2.87. The applicant failed to show how he was entitled for promotion from the date earlier to 8.7.87. Thus, no relief can be granted to the applicant regarding his promotion to the post of UDC from a date prior to 8.7.87. However, the main grievance of the applicant and as pleaded by him in this OA is regarding his promotion to the post of Head Clerk w.e.f. July, 1992 when he has completed 5 years of qualifying service on the post of UDC which was a pre-requisite condition for promotion to the post of Head Clerk. For that purpose, the applicant has also made representation on 29.8.1991 and vide letter dated 30.10.1991, the applicant was informed that he cannot be promoted to the post of Head Clerk as he had not completed 5 years of service in the category of UDC. The respondents have categorically stated that though the applicant had completed 5 years of service as UDC in July, 1992 but he could not be considered for promotion by the DPC held from 1993 to 1998 as his name did not fall in the zone of consideration. The respondents have also stated that the applicant has been granted pay scale meant for the post of Head Clerk in the year 1999 when

he was granted benefit under ACP. It is not the case of the applicant that he was within the zone of consideration and as such has been wrongly denied the benefit of promotion to the post of Head Clerk w.e.f. July, 1992 onwards. In any case, if the applicant was wrongly ignored by the respondents for promotion to the post of Head Clerk when the DPC was held in the years 1993 to 1998, it was open for the applicant to agitate the matter at appropriate stage. Having not done so, the applicant cannot be heard to say that he is entitled for promotion to the post of Head Clerk after July, 1992 when he had completed 5 years of service as UDC. From the material placed on record, it is also evident that the applicant has not raised any objection regarding his promotion to the post of Head Clerk against orthopaedically handicapped category during the relevant period when he was working on the post of UDC and also when he was granted the scale of Head Clerk in the year 1999, when benefit of ACP was granted to him. The applicant was granted promotion to the post of Office Superintendent on 25.6.2001 which is higher post than the Head Clerk. It is only after his promotion to the post of Office Superintendent that the applicant has served legal notice dated 16.9.2002 to the respondents thereby claiming promotion on the post of UDC and Head Clerk from retrospective date and also promotion to the post of Administrative Officer Gr.II against the

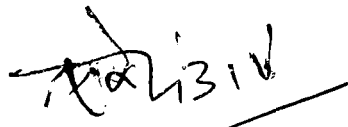
orthopaedically handicapped category which representation came to be rejected vide order dated 17.10.2002 (Ann.A1). Thus, the claim of the applicant for promotion to the post of Head Clerk w.e.f. July, 1992 cannot be entertained at this belated stage especially when the applicant has never raised such grievance while working on the post of Head Clerk till his promotion to the post of Office Superintendent on 25.6.2001 and also that the cause of action in favour of the applicant has arisen in the year 1992, 1993 to 1998 when the DPC for promotion to the post of Head Clerk was held and the case of the applicant was not considered by the DPC. Under Section 21 of the Administrative Tribunals Act, 1985, the applicant ought to have filed OA within one year from the date of cause of action. The applicant has neither filed an application for condonation of delay as stipulated under sub-section (3) of Section 21 of the Administrative Tribunals Act thereby showing sufficient cause for not preferring the application within the time prescribed in the Act nor any explanation is forthcoming as to why the applicant has not availed the remedy at the relevant time. Thus, in view of the law laid down by the Supreme Court in Secretary to the Government of India and ors. vs. Shivram Mahadu Gaikwad, 1995 Supp. (3) SCC 231 and also in the case of Ramesh Chand Sharma vs. Udham Singh Kamal, 2000 SCC (L&S) 53, this case cannot be

entertained and the same deserves to be dismissed without giving any finding on merit.

5.2 That apart, the applicant has mentioned the names of certain persons who have been granted promotion in the category of UDC prior to the applicant, who were also junior to the applicant. The applicant has taken this plea in the rejoinder for the first time, which cannot be entertained. In any case, the applicant has not impleaded the so called junior persons as respondents in this OA, as such no relief can be granted to the applicant which will certainly affect the rights of the so called junior persons, in case the benefit is granted to the applicant, as in that eventuality, the applicant will become senior to these persons. Thus, on this ground also, the applicant is not entitled to any relief. Further, all this happened prior to appointment of the applicant as UDC on 8.7.87, granting relief to the applicant, even if he has got case on merit, will certainly unsettle the settled claim.

5.3 As regards the grievance of the applicant for promotion to the post of Administrative Officer Gr.III, the respondents have categorically stated that the case of the applicant, who is orthopedically handicapped, shall be consider for next promotion to the post of Administrative Grade-III as per rules. Thus, the applicant cannot have any grievance on this account also at this stage and the OA is premature.

6. In view of what has been stated above, the present OA is devoid of merit and the same is accordingly dismissed with no order as to costs.



(A.K.BHANDARI)

Member (A)



(M.L.CHAUHAN)

Member (J)