

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUROriginal Application No.25 of 1999Jabalpur, this the 21th day of January, 2003

Hon'ble Shri M.P.Singh - Vice Chairman
 Hon'ble Shri G.Shanthappa - Judicial Member

Cyril David, S/o Shri Solomon David,
 aged about 45 years, Tax Assistant,
 In the Office of Commissioner of Income Tax,
 Jabalpur, R/o 19-A, Vatika Vihar, Near St.Joseph
 Convent, Ranjhi, Jabalpur (M.P.).

- APPLICANT

(By Advocate - Shri Manoj Sharma)

Versus

1. Union of India through Ministry of Finance,
Department of Revenue, North Block, New Delhi.
2. The Central Board for Direct Taxes, North Block,
New Delhi through its Chairman.
3. The Chief Commissioner of Income Tax, M.P.Aayakar
Bhawan, Hoshangabad Road, Bhopal (M.P.)
4. The Commissioner of Income Tax, Jabalpur, Central
Revenue Building, Napier Town, Jabalpur (M.P.).
5. Smt.S.M.Joshi, Head Clerk, through the Chief
Commissioner of Income Tax, M.P.Aayakar Bhawan,
Hoshangabad Road, Bhopal (M.P.).

- RESPONDENTS

(By Advocate - Shri B.da.Silva)

ORDERBy M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant
 has claimed the following main reliefs :-

"to quash the order of rejection dated 12.2.98(A-1)
 and order of rejection dated 20.1.98; and be further
 pleased to direct the respondent department to assign
 correct seniority to the applicant over and above
 respondent No.5 with all consequential benefits of
 pay, perk and status with arrears thereof; and
 to direct the respondent authorities to consider the
 case of the applicant for promotion to the next higher
 post of Head Clerk w.e.f. the date respondent No.5
 has been so promoted, with all consequential benefits
 of pay, perk and status including arrears thereof".

2. The brief facts of the case are that the applicant
 was appointed as Upper Division Clerk (for short 'UDC') in
 the Income-tax Department through direct recruitment on
 13.4.1976. He successfully qualified the departmental

Contd.....2/-

examinations for UDC and Inspector of Income-tax in July, 1978 and in the year 1983 respectively. He was confirmed as UDC with effect from 18.11.1981 vide order dated 14.6.1982 (Annexure-A-9). According to the applicant his seniority in the grade of UDC has not been fixed properly. As per recruitment rules for the post of UDC, 50% posts are to be filled by promotion and 50% by direct recruitment. According to the applicant, 16 slots of the UDCs are vacant which ought to have been filled by direct recruitment. According to him, one Smt.S.M.Joshi, respondent no.5, ~~who~~ was junior to him and appointed to the post of UDC on 1.12.1976, and was confirmed w.e.f. 18.11.1981 i.e. the same date when the applicant was confirmed. Smt.S.M.Joshi was ^{promoted as} ~~Head Clerk~~ vide order dated 2.1.1996 (Annexure-A-14). He has, therefore, requested the respondents to correct the seniority list and place him above the respondent no.5, and also consider his case for promotion as Head Clerk with effect from the same date from which respondent no.5 has been promoted. The respondents have not acceded his request, therefore, he has filed this O.A. claiming the aforementioned reliefs.

3. The respondents in their reply have stated that the applicant joined the department on 13.4.1976 as a directly recruited UDC. He passed the requisite departmental examination for UDC in July, 1978. Vide order dated 14.6.1982 he was confirmed in the cadre of UDC with effect from 18.11.1981. The applicant has made a special reference of respondent no.5, who as per the applicant is junior to him but has already been promoted as Assistant (Head Clerk). ^{g + 2} ~~It~~ ^{from 2} can be seen in the confirmation orders dated 14.6.82 and 15.1.82 that the names are in accordance with the seniority fixed as per gradation list of 1980. The rules of 1959, provide that seniority will follow the confirmation and accordingly seniority has been fixed. The respondents have also submitted that the OA is barred by limitation, and in this context they have relied on the decisions of the Hon'ble Supreme Court in the cases of

Malcom Lawrence Cecil D'souza Vs. Union of India & others, 1976 SCC (L&S)115 and K.R.Mudgal and others Vs.R.P.Singh and others, 1987 SCC(L&S)6. According to the respondents prior to 1.4.1988 inter-se-seniority was fixed as per direction in O.M. dated 22.12.1959 i.e. strictly according to confirmation and after 1.4.1988 seniority was delinked from confirmation as per DOP's OM dated 28.3.1988. Smt.S.M.Joshi, respondent no.5 was confirmed as UDC with effect from 18.11.1981 vide order dated 15.1.1982 at serial no.71 of the said order, while the applicant was confirmed in the later order dated 14.6.1982. It is thus clear that Smt.S.M.Joshi is senior to the applicant, therefore, the contention of the applicant is not tenable and the OA is liable to be dismissed.

4. Heard the learned counsel for the parties and carefully perused the pleadings available on record.

5. The learned counsel for the applicant has stated that since the recruitment rules provide 50% by promotion and 50% by direct recruitment, therefore, the rote quota system should have been followed and the applicant should have been given due seniority. He has given a chart Annexure-A-20 and stated that there are still number of vacancies available against the direct recruitment and the slots of direct recruits are still vacant. With regard to limitation, the learned counsel submitted that the applicant came to know about his seniority only after his junior Smt.Joshi, respondent no.5 was promoted to the post of Head Clerk and thereafter he has immediately filed this OA, therefore, the OA is not barred by limitation. He has also contended that if certain categories of persons have got the benefit of seniority as a result of Courts orders, similarly placed other persons are also entitled to get the same benefits. Since the applicant has come to know that seniority has not been properly fixed by the respondents, he has filed this OA. He has also relied upon the decisions of this Tribunal in the cases of P.R.Deshpande Vs. Union of India,

O.A.No.458 of 1991, decided on 18.12.1995; K.K.Gupta Vs. Union of India & others, O.A.181 of 1992 decided on 25.1.1996; and Mrs.M.Varghese Vs.Union of India and others, O.A.No.551 of 1991 decided on 19.9.1995 and has contended that since the applicant is similarly placed and is covered by those judgments he is entitled for the same reliefs. With regard to the plea raised by the respondents that unsettled things should not be disturbed after a long time, the learned counsel contended that in fact the department itself has been following seniority qua date of joining and has corrected seniority of various persons with retrospective effect, for example one Shri R.K.Sood, who was at serial no.230 vis-a-vis the applicant at serial no.191 in the list of 1984 and similarly at serial nos.526,434 respectively in the list of 1990, and serial no.127 and 44 respectively in the list of 1995, has been placed above the applicant vide order no.151 (Annexure-A-27) dated 29.1.1999/thereby correcting his seniority retrospectively by more than 15 years. The applicant has also filed a copy of the order dated 20.11.2001 (Document-B) along with MA 397/2002 to demonstrate that the department itself is taking various exercises retrospectively granting seniority and correcting the position as back as of 1976 and 1980. He has also relied on the decision of the Tribunal in the case of R.K.Dubey Vs.Union of India and others, O.A.No.209/94 decided on 30.10.1996, and R.A.No.153/1996 decided on 31.3.98.

6. The learned counsel for the respondents has submitted that no application for condonation of delay has been filed by the applicant. He, however, ^{could not controvert} ~~admitted~~ that the decisions relied upon by the applicant, referred to above, ^{the present O.A. He, however, admits that} ~~fully covers.~~ ^{and} those judgments have been implemented by the respondents.

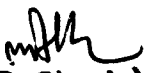
7. We have carefully gone through the decisions relied upon by the learned counsel for the applicant and found that the case of the applicant is fully covered by

those decisions. We have also found that the respondents themselves are issuing the orders and amending the seniority list of 1976 in the year 2001, therefore, the plea taken by the respondents that settled things should not be unsettled is not tenable in the present case.

8. In the similar case of P.B.Deshpande(supra) this Tribunal held that unless the respondents are able to indicate the reasons for delay in confirmation, government servant cannot be held responsible for the delay. In the instant case also the respondents have not been able to show the reasons for delayed confirmation. The Tribunal is, therefore of the opinion that the relief granted in the case of P.B.Deshpande(supra) should be granted to the applicant in this case also, and grant him all consequential benefits within a period of three months from the date of communication of this order. Ordered accordingly.

9. In the result, the OA is allowed. The impugned orders are quashed. No costs.

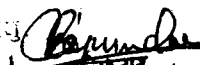

(G. Shanthappa)
Judicial Member


(M.P. Singh)
Vice Chairman

rkv.

7000000
23.1.04

पूजांकन सं ओ/न्या.....जबलपुर, दि.....
पतिनिधि
(1) सचिव, जबलपुर
(2) अध्यक्ष,
(3)
(4)
सूचना एवं आकस्मिकता के लिए


23.1.04

Shri. Chanoj Sharma
Shri. B. Dasila
GHC 1311