

**ORDERS OF THE BENCH**

**Date of Order: 14.09.2012**

OA No. 21/2009

Mr. S. Shrivastava, proxy counsel for  
Mr. Amit Mathur, counsel for applicant.  
Mr. Vishal Jain, proxy counsel for  
Mr. Gaurav Jain, counsel for respondents.

At the request of learned counsels appearing for  
the respective parties, put up the matter on 24.09.2012  
for hearing.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

*J. S. Rathore*  
(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

24/09/2012

OA No. 21/2009

Mr. Amit Mathur, Counsel for applicant.  
Mr. Gaurav Jain, Counsel for respondents.

Heard.

O. A. is disposed of by a  
Separate order on the separate  
sheets for the reasons recorded  
therein.

*Anil Kumar*  
[Anil Kumar]  
Member (A)

*J. S. Rathore*  
[Justice K.S. Rathore]  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH, JAIPUR.

*Jaipur, the 24<sup>th</sup> day of September, 2012*

**ORIGINAL APPLICATION No. 21/2009**

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER  
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

D.C. Saini son of Shri Ram Kishore Saini, aged about 59 years,  
resident of Plot No. 4, Ram Nagar, Bajrang Colony, Sodala,  
Jaipur. Presently working as A.O. III, Income Tax Department,  
Jaipur (Rajasthan).

... Applicant

(By Advocate : Mr. Amit Mathur )

Versus

1. Union of India through its Secretary, Ministry of Finance,  
Department of Revenue, New Delhi.
2. Chairman, Central Board of Direct Taxes, North Block,  
New Delhi.
3. Chief Commissioner, Income Tax, NCR Building, Statue  
Circle, Jaipur.

... Respondents

(By Advocate : Mr. Gaurav Jain)

**ORDER (ORAL)**

The applicant has filed this OA praying for the following  
reliefs:-

"It is, therefore, most respectfully prayed that this  
Original Application may kindly be allowed and "

- (i) the order Annexure A/1 may kindly be quashed and  
set aside or modified. The applicant may be treated  
as promotee to the post of Superintendent II in the  
year 1995 and further he may be allowed all  
consequential promotion and benefits. They may  
further be given actual benefits of pay and arrears

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- to the applicant in reference to the order dated 08.09.08 alongwith the interest @ 18% per annum.
- (ii) The applicant may further be promoted to the post of AO Grade II.
  - (iii) Any other appropriate relief, which the Hon'ble Tribunal may feel proper in the facts and circumstances of this case, may kindly be allowed."

2. The learned counsel for the applicant submitted that the respondents conducted the Review DPC for promotion to the post of Administrative Officer in 2008. Based on the recommendations of the Review DPC, the respondents promoted the applicant on notional basis to the post of Head-clerk w.e.f. 08.01.1993, Superintendent Grade II w.e.f. 30.08.1999 and Administrative Officer Grade III w.e.f. 21.06.2005.

3. Learned counsel for the applicant further submitted that the applicant was entitled for promotion to the post of Superintendent Grade II~~I~~ with effect from the year 1995 as he fulfilled the criteria prescribed for promotion to the aforesaid post in the year 1995. He completed the minimum year of qualifying service required for promotion to the post of Superintendent Grade II. However, without any just, proper and cogent reason vide order dated 08.09.2008, the year of promotion of the applicant was fixed for the post of Superintendent Grade II as year 1999 instead of the year 1995. The Government of India framed a policy for granting the benefit to the physically handicapped persons in the year

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1989. Vide this policy, the Government of India directed various departments to give the benefit of reservation in promotion to the physically handicapped persons. The applicant is Orthopadically handicapped person. He further argued that the applicant sought information under the Right to Information Act, 2005 regarding the decision taken by the respondents on the memorial filed by the applicant against the decision by CIT, Jaipur dated 12.03.1995 on the representation of the applicant against the adverse remarks. The Memorial of the applicant was filed before the Income Tax Officer (Incharge), Range-3, Jaipur on 18.05.1995 for the consideration of Chief Commissioner of Income Tax, Jaipur but the same does not appear to have been forwarded to the Office of the Chief Commissioner of Income Tax, Jaipur. Learned counsel for the applicant argued that the respondents be directed to decide the Memorial submitted by the applicant for consideration of Chief Commissioner of Income Tax, Jaipur.

4. On the other hand, the respondents pointed out that the applicant was considered for promotion on the post of Supervisor Grade II but the Departmental Promotion found him unfit for promotion on account of the adverse remarks in the ACR of the year 1993-94, which were awarded by the Reporting Officer and confirmed by the Reviewing Officer. His case for promotion to the post of Supervisor Grade II in the subsequent recruitment years 1996-97, 1997-98 and 1998-99

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was also considered by the Review DPC and he was found unfit on the same ground. Eventually, he was found fit for promotion in the recruitment year 1999-2000 and vide promotion order No. 390/08.9.2008, the applicant was given the said benefit w.e.f. 30.08.1999. The applicant had been given due benefit of promotion as & when found fit by the Review DPC and thus there is no merit in the OA and it should be dismissed with costs.

5. Heard the rival submissions of the respective parties and perused the relevant documents on record. The main ground, as stated by the respondents, for not giving promotion to the applicant w.e.f. the year 1995 is the adverse remarks in the ACRs of the applicant for the year 1993-1994. It has been stated by the learned counsel for the applicant that the Memorial against the adverse entry has not been decided by the respondents and this fact has not been disputed by the learned counsel for the respondents. Therefore, in the interest of justice, we deemed it proper to direct respondent no. 3 to decide the memorial of the applicant filed by him against the decision of the CIT, Jaipur dated 02.03.1995 against the adverse remarks awarded to the applicant. The respondent no. 3 is directed to decide the memorial of the applicant expeditiously but not later than three months from the date of receipt of a copy of this order. After the decision on the

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memorial of the applicant, the respondents may proceed further in the matter as per the provisions of law, if required.

6. With these observations, the OA is disposed of with no order as to costs.

*Anil Kumar,*  
(Anil Kumar)  
Member (A)

*K. S. Rathore*  
(Justice K.S.Rathore)  
Member (J)

*AHQ*