

Central Administrative Tribunal
Principal Bench

(16)

O.A. No. 2200, of 1998

New Delhi, dated this the 8th December, 2000

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

Shri Jairaj Singh,
S/o Shri Virendra Pal Singh,
R/o I-35, Ashok Vihar Phase I,
Delhi-110052. .. Applicant

(By Advocate: Shri V.S.R. Krishna)

Versus

Union of India through

1. Secretary,
Dept. of Revenue,
Ministry of Finance,
North Block,
New Delhi.
2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
North Block,
New Delhi. .. Respondents

(By Advocate: Shri V.P. Uppal)

ORDER

MR. S.R. ADIGE, V C (A)

Applicant impugns respondents' order dated 9.9.98 (Annexure A-1) superseding him for promotion as Commissioner of Income Tax on regular basis.

2. Admittedly the post of Commissioner of Income Tax (CIT) is a 'Selection Post' to be filled up on the recommendations of a high powered DPC consisting of the Chairman/Member, UPSC as Chairman, Secretary, Dept. of Revenue, Ministry of Finance, Chairman, CBDT and Member, CBDT as Members.

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3. The DPC met on 17.12.98 but as per respondents' reply it did not find him suitable for promotion to the post of CIT.

4. We are informed that the DPC which met on 17.12.98 considered applicant's ACRs for the preceding 5 years. A perusal of applicant's ACRs reveals the following:

<u>Year</u>	<u>Overall rating in ACR</u>
1997-98	
1.4.97 to 12.11.97	Good
13.11.97 to 31.3.98	Very Good
1996-97	Very Good
1995-96	Good
1994-95	Good
1993-94	Very Good

5. As per applicant's own averments the Bench Mark for promotion was 'Very Good' and relying upon the Hon'ble Supreme Court's judgment in the case of U.P. Jal Nigam & Others Vs. P.C. Jain and others JT 1996 (1) SCC 641 applicant's counsel Shri Krishna has argued that as applicant had secured 'Very Good' grading in most of his ACRs except those where he obtained 'Good' grading, respondents were bound in law to have communicated the down graded 'good' entry to applicant so that he would have represented against them, and as they failed to do so, the DPC's recommendations were vitiated.

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6. Respondents' counsel Shri Uppal has challenged these assertions. He has asserted that the Hon'ble Supreme Court's ruling in the Jal Nigam's case (supra) regarding communication of fall in standard as adverse remarks, was in the specific context of the U.P. Jal Nigam Rules, which is not applicable to the facts and circumstances of the present case, and which is guided by DP&R's O.M. dated 30.12.83 (Annexure R-1). He emphasises that there is no specific challenge to the entries in the ACRs and unless the ACRs were modified in full or in part the DPC was not precluded from taking them into consideration when posting their overall assessment of the officer's performance for the relevant period. Reliance in this connection was placed upon the CAT, P.B. order dated 22.9.98 in O.A. No. 1443/93 D.K. Sandila Vs. U.O.I. & Others in which one of us [Shri S.R. Adige, VC (A)] was a party. He has also emphasised that it is entirely for the DPC to make its own classification of the officer being considered by them for promotion to selection posts, irrespective of the grading that may be shown in the ACR itself. It has also been emphasised that the DPC was a high level body, and when it had considered the respective merits of the candidates, assessed the grading; and considered their cases for promotion, the Tribunal could not sit over the assessments made as an appellate authority. Reliance in this connection was placed on the Hon'ble Supreme Court's ruling in Union of India Vs. M. Jangamayya & Others 1997 (2) SCR 28; Smt. Nutan Arvind Vs. Union of India & Anr. JT 1996 (1) SC 699; Anil Katyar Vs.

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Union of India AISLJ 1997 (1) 145; and B.N. Das & Anr. Vs. CDMO Banpada & Anr. AISLJ 1992 (1) 177 Para 33.

7. We have given the matter our careful consideration.

8. It is true that the ratio of the ruling in the U.P. Jal Nigam's case (supra) was handed down in the context of the U.P. Jal Nigam Rules, but respondents cannot argue that their rules and instructions regarding communication of adverse entries in ACRs to the employee is any different. In respondents' organisation too, whereas an adverse entry has to be communicated to the employee, a down graded entry is not required to be communicated. The Hon'ble Supreme Court in the Jal Nigam's case (supra) has held that if an employee earns say 'Very Good' report in a particular year, which in a succeeding year is reduced to the level of 'Good' without any communication to him, even if that entry is a positive one, it can in a given case perilously be adverse, and to say that an adverse entry should always be qualitatively damaging need not always be true, because the downgrading in such cases is reflected by comparison.

9. In the present case this is precisely what has happened. Applicant who was rated overall in his ACR for 1993-94 as Very Good, was rated in 1994-95 as 'Good', without communication to him of this downgrading, as a result of which he was not

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recommended for promotion as CIT by the 1998.

Applying the Hon'ble Supreme Court's ruling in the Jal Nigam's case (supra) to the facts and circumstances of this case, the remarks for the year 1993-94 and 1994-95 should have been communicated to applicant, and he should have been given an opportunity to represent against the same before those remarks were taken into consideration by the DPC for recommending promotions to the post of Commissioner of Income Tax in 1998. While coming to this conclusion we make it clear that we are not sitting as an appellate authority over the decision of the DPC and hence the various ruling cited by Shri Uppal do not avail respondents. Indeed, applicant's counsel Shri Krishna has shown us an order dated 15.2.99 (copy taken on record) issued by the Home Ministry in respect of Shri B.R. Lall, IPS (1967 Haryana). He had represented to the Government against downgrading of his ACRs for the periods 1994-95 and 1995-96. As the aforesaid ACRs were not adverse, applicant was informed that no representation against the same would lie. Meanwhile he filed O.A. No. 2370/97 which was admitted, with liberty given to respondents to dispose of his representation on merit with a speaking order. Thereupon, in consideration of the fact that his ACRs for the years 1993-94 and 1994-95 had not been written in accordance with the ratio laid down in the U.P. Jal Nigam's case (supra), the Home Ministry decided that the aforesaid ACRs of that officer would not be taken into account while considering his promotion and empanelment.

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10. In the result this O.A. is disposed of with a direction to respondents to communicate applicant's ACR for the year 1994-95 and 1997-98 to him within two months from the date of receipt of a copy of this order. It will be open to applicant to represent against these remarks within one month of the date of communication of the same to him, and in the event applicant does represent, respondents should dispose of that representation in accordance with rules and instructions within three months of its receipt. If upon disposal of that representation, any change in applicant's ACRs are necessitated, respondents should consider holding a review DPC to consider applicant's promotion as Commissioner of Income Tax w.e.f. the date his immediate junior was so promoted. No costs.

Lakshmi
(Mrs. Lakshmi Swaminathan)
Member (J)

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Adige
(S.R. Adige)
Vice Chairman (A)