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Central Administrative Tribunal, Principal Bench

Original Application No.1730 of 1995

New Delhi, this the 20th day of July, 2000

Hon'ble Mr. Justice Ashok Agarwal Chairman
Hon'ble Mr. V.K. Majotra, Member (Admnv)

C.R. Gautam, S/o late Shri Ram Dass, R/o 688,
B.K.S. Marg, New Delhi. - Applicant

(By Advocate Shri P.P. Khurana)

Versus

1. Union of India through Secretary,
Ministry of Finance, North Block, New
Delhi.
2. Chairman, Central Board of Direct Taxes,
Ministry of Finance (Deptt. of Revenue)
North Block, New Delhi.
3. Secretary, Deptt. of Personnel &
Training, North Block, New Delhi.
4. Shri M.R. Bhardwaj, Advocate, D-7, Hauz
Khas, New Delhi-110016. - Respondents

(By Advocate Shri V.P. Uppal)

O R D E R

By V.K. Majotra, Member (Admnv) -

The applicant holds the post of Income-tax Officer (Group-B) since 1982. He had earlier filed OA No.102/92 which was disposed of by this Tribunal vide order of 31.1.1994. The respondents were directed by aforesaid order that adverse remarks entered in applicant's ACR for the year 1990-91 be expunged and consequential benefits made available to him by considering his empanelment for the post of Assistant Commissioner of Income-tax (Group 'A') by constituting a review DPC. SLP against the Tribunal's order filed by respondent-department was dismissed. The Department held review DPC for the earlier DPCs held in October 1991, December 1991, June 1993, and March/April, 1994. Applicant's case was considered by the review DPCs. He was graded by these review DPCs as 'good' only. Thus,

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his name was not recommended for inclusion in the select panels.

2. The applicant's grievance is that he has been denied promotion to the grade of Assistant Commissioner of Income-tax and that he has been superseded by numerous junior officers notwithstanding the fact that he is a member of scheduled caste and has a right to be considered for promotion against one of the reserved vacancies in the grade of Assistant Commissioner. It has been alleged that the respondents have ignored instructions contained in DOPT OM dated 20.7.74 (Annexure-A-2) which inter alia provides for reservation for SC/STs in posts filled by promotion made by selection from Group 'C' to Group 'B', within Group 'B' and from Group 'B' to the 1st rung or category in Group 'A'. These instructions as amended and clarified from time to time further provide that if officers belonging to SC/ST in the feeder grade with merit equal to that of other officers in the zone of consideration are not available to fill all the vacancies reserved for them, the difference should be made up by selecting officers who are in the zone of consideration irrespective of merit but who are considered fit for promotion. Incidentally, the post of Assistant Commissioner is the first rung or category of Group 'A' post for purpose of promotion from the grade of ITO Group 'B'. Thus, these instructions are applicable to the matter under consideration. According to the applicant a large number of vacancies in the grade of Assistant Commissioner existed during the period 1991-95. The applicant was not only within the normal zone of

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consideration during these years, his name was also within the number of vacancies to be filled by promotion each year. The applicant claims that the over all assessment of his performance is 'very good'. Thus, he could not have been superseded by his juniors for promotion in 1991.

3. It is further claimed by the applicant that for promotion to the post of Assistant Commissioner the over all assessment of the performance of the officer in the zone of consideration as reflected in the ACRs has to be 'very good' i.e. out of five ACRs which are considered by the DPC at least three should be assessed as 'very good'. The applicant claims that he had three such 'very good' ACRs including that of 1990-91. The applicant has sought quashing of order dated 11/14 November, 1994 vide which he was informed that review DPC held on 17.10.1994 had not recommended his name for inclusion in the panel for the years 1990-91, 1991-92, 1992-93 and 1993-94 and directions to the respondents to reconvene the review DPC in the light of the provisions of the DOPT OM dated 20.7.1974.

4. The respondents in their counter have maintained that as scheduled caste officers with better grading were available at the time of the DPCs as well as the review DPCs held for the DPCs of October 1991, December 1991, June 1993 and March/April 1994, the applicant's name was not recommended for inclusion in the select panel. All instructions relating to reservation of SC/ST officers were complied with in selection and the applicant could not be allowed

promotion for want of comparative merit. According to the respondents the post of Assistant Commissioner is a selection post and merit is the criterion for promotion. The bench mark for promotion is 'good', however, those graded as 'outstanding' are rank^{-ed} enbloc senior to those graded as 'very good' who are in turn ranked senior to those graded as 'good'. The respective seniority of the candidates within the group or inter se seniority is not disturbed. The criterion of promotion for SC/ST candidates is also the same. The number of vacancies in respect of these categories are determined and officers within the consideration zone are arranged in the order of their grading. The applicant's name was not included in the select panels as the review DPCs found that SC officers with better grading were available. According to the respondents none of the applicant's juniors graded as 'good' has been promoted.

5. In compliance of the directions of the Tribunal in order dated 31.1.1994 in OA 102/92, the respondents expunged the adverse remarks in ACR for 1990-91 of the applicant and a review DPC was held on 17.10.1994 reviewing the proceedings of the earlier DPCs held between October, 1991 and March/April, 1994. The review DPCs assessed the applicant as 'good' for the purpose of his promotion for vacancies pertaining to aforesaid years. For want of comparative merit vis-a-vis other SC candidates within the zone of consideration, the applicant could not be recommended for promotion and no SC junior than the applicant

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✓ assessed as 'good' was promoted. The applicant has filed a rejoinder and the respondents have also filed their reply to the rejoinder.

6. We have heard the learned counsel of both sides and perused the DPC records and the relevant ACRs of the applicant produced by the respondents at the time of argument.

✓ 7. The learned counsel of the applicant reiterating the grounds traversed by him in the OA contended that after expunction of adverse remarks in the ACR of 1990-91, that ACR should be considered as 'very good'. Similarly, his ACR for the year 1991-92 which allegedly has been down graded from 'very good' to 'good' by the reviewing officer should also be considered as 'very good'. In this manner he has three 'very good' ACRs out of five ACRs considered by the DPCs for his promotion. The learned counsel of the applicant particularly requested us to examine the minutes of the DPCs held in June, 1993 and on 9.10.1991.

8. The DPC dated 9.10.1991 was held for 176 vacancies (General 137, SC 26 and ST 13). The DPC empanelled SC candidates who had been assessed as 'very good' up to serial no.306. The applicant who was at serial no.335 was assessed as 'good' and there were at least three more SC candidates higher in seniority than the applicant who had been assessed as 'very good' and were not empanelled, as 15 vacancies meant for SC candidates had been exhausted by ^{senior} SC candidates who had been assessed as 'very good'. For 1992-93, DPC was held

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in June, 1993 for 100 vacancies (General 78, SC 15, ST 7). We find that after exhausting 15 vacancies meant for SC candidates who had been assessed as 'very good', there were quite a few still left among the SC candidates who had been assessed as 'very good' vis-a-vis the applicant who had been assessed as 'good' only. We have also found that no junior candidate than the applicant who had been assessed as 'good' had been empanelled for the post of Assistant Commissioner of Income-tax in the above DPCs.

9. The learned counsel of the respondents referred to a decision of the Hon'ble Supreme Court in the case of Union Public Service Commission Vs. Hiranyalal Dev, (1988) 7 ATC 72 contending that the Tribunal cannot substitute itself in place of the selection committee. The powers to make selection are vested in the selection committee under the relevant rules and the Tribunal cannot play the role, which the selection committee has to play. He next drew our attention to the decision of Durga Devi & another Vs. State of H.P. and others, 1997 (2) S.C.S.L.J. 209, wherein it was held by their Lordships that "[T]he Tribunal fell in error in arrogating to itself the power to judge the comparative merits of the candidates and consider the fitness and suitability for appointment. That was the function of the selection committee". He further referred to the decision of Mrs. Anil Katiyar Vs. Union of India & others, 1997 (1) SLJ (SC) 145. In that case candidates had been graded as 'very good' by the DPC. Although the Tribunal held that it was not expected to play the role of an appellate authority or

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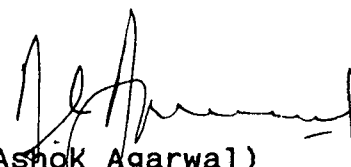
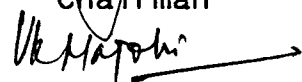
an umpire in the acts and proceedings of the DPC and that it could not go into the recommendations made by the DPC which had been accepted by the Government. The Tribunal has, at the same time, looked into the ACR of the appellant and has observed that out of two 'outstanding' grading given to the appellant one 'outstanding' grading does not flow from various parameters given and the reports entered therein and that must be the reason why the appellant had been graded as 'very good'. It was held that "the Tribunal was in error in going into the question whether the appellant had been rightly graded as 'outstanding' in the years.."

10. From the facts of the case and record we find that whereas all relevant instructions in the case were observed by the DPCs/ review DPCs, no mala fide has been established against any member of the DPC. We have been conscious of the limited scope of the judicial review, as held in the afore-mentioned cases, even then we have seen all the relevant records and satisfied ourselves as to the compliance of the directions of the Tribunal and observance of the parameters for selection to the post of Assistant Commissioner of Income-tax, and instructions on reservation in the matter. We are also satisfied that the respondents have not displayed any arbitrariness while considering the case of the applicant for promotion to the post of Assistant Commissioner of Income-tax. The applicant has been meted out a fair deal and justice but unfortunately he could not be included in the panels drawn for the years 1990-91 to 1993-94 on the basis of comparative merit ~~of~~

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even among the SC candidates falling within the zone of consideration during the respective years. In the ultimate analysis we do not find any merit in the OA, which is accordingly dismissed. No order as to costs.


(Ashok Agarwal)
Chairman

(V.K. Majotra)
Member (Admnv)

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