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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1108/2000

Monday, this the 29th day of March, 2001.

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

Sri Manoj Kumar Sarkar,
Aged about 58 years,
Son of Late Shri R.D. Sarkar,
R/o 164A/4/2 Lake Gardens,
Calcutta:700 045 APPLICANT
(By Advocate: S.K. Ray)

VERSUS

1. Union of India
Ministry of Finance,
Department of Revenue,
North Block, New Delhi - 1
Through its Secretary.
2. The Central Board of Direct Taxes,
North Block, New Delhi - 1
Through its Chairman RESPONDENTS
(By Advocate: Shri V.P. Uppal)

O R D E R (ORAL)

By Hon'ble Shri S.A.T. Rizvi, Member (A):

The applicant, an Indian Revenue Service (IRS) of 1966 batch, was dismissed from service by an order of the disciplinary authority dated 29.10.1986. The aforesaid order was impugned in OA No. 1049/1986, which was decided by this Tribunal on 11.1.1989, modifying the punishment into a minor penalty of censure. The respondents were directed accordingly to make an entry showing the imposition of the penalty of censure in the ACR of the applicant. The applicant was also ordered to be reinstated from the date of his dismissal with all consequential benefits. Honouring this, by the respondents' order of 5.6.1989, the applicant was reinstated w.e.f. the date of dismissal (i.e. 29.10.1986), and by their order of 5.1.1990 the penalty of censure was imposed and the same was ordered

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to take effect from 29.10.1986. The aforesaid action has led to delayed promotion of the applicant to the post of Commissioner of Income Tax and that is why this OA.

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. In consequence of this Tribunal's order dated 11.1.1989, the respondents were required to hold a review DPC which was ultimately held after some delay in April, 1990. However, the applicant's claim for promotion w.e.f. September, 1987 was rejected and a letter to that effect was issued by the Ministry of Finance (Department of Revenue) on 25.1.1991. The same is addressed to the Chief Commissioner of Income Tax, Calcutta, and a copy of it has been provided by the learned counsel appearing for the applicant during the course of hearing of this case. The aforesaid letter has been taken on record. The said letter clearly provides that the review DPC held in April, 1990 did not recommend the inclusion of the name of the applicant in the select panels drawn by September, 1987 and April, 1988 DPCs held for promotion to the grade of Commissioner of Income Tax. The aforesaid letter also clarified that the said recommendations of the review DPC have been accepted by the Appointment Committee of the Cabinet (ACC). Thus, by a Government decision, the applicant's prayer for promotion to the grade of Income Tax Commissioner with effect from September, 1987/April, 1988 was clearly rejected.

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4. Meanwhile, aggrieved by the respondents' action in imposing the penalty of censure, the applicant filed another OA being OA No. 1308/1991 seeking deletion of the penalty of censure from his ACR for the year 1986-87. That OA was dismissed by the Tribunal by its order dated 18.9.1995. We have noted that the prayer made in the aforesaid OA No. 1308/1991 was, in fact, a prayer to annul the order of this very Tribunal passed on 11.1.1989. We also find that while passing the aforesaid order dated 18.9.1995 (in OA No. 1308/1991), the Tribunal had categorically held that the respondents' order of 5.1.1990 communicating the imposition of the penalty of censure was perfectly justified and valid. In the same order of 18.9.1995 the Tribunal had gone on to observe that the review DPC's assessment could not be said to suffer from any infirmity particularly in the light of the fact that selections were required to be made strictly on the basis of merit. The Tribunal in that case had also observed that even if it is accepted that a censure entry is no bar to promotion, the same could not have been dis-regarded by the review DPC held in April, 1990. The aforesaid observations in respect of this Tribunal's order dated 18.9.1995 in OA No. 1308/1991 have been culled from a comprehensive and common order passed by this very Tribunal on 12th September, 1997 in OA No. 1305/1991 filed by the applicant and in five other OAs filed by similarly placed officers. The aforesaid order dated 12th September, 1997 is placed at Annexure A-2.

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5. We have in the foregoing paragraphs referred to this Tribunal's common order dated 12.9.1997 passed in OA No. 1305/1991 filed by the applicant and in five other OAs instituted by other similarly placed officers. All the six OAs involved in the aforesaid case were disposed of by the Tribunal by the aforesaid order of 12.9.1997 with a direction to the respondents to consider the inclusion of the applicant in that case (including the applicant in the present case) in the panel for promotion to the grade of Commissioner (Income Tax) w.e.f. September, 1987/April, 1988 by making applicable a standard similar to the standard applied in the case of Shri Panna Lal, Smt. Baljit Mathiyani and Smt. Rama Rani Hota (PP 55-56 of OA). The delayed compliance of the aforesaid order led to the institution of a Contempt Petition, being CP No.260/1999, by the applicant. The said petition was decided by the Tribunal on 13.1.2000. The Contempt Petition was dismissed. However, the applicant's claim to agitate his grievance regarding his non-inclusion in the panels aforesaid was, however, recognised. The present OA has been filed accordingly.

6. The learned counsel for the respondents has drawn our attention to the reply filed by the respondents in the aforesaid Contempt Petition. A copy of the same has been placed on record at PP 19-20 of the OA. It is seen therefrom that the direction given by this Tribunal on 12.9.1997 has been complied with. According to the aforesaid reply, the competent authority had in compliance of the Tribunal's directive

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considered the case of the applicant for inclusion in the panel for promotion to the grade of Commissioner of Income Tax with effect from September, 1987/April, 1988 and, after a detailed examination of the relevant ACRs of the applicant vis-a-vis Shri Panna Lal, Smt. Baljit Mathiyani and Smt. Rama Rani Hota and on a consideration of the case in accordance with the principles laid down by the Tribunal had come to the conclusion that the applicant would not qualify for promotion to the post of Commissioner of Income Tax. The Contempt Petition, in question, was dismissed after taking into account the action taken by the respondent authority as above. The learned counsel appearing for the respondents has argued that the applicant has made an attempt to conceal the decision of this Tribunal made in the aforesaid OA No. 1308/1991 which had conclusively rejected the applicant's prayer for annulling the out-come of the meeting of the review DPC held in April, 1990.

7. In a nutshell, what we find is that the applicant first approached this Tribunal in OA No.1049/1996 impugning the order of punishment imposed on him. The Tribunal decided in favour of a minor penalty of censure, which was imposed by the respondents. Thereafter, he proceeded to file another OA No. 1308/1991, inter alia, questioning the imposition of the penalty of censure. This was rejected. He filed yet another OA being, OA No. 1305/1991, which was considered by the Tribunal along with five other OAs and a combined decision was



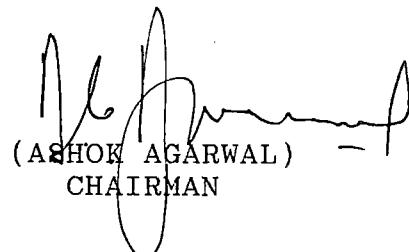
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rendered on 12th September, 1997. A direction was thereby given to the respondents to consider the inclusion of the applicant in the panel of promotion with effect from September, 1987/April, 1988 by applying to the case the standard earlier applied in similar cases relating to Shri Panna Lal and others. We find that the same relief has been sought by the applicant again in this case. Thus the applicant has filed not one but three OAs seeking in effect the same relief. This amounts to abuse of the process of the Court, and on this ground alone this OA deserves to be dismissed.

8. For all these reasons mentioned in the preceding paragraphs, there is absolutely no case for granting the relief of quashing the minutes of the review DPC held in April, 1990. For the same reason, there is no case for granting any other relief sought by the applicant. In the circumstances, the OA fails and is dismissed. No costs.



(S.A.T. RIZVI)
MEMBER(A)



(ASHOK AGARWAL)
CHAIRMAN

(pkr)