

52

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1796/89

New Delhi, this 22nd day of December, 1994

Shri N.V.Krishnan, Hon'ble VC(A)  
Shri C.J. Roy, Hon'ble Member(J)

Smt. Nutan Arvind  
w/o Shri Arvind Kulkarni  
DCIT (Appeals), Akola  
Maharashtra

.. Applicant

By Shri Ashok Aggarwal, Advocate

versus

1. Union of India, through its  
Secretary  
Deptt. of Revenue, M/Finance  
North Block, New Delhi

2. Chairman  
Central Board of Direct Taxes  
Deptt. of Revenue, M/Finance  
North Block, New Delhi

.. Respondents

By Shri V.P. Uppal, Advocate

ORDER

(By Shri C.J. Roy, Hon'ble Member(J))

The applicant has challenged the order dated 9.5.88 (Annexure B) inasmuch as her name is not found therein for promotion to the grade of Deputy Commissioner of Income-Tax(DCIT) while her juniors have been promoted.

2. She is also aggrieved by the letter dated 2.8.88 rejecting her appeal for promotion, conveyed to her through letter dated 10.8.88 (Annexure H). The circumstances leading to the filing of this OA are that the applicant was appointed as Income Tax Officer(Group A) sometime in 1979 (Annexure A) through a written examination and interview held in 1978-79. She says she became due for promotion to the grade of Deputy Commissioner (then called Assistant Commissioner) in 1987. Her name was considered by the Departmental Promotion Committee(DPC) but, despite her excellent performance during the period of her service, she has been ignored for promotion.

T

She made an appeal to Respondent No.2 on 8.6.88 (Annexure G) enumerating the details of her performance and the targets achieved by her and stating "on the basis of my performance I feel I should not have been overlooked by the DPC". But her appeal was not acceded to by the impugned letter dated 10.8.88/2.8.88 (Annexure H). Hence this application claiming a relief for a direction to the respondents "to reconsider the applicant's case for promotion to the grade of Deputy Commissioner of Income Tax from 9.5.88 disregarding such entries in her ACRs that have in effect acted as adverse entries, even though not actually adverse in the narrow sense and which have not been communicated to her".

3. Since the respondents failed to file their reply, despite several opportunities afforded to them, their right to file was forfeited by order dated 26.3.90. However Shri V.P. Uppal, learned counsel appearing for the respondents, was directed to produce the DPC file alongwith the ACRs etc. for our perusal, which were produced.

4. We have heard the learned counsel for both the parties and perused the records including the material filed by the learned counsel at the end of the hearing containing his written submissions, the legal basis of his case, the instructions of Government relied upon by him and also a synopsis of the applicant's performance.

5. The grounds on which the prayer is made in the OA are contained in the averments made in the O.A. and are not set out separately. They are as follows:-

4

(a) The first ground concerns her record of service. It is stated that the applicant has an impeccable record of service. As the DPC was held in March, 1988, the ACRs for the five years 1982-83 to 1986-87 would have been considered. In regard to the Character Rolls for this period the applicant has stated as follows:

(i) It is her belief that for the year 1982-83 she would have received a 'Very Good' grading;

(ii) For 1983-84, the applicant worked on two posts, under four Reporting Officers and two Reviewing Officers. The longest period she worked was under Shri H.S. Subramaniam, I.A.C. i.e. 4 months. It is complained that the Reporting Officers did not follow the special procedures to be followed in such cases by writing separate reports. There was only one report of SH. H.S. Subramaniam. He graded her 'Good', instead of 'Outstanding' which was justified by her work. This was compounded by the Reviewing Officer who did not follow the instructions contained in D.O.P. O.M. No. SI/3/74 - Estt.(A) dated 22.5.75 which, inter alia provides inter alia as follows:

"It has been decided that where he is not sufficiently familiar with the work of the officer reported upon, so as to be able to arrive at a proper and independent judgement of his own, it should be his responsibility to verify the correctness of the remarks of the Reporting Officer after making such enquiries as he may consider necessary. Where necessary, he should also give a hearing to the person reported upon recording his remarks".

(iii) For 1984-85, the applicant's work was openly acclaimed by the Reporting Officer S. Jaypaul as 'Outstanding'. Hence, if the grading was less than

~

'Outstanding', it would have been due to its being downgraded by the Reviewing Authority, without informing the applicant and giving her an opportunity.

~ (iv) She complains that her record for the year 1985-86, which was excellent, was spoiled by the Reporting Officer Shri V.P. Shamsuddin. It is alleged that the competence and integrity of this Reporting Officer were themselves suspected. It is alleged that the Reviewing Officer failed to discharge his duties properly and did not correct this wrong assessment.

(v) For the year 1986-87 she states that she held an additional charge also and worked under four different officers. Though her performance was excellent, she apprehends that she did not get a fair rating for this period.

(b) The second ground is that the DPC which met on 31.3.88 should have called for a special report for the year 1987-88, which it did not do.

(c) In so far as the DPC's assessment is concerned, she states that it met on 31.3.1988 but the minutes were signed on 6.4.1988. As 64 persons were to be promoted, 192 candidates would have been considered by the DPC and considering that the record of five years had to be seen in each case, the DPC could not have spent more than one minute in perusing one year's C.R. The record could not have been assessed properly. Hence the functioning of the DPC in

~

this manner is perfunctory and is contrary to the departmental instructions. The DPC did not at all apply its mind.

(d) Thus, a failure to observe the departmental instructions regarding writings of CRs and holding DPC meeting has led to this injustice.

6. The applicant does not reveal the source of information on the basis of which allegations have been made regarding her CR and the DPC proceedings which are confidential records. The applicant has not impleaded in this O.A. any of the officials against whom she has a grievance in the matter of writing her character rolls and spoiling it deliberately or carelessly (e.g. Shri H.S. Subramaniam and V.P. Shamsuddin).

7. We have perused the CR record of the applicant. In respect of the allegations made, our observations and conclusions are as follows:

i) The applicant has not made a specific averment in respect of the years in which she had worked under more than one Reporting Officer, that she had also worked for more than three months under such officer and, therefore, each such officer should have given a separate report, as required by the standing instructions. That is, there should have been more than one report for that year. Hence, the allegation on this ground is without any basis and is rejected. For the same reason <sup>the</sup> ~~the~~ reliance on the decision of the Bombay Bench of the Tribunal in OA-801/89 Chelat Rayeran Ramchandra Menon vs. Union of India, is of no avail.

(ii) The applicant herself has admitted that she had worked only under Shri H.S. Subramaniam in 1983-84 for the longest period i.e. four months. It is this official who has recorded the remarks as Reporting Officer. The Reviewing Officer was Shri U.N.N. Rao who has stated that the applicant has served for 9 months under him. He has thus a sufficiently long acquaintance with the applicant's work. Therefore, the allegation that he ignored the instructions dated 22.5.1975 (para 5(a)(ii) supra) is baseless. That apart, the instructions leave it to the reviewing authority only to decide whether his familiarity is adequate to record his remarks or whether he should make further enquiries.

(iii) The Reporting Officer assessed the applicant as 'Outstanding' for 1984-85. The Reviewing Officer, however, rated her as 'Very Good'. There is no instruction that this may be done only after giving notice to the applicant. In the <sup>my</sup>very nature of things, this is not required because the Reporting Officer and the Reviewing Officer merely record their views of the officer's performance.

(iv) Sh. V.P. Shamsuddin has recorded his remarks on various items of work and graded him as 'Good'. They give the grounds for such conclusion.

(v) The officer who reviewed the remarks given by Shri V.P. Shamsuddin for 1985-86 was Shri M.Y.M.R. Menon, Commissioner of Income Tax who states that the applicant had served under him for one year. Hence, the observations as at (ii) above will apply.

my

(vi) In 1986-87, the Reporting Officer was Shri A. Ala Sayed, Deputy Director of Inspection (Investigation) II, Bangalore. His report was reviewed by Shri Maretkayar Chief Commissioner of Income Tax under whom the applicant served for 6 months.

(vii) No adverse remarks have been entered in the C.R. of the applicant for the period 1982-83 to 1986-87. Therefore, there has been no communication to her on this account.

In the circumstance we find that the allegations made in respect of the CRs are not substantiated.

8. The learned counsel for the applicant points out that the post designated as Deputy Commissioner (Assistant Commissioner at the time the DPC was held) is a selection post. The instructions of the Department of Personnel show that the Bench mark for such selection is 'Very Good'. Admittedly, no adverse remarks have been communicated to the applicant during the period 1982-83 to 1986-87. Yet, the applicant was superseded<sup>ed</sup> and her juniors were promoted. He, therefore, concludes<sup>es</sup> that the DPC had graded the applicant as 'Good' only, a fact which is admitted by the respondents. The grading renders her ineligible for promotion as it is less than the Bench mark. It is, therefore, contended that, on this ground, the character rolls wherein the applicant has been assessed as only 'Good', should be treated as containing adverse remarks. As these

My

remarks have not been communicated, the DPC should not have considered such character rolls and instead, reports for earlier years should have been considered.

9. In this connection, he draws our attention to the judgement of the Bombay Bench of the Tribunal in O.A. 125/92 - Bhaktadas Roy vs. Union of India & Others. In that case, the applicant complained of his being superseded<sup>ed</sup> for promotion to the rank of Commissioner of Income Tax. Paras 21 and 22 of that judgement deal with this issue. The applicant relied upon a judgement of the Jabalpur Bench in Jugal Kishore Goyal vs. Union of India (OA 291/88), decided earlier on 17.5.89. Copies of these judgements are kept on record. It was submitted to the Jabalpur Bench that if the Bench mark for consideration was 'Very Good' and the officer who was graded as 'Good' was not good enough, the 'Good' grading itself had to be treated as an adverse remark<sup>k</sup> and had to be conveyed to the officer. Admittedly, this had not been done. It was also pointed out that the Supreme Court has laid down in the case of Gurdayal Singh Fijji vs. State of Punjab (AIR 1979 SC 1622) that uncommunicated adverse remarks had to be ignored. The Bench then noted that this was not without force. Relying on this argument and the adverse decision of the Jabalpur Bench, it was held by the Bombay Bench that failure on the part of the respondent to communicate particulars of CRs where the applicant was graded as 'Good' made it necessary to constitute a review DPC which should be directed to ignore the remarks of the year 1988-89 which were only 'Good'. Such a direction was issued in that O.A.

~



10. The learned counsel for the respondents countered by stating that if this argument is taken to its logical conclusion, there will be problems in assessing the CRs of officers by the DPC. If, for example, an officer had only CRs grading him 'Good' not only during the period under review but even for earlier years, it would mean that no C.R. of that officer can be looked into.

11. This point is well taken. It helps to focus attention on the untenable situation that can be created if the argument advanced is applied to the example given above.

12. We are, however, of the view that, the Jabalpur Bench of the Tribunal did not lay down such a law in Jugal Kishore Goyal's case (supra). The following extract from para 5 of that judgement establishes this:-

"...It is contended that if 'Good' is not good enough for promotion purposes, it is the duty of the CBDT and Government to even treat the good remarks as adverse and convey it to the applicant. The applicant here is indirectly challenging the very system of grading officers as 'good' or 'very good' because by simple classification and pigeonholing of an officer into the category 'good', eliminates him from the empanelment and it is claimed that withholding of a promotion is a form of penalty and without giving an opportunity to the officer to rebut his classification as 'good', principles of natural justice are violated. This line of argument is not without some force."

In that case, two DPC meetings were held, one in September, 1987 and the other in April, 1988. The CRs for the years 1982-83 to 1986-87 were considered in para 9 of the judgement. It was noted that for the years 1982-83 and 1983-84 the grading in the reports was only 'Good'. Nevertheless, the Bench observed that there was no justification to impugn the DPC meeting held in September, 1987 except for the need for a reassessment of the relative merit of the applicant vis-a-vis respondents Ashok Sharma and

my

-10-

B.N. Singh, by a Review DPC. There is no direction that the CRs of the applicant for 1982-83 and 1983-84 which were graded as 'Good' only should be treated as containing adverse remarks and that, therefore, they should not be taken into account by the Review DPC, which, instead, should take the reports of earlier years.

13. Therefore, with great respect, we are of the view that, in Bhaktadas Roy's case, the Bombay Bench had read much more into the judgement of the Jabalpur Bench, than was warranted. It was, therefore, misled into assuming that such a declaration of law has been given by that Bench.

14. We shall next consider the allegations in respect of the D.P.C. We have seen the records produced by the learned counsel for the respondents which includes the note to the DPC and the proceedings of the DPC. The DPC met under the Chairmanship of Shri Jagdish Rajan, Member UPSC and included the Secretary, Department of Revenue, the Chairman, CBDT and Member, CBDT. The meetings were held on 23rd to 25th and 30th march, 1988. We notice that the members signed the proceedings on 30.3.1988 itself. The records of 141 persons were considered and a panel of 65 persons was prepared which includes 4 SC candidates. The name of the applicant does not find a place in the panel. No officer has been assessed as 'Outstanding'. The committee had assessed the officers as either 'Very Good' or 'Good'. In some cases, the assessment was placed in a sealed cover. The applicant was assessed as 'Good'. None included in the panel had the rating 'Good'.

15. The applicant has not alleged any mala fide, prejudice or bias against any member of the DPC. The ground in para 5 (c) supra that there was no application of mind by the DPC is baseless. It is seen that the DPC met on four days and not for one day as alleged. The presumption that the DPC could not have spent more than one minute per ACR is thus falsified. In the circumstances, we are unable to agree with the contentions of the applicant that she has not received a fair deal at the hands of the DPC.

16. In passing, we should mention here the plea of the learned counsel for the respondents that, even if there was an uncommunicated adverse remark, it could be looked into by the DPC. Reliance was placed for this proposition on *Baikunth Nath Dass Vs. Union of India* (1992 (1) SLJ 171 (SC)). That was a matter of premature compulsory retirement ordered under FR 56 (j) in public interest. It was held that the order would not be vitiated, even if adverse remarks in the CR, not communicated, were relied upon. That ratio will not apply. The Supreme Court itself has held that uncommunicated adverse remarks cannot be looked into when considering promotion (*AIR 1979 SC 1622 Gurdial Singh Fijji vs. State of Punjab* and *AIR 1987 SC 1989 State Bank of India vs. Mohd. Mysuddin*)

17. We do not find any merit in the contention that the ACR of 1987-88 also should have been seen after getting a special report, as the DPC met on 31.3.88. No such instruction appears to have been issued in this regard by the Department of Personnel.

18. The learned counsel desired that we should pursue the CRs of the applicant and ~~his~~<sup>her</sup> juniors who have been promoted and see for ourselves whether the supersession of the applicant was justified. He points out that this has been done by this Tribunal earlier. In this ~~contestation~~<sup>note</sup> he has drawn our attention to the decisions of this Tribunal in Jugal Kishore Goyal (supra) and Bhaktadas Roy (supra) and in O.A. 102/92 of the Principal Bench (C.R. Gautam Vs. Ministry of Finance & Others). It is true that in Jugal Kishore Goyal's case, a comparison was undertaken by the Bench about the relative merits of the record of applicant and the respondents and the conclusion reached by the DPC was not found acceptable. However, no law has been laid down in that OA about the competence of the Tribunal in this regard. Indeed, the Bench itself had noted the judgement of the Supreme Court in U.P.S.C. vs. Hiranyalal Dev & Others ((1988) 7 ATC 72 SC) as holding that the Court should not issue a writ directing the promotion of an officer and that the performance and abilities of officers should be left to the judgement of a professional committee like the DPC. In so far as C.R. Gautam's case is concerned, we notice that the grievance related to expunction of adverse remarks. The Bench only examined the record to see whether there was any ground at all to record the adverse remarks. It is in this context that the Bench looked objectively into the physical performances of the applicant and the respondents and found that adverse remarks were not given to the respondents, whose performance was inferior to that of the applicant. That case is, therefore, distinguishable.

19. - The learned counsel for the applicant submitted that a Government employee can entertain certain legitimate expectations. The respondents have totally denied the applicant the benefits which she could normally have been given. He relies on the judgement of the Supreme Court in 1992 (4) SCC 477 - Navjyoti Coop. Group Housing Society & Others vs. Union of India & Others and 1993 (3) SCC 499 - Union of India & Others vs. Hindustan Development Corpn. & Others dealing with the doctrine of legitimate expectations. We do not find it necessary to spend any time on these submissions. Government employees are governed by rules, regulations and instructions in respect of their service conditions, including promotion. Therefore, the doctrine of legitimate expectation has no role to play.

20. He has also cited the following judgements to stress that while expressing the powers of judicial review, we can look into matters about which the applicant has made a complaint:

i) AIR 1981 SC 70 - Baldev Raj Chadha v. Union of India & others.

ii) 1993 (4) SCC 441 - Supreme Court Advocates-on-record Association and Others.

iii) Full Bench judgement of the Tribunal in B.N. Rangwani v. Union of India and others (PB Delhi) 1988 (4) SLJ 684 (CAT).

M

21. We have carefully considered this matter. There need be no dispute about the extent of the powers of Courts which examine orders in judicial review. These are well defined by decisions of the Apex Court. If the promotion is denied to an employee, it is open to him to seek judicial review of the impugned order. The scope of judicial review is, however, limited to find out whether the decision has been taken in accordance with the law and the procedures laid down. It is instructive to recapitulate the observations of the Supreme Court in three cases.

i) In State Bank of India vs. Mohd. Mynuddin (AIR 1987 SC 1889) it was held as under:-

"If promotion has been denied arbitrarily or without any reason ordinarily the Court can issue a direction to the management to consider the case of the officer concerned for promotion but it cannot issue a direction to promote the officer concerned to the higher post without giving an opportunity to the management to consider the question of promotion. There is good reason for taking this view. The Court is not by its very nature competent to appreciate the abilities, qualities or attributes necessary for the task, office or duty of every kind of post in the modern world and it would be hazardous for it to undertake the responsibility of assessing whether a person is fit for being promoted to a higher post which is to be filled up by selection. The duties of such posts may need skills of different kinds - scientific, technical, financial, industrial, commercial, administrative, educational etc. The methods of evaluation of the abilities or the competence of persons to be selected for such posts have also become now-a-days very much refined and sophisticated and such evaluation should, therefore, in the public interest ordinarily be left to be done by the individual or a committee consisting of persons who have the knowledge of the requirements of a given post to be nominated by the employer. Of course, the process of selection adopted by them should always be honest and fair. It is only when the process of selection is vitiated on the ground of bias, mala fides or any other similar vitiating circumstance other considerations will arise." (para 5)

ii) To the same effect is the following observation in Dalpat Abasaheb Solunke, etc. etc. vs. Dr. B.S. Mahajan etc. etc. (AIR 1990 SC 434):-

"It is needless to emphasise that it is not the function of the Court to hear appeals over the decisions of the Selection Committees and to scrutinize the relative merits of the candidates. Whether a candidate is fit for a particular post or not has to be decided by the duly constituted Selection Committee which has the expertise on the subject. The decision of the Selection Committee can be interfered with only on limited grounds, such as illegality or patent material irregularity in the constitution of the Committee or its procedure vitiating the selection, or proved mala fides affecting the selection etc." (para 9).

This has again been reiterated in Air Vice Marshal S.L. Chhabra, VSM (Retd) vs. Union of India & Anr. (1993 (3) SLJ 49 (SC) as follows:-

"In such a situation, it was neither possible for the High Court, nor is possible for this Court to act as a court of appeal against the decision of the Selection Board which has been vested with the power of selection of an officer for being promoted to the rank of Air Vice Marshal. No oblique motive has been suggested on behalf of the appellants against any of the members of the Selection Board and there is no reason or occasion for us to infer such motive on the part of the members of the Selection Board for denying the promotion to the appellant with reference to the year 1987. Public interest should be the primary consideration of all Selection Boards, constituted for selecting candidates, for promotion to the higher posts, but it is all the more important in respect of Selection Boards, meant for selecting officers for higher posts in the Indian Air Force. The court cannot encroach over this power, by substituting its own view and opinion." (Para 9).

22. We, therefore, refrain ourselves from making any independent assessment of the applicant's C.R. based on the material the learned counsel now supplied on the conclusion of arguments relating to the applicant's performance because that is not our function and we have no powers to resort to such an exercise.

23. The learned counsel for the applicant then contended that, in the immediately succeeding year, the applicant was, admittedly, promoted as Deputy Commissioner on the basis of the same performance. In his written submissions, it is stated - without disclosing the source of information - that the Bench mark for promotion 'Very Good' is assigned 18 marks and that the applicant got only 17

marks, both in the year under consideration and the next year. Therefore, he contends that the applicant should have been promoted in the previous year itself, i.e., the year under consideration in this OA.

24. We are unable to agree. In the next year C.R. of one more year (i.e., 1987-88) must have been considered. That could have made the difference between selection and rejection. If, however, the applicant, indeed, did not make the grade of 'Very Good' in the next year also, as stated by her counsel, and yet she was promoted, it could, perhaps, give a ground to the respondents to correct the mistake made by them, though we do not give any finding in this regard. But, that would not be a good ground to grant promotion in the preceding year, i.e., the year under consideration in this O.A.

25. To conclude, we are of the view that merely because the applicant was not promoted and her juniors have been promoted, there can be no inference or presumption that her record was not either written or assessed properly. She has not impleaded any authority as respondents alleging malice while reporting on her in the C.R. or while reviewing it. A perusal of the CRs shows that they have been recorded properly. If any adverse remark is communicated, the Tribunal may enquire whether there was any basis therefor. It is not for the Tribunal to find out whether, on the basis of the entries in the CR, the applicant has been properly assessed by the DPC. The DPC was headed by a Member of the UPSC and consisted of the seniormost officials in the department. Nothing has been alleged against them. A perusal of the DPC records show that the applicant's case was



considered and she was graded 'Good'. The panel consists of only people graded as 'Very Good'. We do not find any grounds to direct a reconsideration of the applicant's case for promotion and, therefore, we do not find any merit in this O.A. and hence, it is dismissed. No costs.

*22/12/94*  
(C.J. Roy)  
Member(J)

*22/12/94*  
(N.V. Krishnan)  
Vice-Chairman(A)

'Sanju'