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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A./ ~~W.P.~~ No. 2240/89 /19 Decided on: 20.2.96.

O.P. Agarwal. APPLICANT(S)
(By Shri G.D. Gupta, Advocate)

VERSUS

UII & others. RESPONDENTS
(By Shri R.S. Agarwal, Advocate)

CO RAM

THE HON'BLE SHRI S.R. ADIGE MEMBER (A).

THE HON'BLE ~~SMT.~~ LAKSHMI SWAMINATHAN, MEMBER (J).

1. To be referred to the Reporter or not? Yes.
2. Whether to be circulated to other Benches of the Tribunal? No.

S.R. Adige
(S.R. ADIGE)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
Principal Bench

O.A. No. 2240 of 1989

New Delhi, dated the 20th February, 1996

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri O.P. Aggarwal,
S/o Shri K.R. Aggarwal,
R/o KI-143, Kavi Nagar,
GHAZIABAD (U.P.) APPLICANT

(By Advocate: Shri G.D. Gupta)

VERSUS

1. Union of India through
the Secretary,
Ministry of Finance,
Dept. of Revenue,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
New Delhi.
3. Chief Commissioner of
Income Tax,
Lucknow.
4. Commissioner of Income Tax,
Meerut (U.P.)RESPONDENTS

(By Advocate: Shri R.S. Aggarwal)

J U D G M E N T

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

We have heard Shri G.D. Gupta for the applicant and Shri R.S. Aggarwal for the Respondents and have also perused the materials on record, including the applicant's ACRs which were produced for our inspection by the Respondents' counsel.

2. In so far as the prayer of the applicant in this O.A is concerned, viz. consideration for promotion to the post of Asst. Commissioner of Income Tax w.e.f. 5.1.88, with consequential benefits, we
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notice that the applicant's case was duly considered by a duly constituted DPC (against whose members no malafides are alleged) which met on 5.1.88 and graded the applicant's ACRs for the 5 years preceding years as follows:

| | |
|---------|-----------|
| 1982-83 | Very Good |
| 1983-84 | Good |
| 1984-85 | Good |
| 1985-86 | Very Good |
| 1986-87 | Good |

3. As the applicant had secured only two 'Very Good' and 3 'Good' during the relevant period he was assessed overall as "Good". Admittedly the post of Asst. Commissioner of Income Tax is a selection post and the DPC recommended the promotion of those who had secured an overall assessment of Very Good (a minimum of 3 'Very Goods' during the relevant period) or 'outstanding' and hence did not recommend the applicant's case.

4. During arguments, applicant's counsel Shri G.D. Gupta raised two points. Firstly he urged that the applicant's ACRs for 1987-88 should also have been considered by the DPC for which period he had secured 'Very Good'. The DPC met on 5.1.88 and could not ~~possibly~~ ^{possibly} have had the ACRs for 1987-88 (period ending 31.3.88) before it for the simple reason that those remarks would have been written only after 31.3.88. Secondly, no exception could be made in the applicant's

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case alone and the relevant period had to be uniform for all the candidates being considered. Thirdly, if the year 1987-88 were to be included, then the year 1982-83 would have had to be excluded, so that the coverage was uniformly limited to five years, and even in that case the applicant's overall assessment would still remain 'Good' based on two "very Goods", and 3 "Goods". Hence this argument fails.

5. Secondly, it was argued that the Chief Commissioner of Income Tax had examined the applicant's representation dated 17.3.89 and recommended that the applicant's grading for the year 1983-84 be upgraded from 'Good' to 'Very Good'. This argument was based on the averments contained in para 4.12 of the O.A. and an M.A. to this effect was also filed by the applicant on 8.6.95 in reply to which the respondents in their affidavit reply dated 19.7.95 specifically denied that the Chief Commissioner of Income Tax, Lucknow or Delhi had opined on the applicant's representation that his grading for 1983-84 should be upgraded from good to 'Very Good'. This has been further confirmed in their addl. affidavit reply dated 27.9.95 in which they

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have denied receiving any representation from the applicant for general upgradation of his ACRs for the period from 1982-83 to 1986-87 and have further pointed out that there is no provision under rules for upgradation of CRs. It is true that during the course of hearing a letter of the C.C.I.T., Lucknow dated 27.3.89 was shown to us addressed to the C.B.D.T. forwarding the applicant's representation and describing him as a Very good officer, but there was no specific recommendation in that letter for upgrading the applicant's ACRs for any particular year. We inspected the applicant's ACR which was furnished for our perusal by the respondents' counsel, but no such orders were available. Despite sufficient opportunity given to Respondents, the counsel informed us that they had been unable to locate any representation of the applicant praying for general upgradation of his ACRs for the period 1982-83 to 1986-87 either.

7. It is well settled that the Tribunal cannot substitute its own assessment about the performance and conduct of an officer for that of the DPC. Judicial interference is limited to satisfying ourselves that the action taken by the Resp. is not illegal, arbitrary, malafide, perverse, discriminatory or based on no material. In the present O.A. the applicant's counsel has not succeeded in establishing that the respondents' action suffers from any of the above infirmities and the ruling in State of Kerala Vs. N.M. Thomas

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1976 (1) SLR 805 is not relevant to the facts of this case.

7. In the result we find ourselves unable to grant the relief prayed for by the applicant. The O.A. is dismissed. No costs.

Lakshmi Swaminathan
(Mrs. LAKSHMI SWAMINATHAN)
Member (J) 30/2

S.R. Adige
(S.R. ADIGE)
Member (A)

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