

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

C.P.No.422/2016 in O.A./100/3604/2015

Date of reserve for orders:22-12-2020

Date of Pronouncement of orders:25 -01-2021

(Through Video Conferencing)

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Dinesh Singh, s/o Shri Sheo Prasad Singh,
DOB:18.09.1966, Age49 years, r/oB-402,
Ayakar Vihar, Vaijalpur, Near Shyamal Chaar
Rasta, Ahmedabad, Gujarat, presently working
As Addl. CIT (TDS), Ahmedabad Range,
2nd Flr., Navjivan Trust Building, Ashram Road,
Ahmedabad-380 009.Applicant

(Through Shri A.S.Singh, Counsel for the Applicant)

Versus

1. Dr. Hasmukh Adhia, Secretary (Revenue),
Union of India, M/o Finance, Dept. of Revenue,
North Block, New Delhi-110 001.
2. Smt. Rani Singh Nair, Chairperson,
Central Board of Direct Taxes, Union of India,
M/o Finance, Dept. of Revenue, North Block,
New Delhi-110 001. Respondents

(Through Shri Hanu Bhaskar and Shri Rajeev Kumar, Counsel for the Respondents)

ORDER

Justice L.Narasimha Reddy, Chairman:

This contempt case is filed alleging that the respondents did not implement the order dated 12.05.2016 passed by this Tribunal in OA.No.3604 of 2015.

2. The brief facts of the case are as under:

The applicant is an officer of the Indian Revenue Service (Income Tax) of 1994 batch. Complaining that he was not promoted to the grade of Commissioner of Income Tax (CIT) even while his juniors were promoted through an order dated 16.09.2015, the applicant filed OA.No.3604 of 2015. He pleaded that there did not exist any criminal or disciplinary proceedings against him at the relevant point of time nor was he placed under suspension and the denial of promotion to him was contrary to the law laid down by the Hon'ble Supreme Court in *Union of India etc. v. K.V.Jankiraman etc.* (AIR 1991 SC 2010) and the OM dated 14.09.1992 issued by the DOP&T.

3. The Tribunal took note of these facts and held that denial of promotion to the applicant was contrary to law and directed the respondents to promote the applicant from the date on which his immediate junior was promoted to the grade of CIT. This contempt case is filed alleging that the respondents did not implement the order passed in the OA.

4. The respondents filed a Writ Petition challenging the order in the OA. According to them, the CVC recommended initiation of disciplinary proceedings against the applicant for his acts and omissions in the capacity of the officer on deputation to the Ministry of Home Affairs, to handle the evictee properties. The Writ Petition was dismissed. They have also filed a Review Petition.

5. At one stage, the contempt case was closed and on dismissal of the Writ Petition, it was revived. Directions were issued from time to time calling for the status as regards the implementation of the order issued in the OA. The respondents have also filed status reports on several occasions. In the first report, it was stated that the applicant has since been issued with charge memo and since this development has taken place before the issuance of the order of appointment, further steps could not be taken. According to them, the recommendations of the DPC are deemed to have been kept in a sealed cover, awaiting the outcome of the disciplinary proceedings. The ACC is said to have expressed such a view.

6. We heard extensive arguments of Mr. A. S. Singh, learned counsel for the Applicant and Mr. Hanu Bhaskar and Mr. Rajeev Kumar, learned counsel for the Respondents.

7. This case presents certain typical situations. It is true that the applicant did not face any disciplinary or criminal proceedings, by the time, the DPC met for promotion to the grade of CIT in the year 2015. Obviously, taking note that into account, the Tribunal allowed the OA, through an order dated 12.05.2016. The respondents filed a Writ Petition No.10543 of 2017. Because of the pendency of the Writ Petition, no steps in the direction of implementation of the order in the OA were taken. The Writ Petition was dismissed and thereafter the contempt case was revived.

8. Had the matter remained the same, there would not have been any justification or scope for the respondents to deny the issuance of order of promotion of the applicant once the DPC recommended his case. However, a significant development has taken place.

9. The applicant was on deputation to the Ministry of Home Affairs at the relevant point of time. In relation to certain steps taken by him, two FIRs came to be filed. The Department was also contemplating the issuance of charge memo and correspondence in that behalf, was taking place. The gist thereof is furnished in the counter affidavit, as under:

“3. That as per procedure for promotion of officers to the grade of Sr. Administrative Grade (SAG) and above approval of the ACC for empanelment of officers recommended by DPC is required. Once the approval of the ACC regarding the empanelment is received, officers are

promoted with the approval of the Appointing Authority. Accordingly, the proposal for promotion to the grade of CIT of Shri Dinesh Singh IRS (94049) along with his peers for panel year 2014-15 was submitted to the ACC, for approval in July 2015. However, the ACC while according approval vide DoP&T's communication dated 07.09.2015 for empanelment of officers of the grade of Commissioner of Income Tax on the basis of the recommendations of the DPC held on 0506.2015 had, inter-alia, directed that "*....the Department of Revenue to expedite taking a decision on the pending complaints against Shri Ajay Pandey, Shri Tejinder Pal Singh, Shri OM Prakash Kant, Shri Ashok Kumar, Shri Bhubaneshwar Kulsherestha, Shri Mahsh Kumar Shah and Shri Dinesh Singh and thereafter, resubmit their cases for consideration of the ACC, at the earliest.*" Therefore, Shri Dinesh Singh could not be promoted along with his peers.

4. That since certain complaints were pending against the Shri Dinesh Singh and the ACC sought certain clarifications from the Department time to time. Information was sought from DGIT (Vig.)/CVO on the pending complaints. On receipt of the status time to time, it was forwarded to ACC. Department of Revenue (CBDT) has been regularly submitting status of pending complaints against Shri Dinesh Singh, IRS on deputation with MHA as Custodian of Enemy Property during relevant period of time (24.11.2005-25.10.2011) to all. The DGIT (Vig.), CBDT was regularly corresponding with MHA for update of status of pending complaints. Lastly, Vigilance Cell, MHA, vide their OM No.C12020/83/2014-VC and 37/47/2014-EP both of 06.01.2017, have forwarded the original documents/papers which were required by DGIT (Vig.)/CVO. All those documents were immediately forwarded by Joint Secretary (Admn.)/CBDT, vide note dated 09.01.2017 to Pr. DGIT (Vig.) for taking appropriate action. DGIT (Vig.)/CVO after obtaining approval of the Competent Authority served a

charge sheet dated 06.02.2017 for major penalty proceedings to Shri Dinesh Singh on 10.02.2017.

5. That the DoP&T conveyed directions of the Competent Authority in the ACC, vide communication dated 08.03.2017 in case of Sh.Dinesh Singh as under:

“ In view of the fact that charge sheet has been served on Shri Dinesh Singh, the recommendations of the DPC dated 05.06.2015 in this regard for the panel year 2014-15 may be treated as in deemed ‘sealed cover’ by the DPC.”

6. That in consideration of directives of the Hon’ble Tribunal dated 22.03.2017, the Appointing Authority decided that ACC may be requested to reconsider their directions and accord their approval for empanelment of Shri Dinesh, IRS (94049) so that he may be promoted and Central Administrative Tribunal’s order is complied with to avoid the contempt proceedings. Accordingly, Department sent request to ACC through DoP&T for reconsideration.

7. That directions given by this Hon’ble Tribunal from time to time during hearing of Contempt Proceedings were brought to the notice of the ACC, through Department of Personal Training and Cabinet Secretariat. Lastly, the Department (CBDT) addressd a communication dated 30.03.2017 to the Department of Personal and Training to bring directions of this Hon’ble Court to the notice of the ACC.

8. That since the matter is pending before the ACC, as soon as the file is received from the ACC, the Hon’ble Court would be intimated about the same. The Respondents Department has requested for expediting the matter in view of the contempt petition pending before the Hon’ble Court.”

10. A charge memo dated 06.02.2017 was issued to the applicant. Taking note of these developments, the ACC vide its communication dated 08.03.2017 observed as under:

“In view of the fact that charge sheet has been served on Shri Dinesh Singh, the recommendations of the DPC dated 05.06.2015 in this regard for the panel year 2014-15 may be treated as in deemed ‘sealed cover’ by the DPC.”

11. The applicant has filed OA.2772/2017 challenging the memorandum of charge dated 06.02.2017. The OA was dismissed on 22.08.2019. Writ Petition No.13259/2019 filed against the order in the OA, is said to be pending.

12. The issue pertaining to the status of an officer, whose case is recommended by the DPC for promotion, but was (a) issued a charge memo or (b) faced criminal case or was (c) placed under suspension, before the order of actual promotion could be issued; was dealt with by the Courts as well as DOPT. The view taken in this behalf is that the recommendations of the DPC shall be treated as those in the sealed cover and the concerned officer can be promoted only when he comes out clean, in the proceedings that came to be initiated against him.

13. The applicant fits into a circumstance of similar nature. Though his name was recommended by the DPC in the year 2015, two FIRs were registered and a charge memo was issued, before the actual order of promotion could be issued to him. Under these circumstances, it cannot be

said that there was any deliberate act of contempt on the part of the respondents. There existed a legal impediment for the implementation of the directions issued in the OA.

14. We do not find any contempt on the part of the respondents. The CP is accordingly closed.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

DSN