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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

O.A. No. 1440 of 1987.

Decided on 24-5-1990.

S.K. Goyal

....Applicant.

Vs.

1. Union of India through Secretary,  
Department of Personnel & Training,  
New Delhi.
2. Chairman, Central Board of Direct  
Taxes, North Block, Central Secretariat,  
New Delhi. and 21 others.

....Respondents.

For the Applicant - Shri N.L. Duggal, Advocate.

For the Respondents - Shri J.K. Sibal with  
Shri Pramod Sibal, Advocate.

B.S. SEKHON:

Concisely stated the factual matrix germane to the adjudication to the instant Application is:-

Applicant who was working as Assistant Commissioner of Income Tax and is senior to Respondents No. 3 to 23 was assessed by the Departmental Promotion Committee which met on 28th and 29th October, 1986 under the Chairmanship of the Chairman, UPSC for drawing up a list of Assistant Commissioners for promotion to the post of Commissioner of Income Tax. As per the averment made by the Applicant, his name was included in the panel<sup>as</sup> prepared and approved by the U.P.S.C. But his name was deleted from the Selection list by the Department of Personnel and Training to whom

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the selection list was sent for formal approval of the Appointments Committee of the Cabinet. Saying that he had been best in his official working, the Applicant has added that the deletion of his name from the select list and depriving him from the promotion is violative of Articles 14, 16 and 311 of the Constitution as also of principles of natural justice. Applicant also made a representation to the Chairman against his non promotion as Commissioner of Income Tax vide Annexure A/2. Vide communication dated 10.4.1987 (Annexure A/3), Applicant was advised that the matter is under consideration and the decision of the Government would be communicated as and when arrived at.

2. Another D.P.C. was convened in September, 1987 wherein names of more than 50 officers were considered for promotion. The Applicant has since been promoted to the post of Commissioner of Income Tax from April, 1988.

3. In the counter filed by Respondents No. 1 and 2, it is stated that the name of the Applicant was recommended by the DPC, but the Appointing authority did not include his name, in the select list of officers who were approved by the appointing authority after considering the recommendations of the DPC. Out of the four members constituting the DPC, one member graded the Applicant as "Very Good", whereas, the other three members did not agree with this grading

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and the Applicant's name was not included in the final select list on the basis of the assessment of the appointing authority after due consideration of the record of the Applicant and the recommendations of the Department Promotion Committee. Respondents have also denied the averments about violation of Articles 14, 16, 311 of the Constitution and about the violation of the principles of natural justice adding that the whole matter is being reviewed as per the procedure prescribed in consultation with the Union Public Service Commission and in case the Applicant is found fit by the appointing authority after consultation with the Union Public Service Commission, he will be given his due seniority as soon as the decision is taken in this regard by the appointing authority. Applicant had also filed Original Application No. 1442 of 1987 for expunction of the adverse remarks recorded against Cols. 13, 16(c) and 17(IV), (V) and (VI) of his Annual Confidential Report for the year 1985-86.

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4. During the course of arguments the learned counsel for the Applicant submitted that in view of the expunction of adverse remarks carried out on 20th April, 1990, the complexion of the case has entirely changed. So saying, the learned counsel for the Applicant urged that a direction be given to the Respondents to convene a fresh D.P.C. for re-assessing the Applicant for promotion to the post of Commissioner (Revenue) and that on the basis of the recommendations which may be made by the fresh convened D.P.C., appointing authority may be asked to take appropriate action in the matter. The learned counsel for the Respondents countered by submitting that the Tribunal may not adopt this course for the reasons; Firstly, that after the filing of the Application fresh D.P.C. had already been convened and Respondent has since promoted the Applicant w.e.f. April, 1988. Banking upon the following portion contained in O.M. No. 22011/6/75-Estt. (D), dated the 30th December, 1976 issued by the Department of Personnel and Administrative Reforms, the second reason urged by the learned counsel for the Respondent was that in such a case the decision as to whether or not a Review D.P.C. should be convened is is to be taken by the appointing authority:-

"In case, the DPC did not defer consideration of the case and has taken into account the adverse remarks no further action would be necessary, if the competent authority, after considering the representation against the adverse remarks, decides not to tone down or expunge the adverse remarks. In cases, where the adverse remarks were toned down

or expunged, the appointing authority should scrutinise the case with a view to decide whether or not a review by the DFC is justified taking into account, the nature of the adverse remarks toned down or expunged. Representations received after the time allowed need not be brought to the notice of the DFC unless the competent authority had entertained the same after condoning the delay. In cases, where the U.P.S.C. have been associated with the DFC, approval of the Commission would be necessary for a review of the case by the DFC."

5. The first reason put forward by the learned counsel for the Respondents is difficult to countenance in that the Applicant would have been entitled to be promoted from an earlier date, if his case had been approved for appointment pursuant to the recommendations of the DFC convened <sup>Sept., 1986.</sup> on 28th & 29th. Turning to the second reason, the same cannot be deemed to be altogether implausible. But a closer scrutiny inclines us to the view that this reason would not justify the rejection of the submission made by the learned counsel for the Applicant <sup>of</sup> the same is otherwise held to be valid. In this connection it would be pertinent to point out that the <sup>Sept., 1986</sup> recommendations of the DFC convened on 28th, 29th/ qua the Applicant are plainly unsustainable for the simple reason that the aforesaid DFC took into account the adverse remarks in the ACR of the Applicant which have been expunged on 20th April, 1990. These remarks were expunged in the light of the decision taken by the President pursuant to the direction given by the Tribunal in the judgment dated 27th September, 1989 rendered

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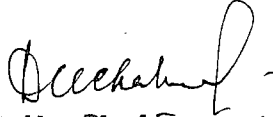
in OA No. 1442/87. In such a case as this, the appropriate course is to convene a fresh DPC. The above extracted instructions relied upon by the learned counsel for the Respondents do not in any wise oust the jurisdiction of the Tribunal to give such directions. In all fairness to the learned counsel for the Respondents, the learned counsel also did not question the jurisdiction of the Tribunal to make appropriate directions. It may also be added that the course of action suggested by the learned counsel for the Respondents may lead to multiplicity of litigation which is best avoided. The second reason is also, therefore, hereby repelled. The request made by the learned counsel for the Applicant is perfectly justified.

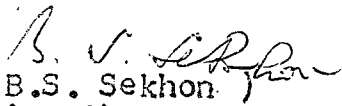
6. Before concluding we may also refer to another point made by the learned counsel for the Respondents. The learned counsel for the Respondent contended and, rightly so, that the Tribunal cannot issue any direction asking the Respondents to promote the Applicant from a certain date. This proposition admits of little doubt. It is certainly not the province of the Tribunal to give any such direction in a case where the decision is to be taken by the appointing authority after considering the recommendations made by the DPC.

7. In the premises, the appropriate direction to be made and which we hereby make is to direct the Respondents to convene a review DPC for re-considering the case of the Applicant on the basis of the relevant records. The

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review DPC shall make assessment regarding Applicant's inclusion in the select list on the basis of which Respondents No. 3 to 23 were promoted alongwith others to the post of Commissioner of Income Tax vide order dated 10th February, 1987 (Annexure A/1). The Appointing Authority is directed to take appropriate action in the matter on the recommendations which may be made by the review DPC. Respondents are directed to comply with the afore-said direction within a period of three months from today. Application is disposed of on the terms stated here-in-above. In the circumstances, we make no order as to costs.

  
( D.K. Chakravorty )  
Administrative Member  
24-5-1990

  
( B.S. Sekhon )  
Vice Chairman  
24-5-90

'MSR'