

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH?  
NEW DELHI.

Registration O.A. No. 1527 of 1987

Shri Tejinder Singh ... ... ... Applicant.

## Versus

Union of India and others ... ... ... Respondents.

Hon. Mr. Justice U.C.Srivastava, V.C.  
Hon'ble Mr. S.R. Adige, Member (A)

(By Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was recruited as a Class-I Income Tax Officer through the competitive I.A.S. etc. examination conducted in the year 1963 and joined the Income-tax Department in June, 1964. He has approached the Tribunal praying that this ~~hon'ble~~ court may be pleased to summon all the records of the case particularly records relating to correspondence of respondent no.2 with the commission and the proceedings of the D.P.C. dated 16.8.1986 may be quashed. The applicant is not present in the court <sup>even</sup> today who has filed his case in person. Therefore, we have no option but to decide the case in his absence.

2. The applicant was selected by the Union Public Service Commission in a D.P.C. meeting held on 2.12.1983 and was placed in Select Merit panel for promotion as Commissioner of Income-Tax, Level II prepared by the said commission on 2.12.1983, but ~~he~~ was not promoted. ~~Subsequently he~~ challenged the same/filing a case before the Tribunal

which case was partly allowed ~~as per the order~~ and the respondents were directed to consider the case of the applicant in consultation with the Union Public Service Commission. A review petition ~~has also been~~ is said to have been filed in this case, which is sub-judice. On 23.9.1985 another DPC were constituted for promotion to the post of Commissioner of Income Tax Level-II, wherein the applicant was once again selected, being a "Very Good Officer" and placed at S1. No. 22 of the of the said list dated 23.9.1985, but the applicant was not promoted and the officers junior to him were promoted and according to the applicant, he was left out on the ground of a contemplated disciplinary proceedings, malafidely initiated by the respondent no. 2. The applicant again filed an application No. 256 of 1986 before the Tribunal challenging the legality and constitutionality of the initiation of the disciplinary proceedings against him. This application is said to be pending.

3. The respondents in their written statement have stated that the applicant will be promoted after completion of the contemplated disciplinary proceedings. The applicant has made a complaint that the then Ex-chairman of the Central Board of Direct Taxes sent to the commission ~~an~~, a purportedly adverse report for the financial year 1982-83, the authenticity of which itself was in doubt, asking the commission to review the findings and the panel

prepared on 23.9.1985, on the basis of the said adverse report, and a lot of correspondence in this behalf ~~was~~ took place, and as per ~~the~~ information of the applicant, the commissioner did not agree to the same. On 1.11.1985, the commission wrote to the respondents no.2 that the aforesaid report/purportedly written by late Sri K.R. Raghvan had not been reviewed and had also not been communicated, thereafter, the respondent no.2 prepared a letter dated 8.11.1985 to be served on the applicant, while he was on sick leave, in order to communicate the aforesaid adverse remarks. The applicant moved a representation against the same before the department but it was not expunged, thereafter, he moved an application before the Tribunal against the same and from the counter affidavit, it appears that the same has now been expunged and a SLP filed by the department is pending before the Hon. Supreme Court. The respondent no.2 on 25.7.1986, wrote to the Union Public Service Commission that the aforesaid report for the year 1982-83 purportedly written by late ~~the~~ Raghvan had now been communicated and the representation against the same being dismissed, a review DPC be convened. The Union Public Service Commission was thus pressurised to hold a review DPC on 11.8.1986, but this DPC wrongly and illegally graded the applicant "Not yet fit" although, he was graded "Very Good" by the earlier DPC. The applicant made representation against the same ~~was~~ submitting that the Review DPC was illegal and the adverse remarks were not operating as the representation against the same which was filed within the prescribed time was still pending.

The applicant has challenged the holding of the Review D.P.C. as violative of the principles of natural justice and is against the law. The applicant has contended that no adverse remarks should have been taken into account unless the representation against the same was disposed off, and it is the Direction of the Government of India dated 6.3.1980 that the grading of an officer can be changed, "only with reference to the technical or factual mistake that took place earlier and, therefore, it should neither change the grading of an earlier considered..."

4. From the counter affidavit filed by the respondents, it appears that the adverse remarks were given to the applicant for the year 1983-84 but the same has also been expunged and the C.R. written by Sheikh Abdullah for the year 1982-83 has been restored. In the case of Gurdial Singh Fijji Vs. State of Punjab, (1979) 2 SCC page 368 as well as in the case of Brij Mohan Singh Chopra Vs. State of Punjab, AIR 1987(SC) page 948, in which it has been held that the adverse entries should be communicated to the affected government servant and his representation against such entries should be disposed of before taking into account the entries with a view to form any opinion against him. When the representation filed by the applicant was pending, the adverse remarks were to be considered along with the representation itself. As the applicant having been categorised very good by the DPC, there was no occasion for reviewing the same. It appears that merely because of some adverse remarks, his assessment was not considered, that itself would not decline more so, when the adverse remarks itself has now been subsequently wiped out.

The adverse remarks having been wiped out, there appears to be no reason for restoration of the old position. With the result, the selection of the applicant still holds good the constitution of the review DPC has become ineffective. It is different matter that the SLP pending before the Supreme Court is decided and the entries are restored, but so long as there was no direction or order, there appears to be no reason why the applicant could not be given benefit of his grading and the selection by the DPC in 1988 which supposed to be considered all the relevant material and we hope that this will be done within a period of 3 months from the date of receipt of the certified copy of this order to the respondents, ~~discrepancy do not exist~~. The application is disposed of with the above terms. No order as to the costs.

*Arif Ali*  
Member (A)

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Vice-Chairman

Dated: 17.3.1993.

(n.u.)